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Administration**

Summary Report

FHWA Waiver Valuations Study

August 2018 – November 2020

FHWA Task Order 693JJ318F000266

**An Analysis of the Use of Waiver Valuations by Federal,
State, and Local Public Agencies (LPAs): (Identifying and
Measuring Outcomes that could Further Streamline
Project Delivery)**

November 2020

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16. Abstract The Federal Highway Administration conducted research and analysis on the current state of the waiver valuation program nationwide, to support a Notice of Proposed Rule Making initiative to update the waiver valuation sections of 49 CFR part 24, and to enhance streamlining opportunities available to acquiring agencies subject to Federal regulations. This report summarizes and presents the research, which included a nationwide survey, interviews with selected survey respondents, and a literature search. The report discusses several aspects of waiver valuations, including current thresholds for use of waiver valuations, agencies that do not use waiver valuation due to statute or case law, average costs for administering appraisal and waiver valuation, parameters used by agencies in determining suitability of waiver valuations, criteria used by agencies to determine qualifications of those conducting the valuations, and more. It also includes recommendations for improving the waiver valuation program that resulted from the research. Best practices in key findings areas are also identified.					
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Executive Summary

The fundamental purpose of the waiver valuation program is to streamline the right-of-way process in instances of small, temporary, or uncomplicated acquisitions while still protecting the rights of affected property owners and tenants. Use of the waiver valuation program, as presented in 49 CFR Part 24.102, is intended to provide just compensation in a streamlined and fiscally responsible way in simple and uncomplicated acquisitions of real property on Federal aid projects. While all Federal agencies and any State agencies and Local Public Authorities (LPAs) are required to conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) on Federal aid projects, the use of the waiver valuation program varies considerably around the country. While some variability is undoubtedly attributable to differences in real estate market values, topography, and the very nature of projects, the Federal Highway Administration (FHWA) has undertaken a project to survey the state of the practice and to conduct a robust analysis of best practices regarding the waiver valuation program. This project was undertaken to support changes proposed in a Notice of Proposed Rulemaking (NPRM) published in 2019, and to better support the waiver valuation program.

FHWA designed and developed a survey that was then distributed to 50 States and four territories, plus Federal agencies, seeking information on their waiver valuation programs. Initial responses to the survey indicated that one question of the survey (Question 28, focused on values of initial offers of just compensation) was likely misunderstood, so this question was redeveloped and redistributed. Results were then compiled, and those results were supplemented by conducting 10 interviews with 2 Federal agencies and 8 State Departments of Transportation (SDOTs) whose survey responses yielded particularly important data. Copies of statutes, regulations, court cases, and policy manuals were uploaded by respondents as part of the survey, and these were supplemented by a literature search and legal analysis. Over the course of this project, 63 survey responses were received, 10 follow-up interviews were conducted, and 98 relevant documents were uploaded or otherwise identified. The purpose of this report is to convey information from the survey, interviews, and literature review and to present results, conclusions, and best practices.

One of the opportunities afforded by this project has been to analyze pairs of States that are geographically near one another but have very different waiver valuation programs. The most common reason for these disparities in otherwise similar States is identified as differences in state statute or state case law. Best practices have also been sought for topics such as model language for jurisdictional exception's to better enable State DOT's to use waiver valuations where appropriate. Other best practice topics analyzed include scoping of waiver valuations; minimum training necessary to perform waiver valuations; minimum competency requirements of personnel performing waiver valuations; and measurement and tracking of an organizations overhead burden for waiver valuations compared to appraisals/reviews. Examples of best practices include:

- The State of Colorado's statutory language that confirms that waiver valuations are not appraisals, thereby clearing the path for people knowledgeable of property values and competent in the market area to conduct waiver valuations. These people need not be appraisers.
- The State of Ohio's statutory language that permits a jurisdictional exception for appraisers to conduct a waiver valuation that is not an appraisal report.
- The U.S. Fish & Wildlife Service's checklist for scoping of project valuations, identifying properties that are appropriate for the use of waiver valuations.

- The Bonneville Power Authority’s (BPA’s) scoping decision tree provides guidance in scoping project valuations and helps ensure the appropriate use of waiver valuations.
- The State of Ohio’s, and the BPA’s published programs for minimum training, ensuring qualification and competence of persons performing waiver valuations, and
- The States of Georgia and Texas with their measurement of overhead burden for conducting waiver valuations compared to appraisals/reviews as an element of Transportation Performance Measurement.

Few insights were provided from respondents regarding how to improve the waiver valuation program. Some respondents believe the limits should be increased, while others believe that doing so would not improve their programs.

Survey responses revealed that nearly 73 percent (72.9%) of all initial offers of compensation are equal to or below \$50,000, and nearly 67 percent (66.9%) of all initial offers of compensation are below \$25,000. The survey responses also seem to indicate that higher waiver valuation limits do not result in a more successful program. Those states with higher waiver valuation limits were only using waiver valuations to support between 0-25% of initial offers to property owners. North Carolina has a state law permitting them to raise the waiver valuations to \$40,000 and still only uses the program less than 25% of the time. Arizona and Delaware have state laws that permit them to raise the waiver valuation program to \$50,000 and those states do not show any increase in the percentage of initial offers to property owners being based upon the waiver valuation. The data indicates that meaningful streamlining efforts in the program should be targeted in the lower value ranges to ensure the greatest impacts. Survey responses and interviews also demonstrate a need to clarify that all forms of payments are included in the waiver valuation compensation limits (i.e., compensation for land, minor site improvements, fencing, etc.); however, administrative settlement may exceed the limits of the waiver valuation.

Chapter 1 provides background on the waiver valuation program and describes the research project’s objectives. Chapter 2 indicates how the survey was conducted and summarizes key responses. Chapter 3 describes interviews held with selected survey respondents and Chapter 4 conveys the results of a review of relevant literature. Chapter 5 provides a combined analysis of the survey, interviews, and literature search. Chapter 6 includes conclusions and recommendations for FHWA based on the outcomes of the research. There are two appendices to the report: Appendix A provides the aggregated responses from all survey questions and Appendix B provides a bibliography of all materials respondents shared through the survey or were reviewed through the literature search.

Chapter 1 – Project Purpose and Need

Property appraisals are generally needed when Federal agencies or State and local governments acquire real property under the Federal-aid Highway Realty Program. Under U.S. Code (42 USC §4651), the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. This law is further implemented into Federal Regulation (49 CFR Part 24) to clarify the requirement for the formal appraisal can be waived if the property owner donates the property and releases the government agency from its obligation to appraise the property, or if the government agency determines that the appraisal is not needed because the valuation problem is uncomplicated and the estimated value of the proposed is \$10,000 or less. The agency may apply a higher threshold, up to a maximum of \$25,000, if the agency acquiring the real property offers the property owner the option of having the agency appraise the property. The valuation process—and the product produced—when an appraisal is not required is a *waiver valuation*.

Ever since the waiver valuation language was included in 49 CFR Part 24, the extent by which State and territory Departments of Transportation (SDOTs) and Federal agencies have used this tool has varied greatly, but its use continues to expand. It has been almost thirty years since the introduction of the waiver valuation and more than a decade since the completion of last official research on the effects of program. The initial intent of the waiver valuation was to help manage costs and increase efficiency in the right-of-way phase of a project by allowing qualified staff to establish estimates of just compensation for uncomplicated acquisitions where the cost of the appraisal and appraisal review exceeded the agency's compensation offer. The dynamics of the Federal-aid Highway Realty Program have changed significantly in that time – and they continue to do so.

There is continued interest in increasing the waiver valuation limits, but little current research has been accomplished which can point to an optimum level that balances risks and rewards effectively while also considering appropriate protections for property owners impacted by Federal-aid projects.

To learn more about waiver valuations, FHWA conducted research, including a survey of SDOTs and Federal agencies, follow-up interviews, and an extensive literature search. The primary purpose of this research was to identify programs that have been successful using the waiver valuation regulations as they are currently written and to characterize the benefits that may be derived if the waiver valuation regulation limits were increased. Other efforts included soliciting techniques or procedures that adequately protect property owner interests at advanced waiver valuation levels, as well as identifying and examining current practice, needs or beliefs that are leading to the use of licensed or certified appraisers to prepare waiver valuations.

FHWA conducted the research in three parts:

- FHWA conducted a survey of the SDOTs and Federal agencies to collect information about their use of waiver valuations.
- FHWA conducted interviews of two Federal agencies and eight SDOTs to collect detailed information about how they use waiver valuations, including challenges they face and best practices.
- FHWA conducted an extensive literature search and review, including State law to collect information on the use of waiver valuations.

Chapter 2 – Conduct and Findings of the Survey

Survey Design

FHWA sent a survey to each SDOT and Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) Federal agency to gather information about their use of waiver valuations. (We refer to Federal agencies and SDOTs as “acquiring agencies” in the survey summary.) The survey, which was self-administered through an on-line questionnaire, consisted of six broad areas of inquiry:

1. Questions about the statutes, regulations, and court cases that affect the use of waiver valuations.
2. Questions about the acquiring agencies' policies and procedures for handling waiver valuations.
3. Questions about guidelines about waiver valuations that the acquiring agencies provide to sub-grantees agencies or jurisdictions, including LPAs
4. Questions about the extent to which the acquiring agencies use waiver valuations.

5. Questions about the acquiring agencies' process for determining the satisfaction of property owners with waiver valuations.
6. Questions about innovations or improvements to the waiver valuation process.

FHWA developed two similar surveys, one for SDOTs and another for Federal agencies. The survey included a total of 48 questions, but respondents could skip some questions based on their responses to previous questions. The survey included a combination of multiple choice and open-ended questions, and respondents also had the option to upload documentation in support of their responses.

Conducting the Survey

The survey was sent to 50 States and four territories, plus Federal agencies, in October 2019. Responses were accepted through January 2020 after several follow-ups from contacts who did not initially respond. There were 63 total unique responses from the initial list of agencies and departments, 52 from SDOTs and 11 from Federal agencies. Table 1 lists the State DOT's and Federal agencies that participated in the survey. Each SDOT that responded provided a single response. Two responses were received from the U.S. Department of Energy and one response from the other nine Federal agencies. FHWA's followed up with 34 of the respondents on a key question pertaining to initial offers in their acquisition programs as it seemed they may have misinterpreted the question. The team received 25 responses, nine of which included revisions to the original answer. Appendix A provides a summary of all the completed responses to each question of the survey, including any revisions made to the response.

State and Territorial Departments of Transportation and Federal Agencies that Participated in the Survey

State and Territorial Departments of Transportation				
Alaska	Guam	Maine	New Jersey	Texas
Alabama	Hawaii	Michigan	New Mexico	Utah
Arizona	Iowa	Minnesota	New York	Virginia
Arizona	Idaho	Missouri	Ohio	Virgin Islands
Colorado	Illinois	Mississippi	Oregon	Vermont
Connecticut	Indiana	Montana	Pennsylvania	Washington
District of Columbia	Kansas	North Carolina	Puerto Rico	Wisconsin
Delaware	Kentucky	North Dakota	Rhode Island	West Virginia
Florida	Louisiana	Nebraska	South Carolina	Wyoming
Georgia	Massachusetts	New Hampshire	South Dakota	
	Maryland	Nevada	Tennessee	
Federal Agencies and Departments				
Architect of the Capitol		U.S. Department of Defense		U.S. Department of Transportation
Bonneville Power Administration		U.S. Department of Energy		U.S. Department of Veteran Affairs
General Services Administration		U.S. Department of Homeland Security		
Tennessee Valley Authority				
U.S. Department of Agriculture		U.S. Department of Interior		

Results of the Survey

Appendix A contains the responses to each of the survey questions. Chapter 5 provides an integrated analysis of the results of the survey, the interviews, and the literature review. This section summarizes the key results of the survey. It includes descriptions of the following:

- The Use of Waiver Valuations and Waiver Valuation Limits

Results of the Survey

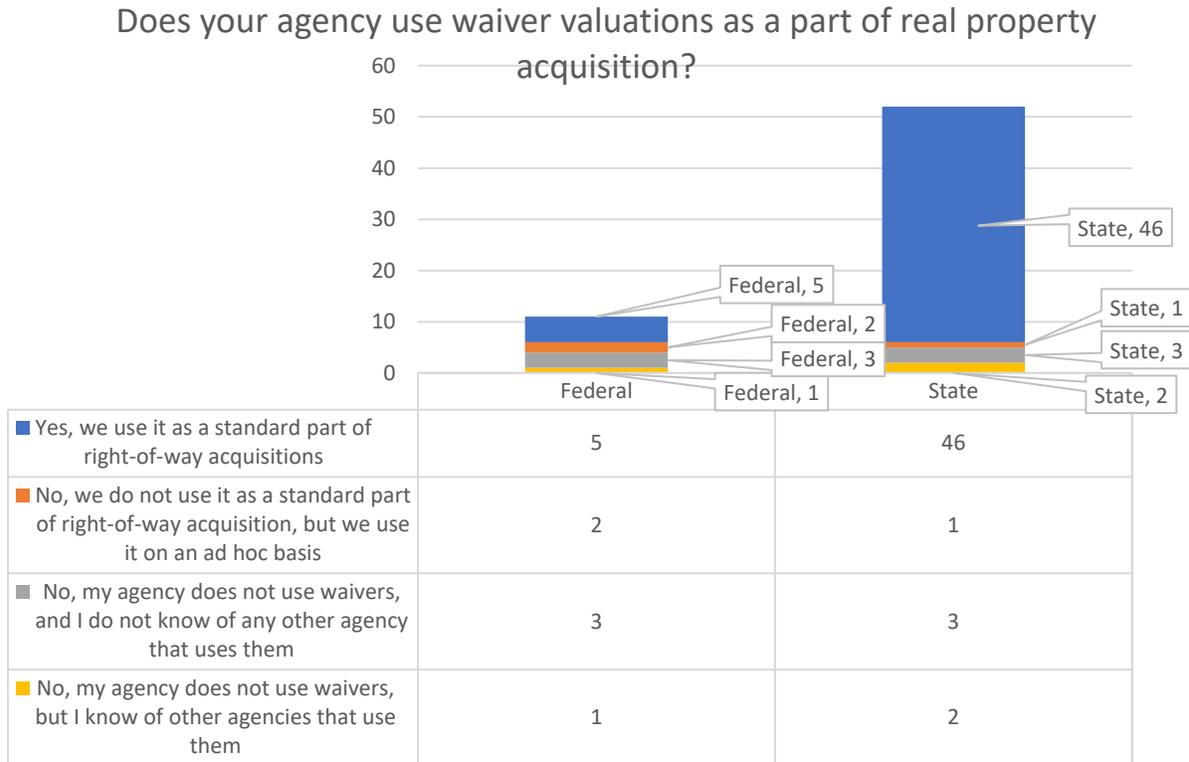
Appendix A contains the responses to each of the survey questions. Chapter 5 provides an integrated analysis of the results of the survey, the interviews, and the literature review. This section summarizes the key results of the survey. It includes descriptions of the following:

- The Use of Waiver Valuations and Waiver Valuation Limits
- Staffing
- Guidance for Sub-Grantees
- Cost Comparisons
- Tools and Resources
- Engaging Property Owners
- Process Improvements
- Geographic Differences

Use of Waiver Valuations

Most of the acquiring agencies responded that they use waiver valuations a standard part of right-of-way acquisitions. As shown in Figure 1, 45 of 48 SDOTs, 1 of 4 US Territories, and five of eleven Federal agencies that responded to the survey said they use waiver valuations as a standard part of right-of-way acquisitions. Six State DOTs and four Federal agencies indicated they did not use waiver valuations.

Figure 1. Survey Responses about Whether Agencies Use Waiver Valuations as Part of Real Property Acquisition



Source: survey question 1.

The responses among Federal agencies stand out because many do not track how their partner agencies or subgrantees may use waiver valuations. Out of the Federal respondents that indicated their agencies

do not use waiver valuations, the primary reason was that they themselves do not acquire property. As discussed in Chapter 3, the two Federal agencies that were interviewed indicated that waiver valuations are a critical part of their programs.

While some SDOTs have authorized the use of waiver valuations through enabling legislation or State regulations, many rely on other means like their policy and procedures manuals or Code of Federal Regulations (CFR). The responses are summarized in Table 1. (Respondents could choose more than one option, so the column does not sum to 100 percent.)

Table 1. Authorization of the Use of Waiver Valuations

Source of Authorization of Use of Waiver Valuations	Respondents
Enabling legislation	22.0 %
State regulations	12.2 %
Other means	41.5 %
None	22.0 %
Do not know	12.2 %
Number of Respondents	41

Source: survey question 4.

Regardless of the source of the authorization of the use of waiver valuations, most agencies (92 percent) have published policy or standard operating procedures to guide the use of waiver valuations. (As reported in response to question 8 of the survey.)

Survey respondents were also asked about laws, regulations, or court cases in their jurisdictions that affect the use of waiver valuations. Their responses (shown in Table 2) indicate that in each case, the majority of the agencies responding reported that the mechanism neither limits nor affirms the use of waiver valuations. For example, 22 of the 33 respondents reported that laws neither limit nor affirm the use of waiver valuations. (Many agencies did not respond to all or part of this question.) Out of the three mechanisms, court cases were cited the most as limiting the use of waiver valuations and laws were cited the most as affirming the use of waiver valuations, but the differences are small.

Table 2. Statutory, Regulatory, and Legal Controls of the Use of Waiver Valuations

Effect on use of waiver valuations	Agencies with Laws, Regulations, or Court Cases Affecting the Use of Waiver Valuations		
	Laws	Regulations	Court Cases
Limits the use of waiver valuations	4	3	6
Neither limits nor affirms the use of waiver valuations	22	22	19
Affirms the use of waiver valuations	7	3	0
Number of Respondents	33	28	25

Source: survey question 5.

Table 4 shows the percentage distribution of acquiring agencies initial acquisition offers. Nearly 73 percent of all initial offers of compensation are less than or equal to \$50,000, and nearly 67 percent of

all initial offers of compensation are below \$25,000. It is likely the sweet spot for any meaningful streamlining efforts in the program should be targeted in this area.

Table 3. Percentage of Initial Offers

Property Value Category	Initial Offers
\$0-\$10,000	51.9%
\$10,001-\$25,000	15.0%
\$25,001-\$50,000	6.0%
\$50,001-\$75,000	4.6%
\$75,001-\$100,000	4.0%
\$100,001-\$125,000	3.4%
\$125,001-\$150,000	3.0%
>\$150,000	12.0%
Number of Respondents	61

Source: survey question 28.

The majority of respondents reported using waiver valuations for 25 percent or less of all of their real property acquisitions, as shown in Table 5.

Table 4. Waiver Valuations as Percentage of All Acquisitions

Percentage Category	Respondents
0% to 25%	55%
25% to 50%	15%
50% to 75%	17%
More than 75%	13%
Number of Respondents	53

Source: survey question 29.

Waiver Valuation Limits

Most survey respondents indicated that they either follow the limits established in 49 CFR Part 24, or their own regulations have been modified to match, as needed. Many State DOTs did not respond to the survey's question about waiver valuation limitations. Table 6 provides the limits from public sources. It also shows the size of each State's program as measured by the number of parcels purchased in the past ten years. During the interviews (see the next chapter), some of the agencies recognized the need to increase the limits; however, others indicated their programs would not necessarily benefit from higher limits. Chapter 5 describes the agencies views of the limits in more detail.

Table 5. State Waiver Valuation Limits and Program Size

State/Territory	State Limits	Parcels Acquired 2010 - 2019	State/Territory	State Limits	Parcels Acquired 2010 - 2019
Alabama	N/A ^a	2,716	Montana	\$25,000	4,462
Alaska	\$25,000	1,906	Nebraska	\$10,000	4,587
Arizona	\$25,000 ^b	966	Nevada	\$20,000	614
Arkansas	\$10,000	5,644	New Hampshire	\$10,000	720
California	\$10,000 ^c	11,386	New Jersey	\$25,000	802
Colorado	\$25,000	3,026	New Mexico	\$10,000	1,325
Connecticut	\$10,000	1,999	New York	N/A ^h	3,951
Delaware	\$25,000 ^d	922	North Carolina	\$25,000 ⁱ	27,407
District of Columbia	N/A	12	North Dakota	\$25,000	3,096
Florida	\$25,000	9,455	Ohio	\$10,000	20,743
Georgia	\$25,000	14,975	Oklahoma	N/A	8,675
Guam	N/A	26	Oregon	\$25,000	3,634
Hawaii	\$25,000	27	Pennsylvania	\$25,000	8,745
Idaho	\$10,000	647	Puerto Rico	N/A	242
Illinois	\$10,000	7,440	Rhode Island	\$10,000	915
Indiana	\$10,000	11,563	South Carolina	\$20,000	5,999
Iowa	\$25,000	6,816	South Dakota	\$25,000	3,746
Kansas	\$10,000	5,122	Tennessee	\$10,000	8,010
Kentucky	\$25,000	3,492	Texas	\$25,000	12,393
Louisiana	\$10,000	2,500	Utah	\$25,000	2,928
Maine	\$15,000 ^e	3,776	Virgin Islands	N/A	110
Maryland	\$10,000	3,128	Vermont	\$25,000	860
Massachusetts	N/A ^f	7,106	Virginia	\$25,000	5,013
Michigan	\$25,000	2,863	Washington	\$25,000	4,496
Minnesota	\$25,000	12,404	West Virginia	\$25,000	2,029
Mississippi	\$10,000	3,142	Wisconsin	\$25,000	12,666
Missouri	\$10,000 ^g	10,996	Wyoming	\$10,000	1,889

N/A = not applicable or available.

a. State law prohibits use

b. \$50,000 or less may be waived under A.R.S. §28-7096.

c. The \$10,000 amount includes severance damages per ROW manual.

d. State law permits \$50,000 on State funded projects

e. Property owners may request an appraisal if over \$10K

f. MassDOT ROW Manual requires a restricted use appraisal

g. MO ROW Manual indicates that fence payments can exceed \$10,000 limits of waiver valuations

h. NYSDOT does not use the waiver valuation

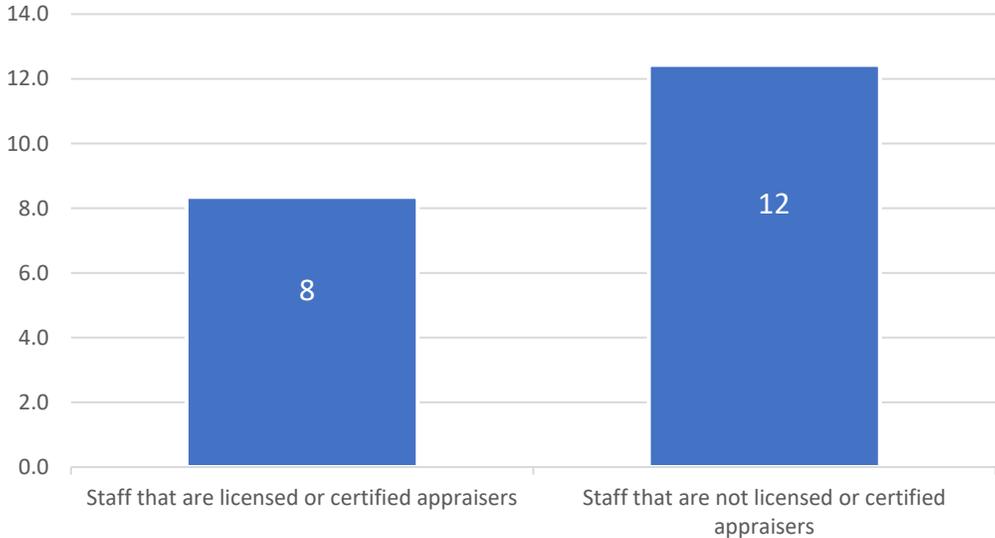
i. State law permits \$40,000 on State projects

Staffing

Survey respondents rely on a range of centralized to decentralized staffing that appears largely dependent upon the geographic area covered. Most respondents report a relatively small number of licensed or certified appraisers on staff with a larger number of technicians. During the interviews, some agencies indicated that internal staff has been reduced (often in the face of substantial budget cuts) while at the same time indicating that use of qualified contractors is highly variable. No respondents indicate use (or plans to use) “big data” or automated valuation model platforms. Regarding staff qualifications, a significant number of survey respondents uploaded position descriptions; however, in many cases these are general civil service descriptions that do not specifically address critical skills or competence to perform waiver valuations. The Ohio DOT, the US Fish & Wildlife Service, and the Bonneville Power Administration provided documents that identify courses that must be successfully completed and experience that must accompany coursework to achieve competence. These three agencies’ documents also speak to continuing education requirements.

Figure 2 shows the average number of staff conducting valuations that are licensed or certified employees, compared to the number of qualified staff conducting valuations that are not licensed or certified appraisers.

Figure 2. Average Number of Staff Conducting Valuations



Source: survey question 19.

The survey provided two key points about the valuation processes and procedures:

- Fifty percent of the responding agencies reported that they use a formal process or a checklist to determine the valuation problem and the proper scope of work for an appraisal or waiver valuation before making the assignment. (Question 13 of the survey.)
- Most agencies (83 percent) do not have laws, regulations, or court decisions that limit who can conduct waiver valuations. (Question 20 of the survey.)

Table 7 shows the type of profession used to assign valuations and to perform them. The first column shows who is allowed to assign staff to appraise or otherwise estimate the value of properties. More than one selection is allowed, so the column does not need to sum to 100 percent. Agency staff is used by the large majority of agencies, and 44 percent use licensed or certified appraisers. The second column shows who is allowed to perform the valuations. Unfortunately, 54 of the 62 respondents did not answer this question. The percentages shown in Table 7 are for the eight respondents that completed the question.

Table 6. Type of Professional Used to Assign and Perform Valuations

Type of Professional	Who Assigns Staff to Perform Valuations?	Who Performs Valuations?
Appraisers-licensed or certified	45.1%	87.5%
Brokers	11.8%	25%
Realtors	7.8%	25%
Auctioneers	1.9%	0.0%
Agency staff	74.5%	75%
Other	27.5%	50%
Number of Respondents	51	8

Source: survey questions 14 and 21.

Slightly more than half of survey respondents report having published minimum qualifications for persons conducting waiver valuations. However, examination of many of these qualifications reveal that they are written for generic job titles by agency HR departments and are not written to ensure qualification to perform waiver valuations. From the interviews and surveys, the agencies rely on experienced trained staff to conduct valuations. But only about half of the respondents have written minimum qualifications for staff that perform valuations, as shown in Figure 3.

Figure 3. Number of Respondents that Have Written Minimum Qualifications for Staff Conducting Valuations



Source: survey question 22.

Guidance for Sub-Grantees

The majority of Federal agencies who responded indicate that they do not have information because they do not monitor their partner agencies and sub-grantees. The State agencies who responded to the survey indicate a variation of oversight levels from phone support to active partnering and training. Table 8 demonstrates that, while in most States the LPA’s or other sub-grantees operate under the same regulatory guidance of the States (25 of the 32 respondents), most (approximately 88 percent) use waiver valuations less than or about the same amount as the State agency.

Table 7. Waiver Valuation Authority for Subgrantees

Question 26: Do Sub-grantees operate under the same waiver valuation authority and limitations as your agency			
Question 27: How do sub-grantee agencies use of waiver valuations compare to the agency	No	Yes	All Respondents
Less than my agency	57%	44%	47%
About the same as my agency	29%	44%	41%
More than my agency	14%	12%	13%
Number of Respondents	7	25	32

Source: survey questions 26 and 27.

Cost Comparisons

Table 9 shows the cost per completed waiver valuation, appraisal, and appraisal review for the nine State DOTs that provided cost information. The majority of survey respondents report they do not have data on the subject of overhead burden for waiver valuations versus appraisals/reviews.

Table 8. Cost of Waiver Valuations and Appraisals

Cost	Minimum Reported Costs	Maximum Reported Costs
Waiver Valuations	\$100	\$2,000
Appraisals	\$2,800	\$7,500
Appraisal Reviews	\$600	\$1,500
Number of Respondents	4	4

Source: survey question 33.

Tools and Resources

Despite pressures to downsize staff reported by some, many respondents neither use “big data” nor automated valuation model platforms, nor do they plan to do so. Table 10 shows the data sources used by survey respondents. In follow-up questions during the interviews, many States rely on their own data sources—from transactions or valuations—rather than commercial sources. (Respondents could select more than one data source, so the rows do not sum to 100 percent.) No survey respondents indicated

that they currently use or plan to use “big-data” or automated valuation models. Most rely on Multiple Listing Services (MLS) or local courthouse data to conduct waiver valuations.

Table 9. Use of Data Sources

Data Source	Respondents that Use the Data Source
MLS	71.4%
Costar/Loopnet	38.8%
STDB	4.1%
Local courthouse records	81.6%
Quantum Listing	2.0%
acrevalue.com	2.0%
Others	42.9%
Number of Respondents	49

Source: survey question 35.

Other data sources include court data, real estate data collected from brokers and sales agents, and data from appraisals of projects. Most respondents (91 percent) reported that they did not use software programs intended for financial institutions and appraisers to expedite the creation of waiver or appraisal forms or reports. One reported using PAECETrak™ and three reported using their own spreadsheets or market data.

Engaging Property Owners

Fourteen of the respondents to the survey reported that they conducted property owner opinion surveys. They reported that that property owners are either generally satisfied with the waiver valuation approach (ten responses) or ambivalent (four responses).

Process Improvements

Most of the survey respondents reported that they did not implement innovations or improvements to their processes in their waiver valuation programs, with only six of the 49 responses indicating they made changes. No formal processes for utilizing feedback to support waiver program changes were discovered.

Geographic Differences

The data do not support conclusions of geographic distinctiveness. In fact, preliminary paired analyses of survey responses and interviews of adjacent or nearby States (Maine/New Hampshire, Wisconsin/Ohio, and Alabama/Mississippi) demonstrate that geographically similar States can have very different waiver valuation programs. The primary reasons for this appear to be regulatory. For instance, one State may have a statute that significantly limits who may perform real property valuations. Another example involves very different interpretations by regulatory boards for appraisers regarding jurisdictional exceptions for waiver valuations.

Documents Provided by Respondents

The Federal agencies and SDOT’s provided ROW manuals, statutes, policies and procedures, and other documents as part of their responses to the survey. The interviewees and the literature search provided

additional contents as well. The documents are included in the bibliography. FHWA has created a document library that is included in this report by reference.

Chapter 3 – Follow-up Interviews

Selection of Interviewees

FHWA conducted an initial review of the survey responses, and based on this review, identified 12 SDOTs and Federal agencies (and three alternates) to interview to gain a more nuanced understanding of their waiver valuation processes. The criteria used to select subjects for the interviews included:

- The extent to which they currently use the waiver valuations
- The agency’s waiver valuation staffing and their qualifications and certifications
- Whether the agency’s use of waiver valuations had conflicts with State laws or other issues
- Whether the agency had processes and procedures for determining valuation issues or problems

A total of ten interviews were held from March 30 through April 21, 2020 with the following agencies and contacts:

- Bonneville Power Authority: Matthew Kirkland, Real Property Services Director
- Forest Service (USDA): Jerry Sanchez, Chief Appraiser
- Alabama: Jeffrey Jones, Assistant Bureau Chief
- Kentucky: Dean Loy, Division Director Right of Way & Utilities
- Maine: Scott Avore, Chief Property Officer
- Mississippi: Don Drake, ROW Operations Administrator
- New Hampshire: Dena Rae, Chief ROW Agent
- Ohio: Douglas Maitland, Acquisition Support Section Manager and Jared Miller, Appraisal Section Manager
- Texas: Laura Riley, Acquisition Section Supervisor
- Wisconsin: Gregory Gasper, Section Chief and Gregory Thompson, Statewide Review Appraiser

Paired Analysis Between Neighboring States

Some States were selected in geographic pairs to gain insight about the differences between their programs. They were interviewed separately but selected in pairs for comparison. For example, Mississippi and Alabama, Maine and New Hampshire, and Ohio and Wisconsin, are pairs of States located near one another, but which have very different programs. The interviews were intended to help identify best practices and common challenges as well lessons learned and suggestions for improvement.

Requests for Additional Documents

To support the literature review (described in Chapter 4), FHWA requested additional documents from each of the interviewees. These documents included enabling legislation, court cases, ROW manuals, minimum qualifications (both for scoping and conducting waiver valuations), operating procedures, and other material. The material supported the information provided during the interviews and provided examples of best practices used by the acquiring agencies and challenges they face.

Interview Results

Several themes emerged from the interviews:

- There is considerable variation among Federal and State agencies in how they implement waiver valuations. Similar States may have very different programs. For example, Mississippi has a robust waiver valuation program, while neighboring Alabama makes virtually no use of waiver valuations. Alabama is limited by a State statute that specifies only licensed or certified appraisers may provide opinions of value for real property. There are only two narrowly defined exceptions that allow realtors and brokers to provide listing prices. Similarly, Ohio makes use of waiver valuations, while Wisconsin does not. Ohio has very detailed laws and regulations enabling the use of waiver valuations, and this is the most likely difference between these two States. Two Federal agencies—the U.S. Forest Service and the Bonneville Power Administration—have strong programs but felt they would benefit from increased use of waiver valuations. All federal agencies surveyed who indicate use of waiver valuations confirm alignment with FHWA waiver valuation limits.
- Agencies interviewed had different interpretations about which items to include or exclude when evaluating compensation limits. Some agencies indicate that the waiver valuation compensation limits apply to land value only and costs of cure may be added above land value. For example, some agencies interpret that minor costs of cure (including replacement of fencing, parking area, or relocation of signs) can be addressed above the current waiver valuation compensation limits. Some agencies indicate that the compensation limits must include *all* costs to acquire (including administrative settlements), while other respondents say that all costs to acquire properties are included in the limits, but Administrative Settlement is a separate function outside of the waiver valuation, and can exceed the limits of the waiver valuation program. Clarification is needed that all costs to acquire are to be accounted within the compensation limits; however, Administrative Settlement exists outside the waiver valuation limits. FHWA should consider publishing a frequently asked question (FAQ) on this topic.
- The interview discussions revealed significant legal and institutional barriers to more widespread use of waiver valuations.
 - Differences in the statutory and common laws in various States affect who may perform waiver valuations. The existence of enabling statute and regulation in Ohio compared to nearby Wisconsin which lacks such enabling language, and the existence of limiting language in Alabama that limits real property value opinions to licensed or certified appraisers compared to nearby Mississippi which has no such limitations are two such examples.

- Waiver valuations are not appraisals under Federal regulations; however, they are opinions of market value, and this appears to be a source of significant concern. The State of Colorado has specific statutory language that confirms this at the state level, and Ohio whose regulatory language creates a specific jurisdictional exception for waiver valuations are two examples of how some states are addressing this concern.
- Most interviewees confirmed that licensed and certified appraisers can perform waiver valuations, but only after completing the same scope of work that would generate an appraisal report, thus negating the time and cost benefits of waiver valuations. The only interviewee to offer a specific solution to this barrier was Ohio's jurisdictional exception language in the state regulations.
- Some State statutes and regulations require that any opinion of market value of real estate must be made by a licensed or certified appraiser. Such statutes contain exceptions for commercial real estate brokers to develop brokers' price opinions, for residential realtors to develop listing prices, and development of model language to add an exception for non-appraisers competent to perform waiver valuations (see training and qualifications discussion above) could be useful.
- The results of the survey show a great deal of variability in agencies' oversight of LPA's. The LPA's also were less likely to use waiver valuations than their state agency. (See Chapter 2.) The interviews revealed the primary cause for this may be the lack of qualified personnel in LPA's to conduct or manage the waiver valuation process.

The implications of these findings are discussed in detail in Chapter 5.

Chapter 4 – Literature Search

Sources Searched

The research team reviewed existing literature to obtain information on the use of waiver valuations under the Uniform Act valuation of interests to be acquired. This stage of research was intended to expand documents identified during the survey, to identify the best practices in the scoping and application of waiver valuations, and the qualifications/competence of those performing waiver valuations. Another purpose was to examine obstacles to greater use of waiver valuations and suggest actions to overcome those obstacles.

The team performed an initial identification and preliminary assessment of literature in the form of statutes/regulations, court cases, and policy documents uploaded to us during the survey. The team also reviewed *National Cooperative Highway Research Program Report 771: Strategies to Optimize Real Property Acquisition, Relocation Assistance, and Property Management Practices* and its associated bibliography; conducted a general internet search using Google; and conducted a search of the FHWA, International Right of Way Association (IRWA), and American Association of State Highway and Transportation Officials (AASHTO) websites. The subject of waiver valuations is a narrow topic area, and the team focused only upon those documents directly linked to the specific topic. The items provided through the survey and found through the literature search include the following:

- Two court cases (from New Jersey and from Utah) were identified that limit the use of waiver valuations. In both instances, state courts determined that waiver valuations do not meet the requirement for good faith negotiation of property owners, and thus cannot be used.
- Sixteen States plus one territory were identified with statutes/regulations that either enable or limit the use of waiver valuations.
- An additional two States (Illinois and West Virginia) were found to have regulatory language specific to the use of waiver valuations, with Illinois regulation providing substantial instruction on waiver valuations in the statute regulating appraisers.
- Two Federal agencies (U.S. Fish & Wildlife and Bonneville Power Authority) have extensive policy language regarding the scoping and conduct of waiver valuations.

Ten additional sources of information were identified through an internet search of Google, and searches of FHWA, IRWA, and AASHTO websites. Internet search terms included:

- Waiver Valuation of Real Property
- Right of Way
- Waiver Valuations, and
- Waiver Valuations in State Law

A total of 120 potential matches were viewed on the FHWA website, four of which were sufficiently relevant to the project to warrant deeper review. One of those is included in the project's document library; the other three were tangential and not specific to waiver valuations. A total of 139 potential hits were found on the AASHTO website, but none were sufficiently similar to warrant inclusion. No references were found in the search of the IRWA website. Approximately 21.8 million documents were identified by the Google search; however, only 12 were found to be sufficiently similar to merit deeper analysis. Four of those documents were sufficiently relevant to warrant inclusion.

Including the documents provided through the survey and those found through the literature search, the team compiled a total of 98 documents, which are listed in the bibliography in Appendix B and organized by FHWA as individual files.

Gaps in Literature and Survey Linked Sources

Information gaps are noted in the survey information gathered, the interviews, and in the literature:

- Several respondents to the survey indicated a desire to increase the payment limits allowed under the waiver valuation program.
- Data were requested regarding the overhead burden of waiver valuations compared to the overhead burden of appraisals and reviews. However, only a very limited number of respondents (2) furnished quantitative information. Several respondents indicated an opinion that waiver valuations carry a lower overhead burden, but few have quantitative support.

- The guidance on appropriate scoping of waiver valuations (when are they appropriate and what does it mean to be competent to make that determination) is extremely limited.
- The guidance on what it means to be competent to perform waiver valuations and the training and education necessary to make one competent varies considerably amongst the respondents.
- Federal laws/regulations and guidance documents are written to provide room to interpret with the expectation that acquiring agencies will negotiate with effected property owners in good faith. However, this can lead to wide variations in application of even some fundamental principles, such as what is included in the waiver valuation limits. Multiple survey respondents and interviewees cited a lack of guidance in such matters.

An additional search was conducted to identify and analyze statutes, best practices, regulations, published case law, or policy statements that support (or inhibit) use of waiver valuations. As part of this search, regulatory language or commercially available products recommended in follow-up interviews were identified and were compiled into a comprehensive bibliography. The bibliography includes documents provided as part of the survey and additional resources discovered during the literature search. The following specific areas were identified by FHWA, including:

- Respondents including Ohio DOT, Maine DOT, and Bonneville Power Authority report having formal training and qualifications programs to ensure (agency) staff performing waiver valuations are competent to do so. For instance, the Maine DOT reports requiring staff to complete the Appraisal Institute's Basic Appraisal Principles and Basic Appraisal Procedures courses. This is not for purposes of licensure or certification, but rather to ensure basic competence for research, comparable selection and adjustment, and reconciliation. The Ohio DOT has a robust in-house training program, and their Appraisal Manual goes into detail with regard to minimum training requirements necessary to achieve competence to perform waiver valuations. The Bonneville Power Authority also has a robust training and competency program in their manual. These manuals are included in the document library for this project.
- A few of the interviewees indicated that they have developed checklists or other formal guidelines that assist the agency in determining when waiver valuations are appropriate. As many published guidelines as could be located are included in the document library for this project.
- A significant remaining question is the possible existence of a rational basis for possible changes to maximum compensation levels balanced against requirements to protect the rights of property owners. We did not find any basis for such changes through either the survey or the interviews and nothing was discovered in the literature search. This remains a significant gap in the practice.
- It is clear that public agencies are facing pressures to downsize and are relying more heavily on outside consultant support than in the past. Some survey respondents indicated the presence of statutory or regulatory language that prohibits anyone but appraisers from providing opinions

of value, with limited exceptions for realtors and brokers. A search for examples of model language that provides for use of waiver valuations by qualified people knowledgeable in the market other than appraisers was undertaken and is summarized in the legal analysis found below.

Chapter 5 – Analysis of Survey, Interviews, and Literature Search

Analysis of Survey and Interview Results

One of the key findings of the research is the diverse nature of the ways Federal agencies and SDOTs use waiver valuations. Of the 11 Federal agencies that responded to the survey, six responded that they do not use waiver valuations, and five of the six do not monitor partner agencies or subgrantees in their use of waiver valuations. The variability in how various Federal agencies operate their land acquisition programs is high. Some agencies report they have no land acquisition program at all.

States that are geographically close to one another can have very different waiver valuation programs. For example, Mississippi has a robust waiver valuation program and provides a best-practices example of the measurement of the reduction in overhead burden achieved through waiver valuations compared to the overhead burden of appraisals and reviews. Alabama, on the other hand, makes little use of waiver valuations despite a recent change in statute that theoretically enables them to rely upon them. The interview with Alabama indicated the changes in the enabling legislation are so narrow as to render waiver valuations essentially unusable. Alabama also reports that legislation essentially prohibits anyone but licensed/certified appraisers from expressing an opinion of value for real property with only two narrowly defined exceptions.

In the northeast, New Hampshire reports a robust waiver valuation program. In contrast, Maine makes little use of waiver valuations despite enabling legislation, because the State cannot rely upon waiver valuations in condemnation. Unless all property owners on a project agree to waiver valuations (waive their rights to an appraisal) in writing, any failure to negotiate a settlement will jeopardize the project schedule.

Despite their proximity and similarity, Ohio and Wisconsin also look quite different. Ohio has a robust waiver valuation program and is a best-practice example of training and competence programs for staff conducting waiver valuations. Wisconsin has little involvement with waiver valuations because of the perceived legal risks involved and because they are unable to rely on them in the event of condemnation. During the interview Wisconsin explained that if they proceed with waiver valuations, but then must condemn, then appraisals and reviews must be performed, and this delays the project schedule. This perceived risk makes waiver valuations unattractive. Maine expressed very similar concerns during their interview.

The respondents to both the surveys and the interviews reported mixed opinions about the necessity of increasing waiver valuation limits:

- Most of the agencies interviewed believe they are making the greatest possible use of the waiver valuation program in their States and would not benefit from an increase in the program limits. This may be a reflection of real estate market values that a static limit cannot reflect.
- While most respondents did not favor increases in the waiver valuation limits, some jurisdictions that were not formally interviewed but talked with the research team strongly believe that the limits of the waiver valuation program should be increased. Examples of this include coastal

States where real estate prices seem to indicate compensation estimates are higher than existing waiver valuation limits.

- Waiver valuations are used more often in initial offers of up to \$10,000 for two primary reasons, as revealed by the survey and the interviews. One is that State regulatory limits sometimes remain at the \$10,000 limit. Second, the landowner concurrence requirement to move to \$25,000 is perceived to negate the time savings and is perceived to threaten project schedules.

Several themes emerged from the research:

- **Variability:** There is wide variation among Federal and State agencies alike in how they implement waiver valuations. For example, additional guidance would be helpful on topics such as:
 - Scoping – Most agencies lack clear, written, and objective procedures on how, when, and where use of a waiver valuation is appropriate. While all agencies surveyed and interviewed indicate they retain full authority and control over valuation scoping, comparatively few have published guidance or procedures. Examples of best practice coupled with strong encouragement to adopt and implement more robust scoping guidance would better manage variability.
 - Inclusiveness – Agencies interviewed had different interpretations about which items to include or exclude when evaluating compensation limits. Some agencies indicate that the waiver valuation compensation limits apply to land value only, and costs to cure (damages) may be added above land value, thereby resulting in an offer to the property owner that exceeds the regulatory limits of the waiver valuation established in 49 CFR. Some agencies indicate that the limits must include *all* costs to acquire (including administrative settlements), while other agencies say that all costs to acquire properties are included in the compensation limits, but Administrative Settlement is a separate function outside of the waiver valuation, and can exceed the limits of the waiver valuation program. Clarification on this point would also better manage variability.
 - Qualifications – Relatively few agencies interviewed revealed robust training and qualification programs or even core competencies for people conducting waiver valuations. Examples of best practice coupled with strong encouragement to adopt and implement qualification programs would better manage variability.
- **Jurisdictional Conflicts:** Survey responses, documents uploaded as part of survey responses, and interview discussions all reveal significant legal and institutional barriers to more widespread use of waiver valuations.
 - There are differences in the statutory and common laws in various States regarding who may perform waiver valuations.
 - Waiver valuations are not appraisals under Federal regulations; however, they do include opinions of land value, and this appears to be a source of significant concern for appraisers.
 - Licensed and certified appraisers can perform waiver valuations in most jurisdictions, but only after completing the same scope of work that would generate an appraisal

report, thus negating the time and cost benefits of waiver valuations. A jurisdictional exception that would allow licensed and certified appraisers to perform a more abbreviated scope of work has been opposed by real estate appraiser professional organizations.

- Some State statutes and regulations require that any opinion of market value of real estate must be made by a licensed or certified appraiser. Such statutes contain exceptions for commercial real estate brokers to develop brokers' price opinions, and for residential realtors to develop listing prices. Development of model language to add an exception for non-appraisers competent to perform waiver valuations (see training and qualifications discussion above) could be useful.
- **Lack of Critical Data and Analyses:** One of the goals of the survey was to quantitatively analyze the comparative overhead burden of waiver valuations to appraisals/reviews and to analyze the level of use of waiver valuations.
 - Complete overhead cost information was limited to five respondents, and all of these indicated significant reduction in overhead burden. Lead States Initiative, a Pooled Fund Study, or other research projects to expand these data to include more of the U.S. would be insightful.
 - The survey results also indicated that agencies do not have sufficiently reliable data to determine whether waiver valuations are being over or underused, even after clarification of one survey question was given and revised responses received. As with overhead burden data, additional study of the use of waiver valuations, possibly in combination with cost of living or other demographic or affluence indicators would provide much needed clarification and support for things such as cost limit adjustments, *de minimus* award amounts, and use of waiver valuations where appropriate.

Additional Legal Analysis

The use of waiver valuations by condemning authorities can be legally challenged for failure to comply with procedural or substantive requirements of Federal and State constitutions, State statutes, and administrative rules, as well as local ordinances. The power of eminent domain is an essential attribute of State sovereignty¹, but the power is limited by the Fifth Amendment to the U.S. Constitution that provides "...nor shall private property be taken for public use without just compensation."

Individual State constitutions further delineate the power of eminent domain by expanding the scope of just compensation in at least 31 states beyond the fundamental requirement in the U.S. Constitution that no property shall be "taken" without just compensation that is applicable to all States as follows:

- Kansas and North Carolina have no state constitutional takings provision and instead rely upon statutes for condemnation authority.
- The other forty-eight (48) States all have takings provisions in their state constitutions.

¹ "The right of eminent domain -- that is, the right to take private property for public uses -- appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty." *Boom Co. v. Patterson*, 98 U.S. 403, 406 (1879).

- Wisconsin and Connecticut constitutions are identical to the United States Constitution in terms of takings of private property for public use.
- Twenty-four (24) State constitutions add a limitation by adding both “taken or damaged” provisions. For example, Alaska’s constitution states “Private property shall not be taken or damaged for public use without just compensation.”
- In all, thirty-one (31) State constitutions have one or more provisions beyond simply taking of property.²

State statutes, regulations and local ordinances and State court decisions also expand on what constitutes just compensation. What is included in just compensation necessarily varies by State and often goes beyond any compliance requirements of the U.S. Constitution and the Uniform Act [42 USC 4601-4655]. These provisions apply regardless of the method of valuation applied, so they cover waiver valuations as well as appraisals / reviews.

Typically, just compensation is determined by an appraisal process tailored to that individual State’s constitutional, statutory, regulatory, and local just compensation requirements and procedures. Local governments across the United States also can be grouped by types of governing authority, Home Rule, or the Dillon Rule. Those with Home Rule may go beyond State basic requirements whereas those in States that follow the Dillon Rule can only do what the State has expressly allowed. State agencies typically must have express statutory or necessarily implied authority to act. Doubts are typically resolved against any implied authority. Binding State court decisions add further wrinkles and variations. Condemning authorities are universally held to strict compliance with all substantive and procedural mandates for the protection of property owners.

All of these variations influence the extent to which State and local condemning authorities may take advantage of waiver valuations as defined in 49 CFR §24.2(33) because they affect when and if an appraisal is or is not required pursuant to 49 CFR §24.102(c)(2). The reason is that an uncomplicated just compensation, valuation problem in one jurisdiction may well be much more complex in another jurisdiction and difficult to confine to the ceiling on the estimated value of the property acquired in order to qualify for a waiver valuation. Differences in real estate market pricing combined with differences in statutory and common law make a uniform national effort to support the waiver valuation program a difficult challenge. As previously stated, the survey data support an increase in waiver valuation limits within the range from \$25,000 to \$50,000.

Based on the interviews, the survey, and the general experience of the researchers, only 5 percent of the numerous State DOT property parcel acquisitions, including numerous strip acquisitions, end up in court and many of those can be settled prior to trial. When challenging a condemning authority in court, the property owner will argue the provisions of the State constitution, statutes and administrative rules provide for higher levels of just compensation. Waiver valuations are more of an administrative issue than they are an eminent domain litigation issue.

For this project, the survey was used to determine how various agencies handle the waiver valuation process and how they advise local public authorities in their use of waiver valuations. As part of this

² “Takings Provisions in State Constitutions, Do They Provide Greater Protections of Private Property Than the Federal Takings Clause.” <http://www.law.msu.edu/king/1999/1999-Nakagiri.pdf>, <https://digitalcommons.law.msu.edu/king/192/>

survey, condemning authorities were asked to identify key court decisions, statutes, and regulations that enabled or prohibited the use of waiver valuations. Not all States and jurisdictions responded to these questions or did not know the answer, but the responses that were received and further research of additional jurisdictions provide a representative sample.

Court Cases. Only New Jersey and Utah reported that court cases affected their use of waiver valuations.

NEW JERSEY CASE. The New Jersey case cited concluded that the New Jersey condemnation statute requires an appraisal so that negotiations may take place prior to condemnation³. The case effectively bars the use of a waiver valuation in New Jersey when a property owner decides to challenge its use.

State of New Jersey, Commissioner of Transportation v. V. H. Edward Hancock and Walter W. Hancock, 208 N.J. Super. 737 (1985), 506 A.2d 855 <https://law.justia.com/cases/new-jersey/appellate-division-published/1985/208-n-j-super-737-0.html>

In brief, the New Jersey statute at that time, N.J.S.A. 20:3-6, provided that

... no action to condemn shall be instituted unless the condemnor is unable to acquire such title or possession through bona fide negotiations with the prospective condemnee, which negotiations shall include an offer in writing by the condemnor to the prospective condemnee holding the title of record to the property being condemned, setting forth the property and interest therein to be acquired, the compensation offered to be paid and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated.

Defendant Hancock claimed that the State had failed to comply with these requirements. This court's opinion agrees with that contention. This matter did not involve substantial money. The State's offer of compensation totaled \$9,550.

N.J.S.A. 20:3-6 stated only that: "In no event shall such offer be less than the taking agency's approved appraisal of the fair market value of such property. A rejection of said offer or failure to accept the same within the period fixed in written offer ... shall be conclusive proof of the inability of the condemnor to acquire the property or possession thereof through negotiations." [Emphasis added.]

The New Jersey Statute requires an appraisal in all situations regardless of amount. Despite the nominal value of the property, the Court emphasized it was not possible to truly negotiate without an appraisal. The same New Jersey Statute remains in effect today in 2020:

<https://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu>

UTAH CASE. The Utah case concluded that property owners' testimony on severance damages in a partial takings case should have been excluded. The City of Hildale had offered \$2,600 for an easement

³ New Jersey is a "taking" State. New Jersey's Constitution provides, "Private property shall not be taken for public use without just compensation." Article 1, § 20

on one property and \$800 for an easement on another. Utah’s Constitution requires just compensation for takings and damages to property⁴.

The landowners testified that the value of the easement on one property was \$5,800 but the damages to the remainder was \$110,800. The other property owner testified the easement was worth \$10,000 and the damages to the remainder were \$160,000. Since the trial court allowed the testimony of the property owners, the jury awarded substantial severance damages. The Utah Supreme Court reversed that decision because the property owners were not qualified as experts and furthermore the measure of severance damages is what effect the partial acquisition has on the value as of the date of its acquisition not as of its value based on a speculative highest and best value at some future date. The case was reversed for a new trial.

The decision cautions against use of waiver valuations where there is exposure to significant severance damages that may be proper and robust in some partial acquisitions in a takings and damages State. The decision does require the use of expert testimony of the highest and best use and value of the remainder as of the date of acquisition, not some future date, and has been cited as precedent often.

City of Hildale, v. Cooke, Nos. 990933, 990975, 2001 UT 56, 28 P.3d 697

<https://law.justia.com/cases/utah/supreme-court/2001/hildale.html>

<https://caselaw.findlaw.com/ut-supreme-court/1368859.html>

<https://casetext.com/case/city-of-hildale-v-cooke>

Utah Code 78-34-10 (1996) was the statutory requirement for determining the value of the property and severance damages that controlled at the time of this decision.

Subsequently the controlling statute has been significantly amended as follows effective 5/12/2020:

<https://le.utah.gov/xcode/Title78B/Chapter6/78B-6-S511.html>

It appears that the amended Utah Statute as well as the Utah Constitution compensation and damages requirements expose condemning authorities to even greater uncertainty as to substantial severance damages and mitigates against the use of waiver valuations by condemning authorities in Utah. The valuation problem does not fit well or with a degree of certainty within the range of estimated value for a waiver valuation.

Reported cases that focus on “waiver valuations” are rare to nonexistent because waiver valuations are simply not used in litigation.

Statutes. Although there was some internal inconsistency in the responses of South Carolina, Washington, and Wisconsin, twelve States and the Virgin Islands responded that they relied to some extent on enabling statutes to support their use of waiver valuations. What follows is a list of those States, links to the statutes cited in their survey responses, and a brief legal analysis of each statute cited. Some responses were simply incorrect or referred to an administrative rule rather than a statute. Four other States were selected for further in-depth research of enabling or prohibiting statutes, based on interview responses. All citations to statutes are to the current versions of the official statutes as of the date of this memorandum or as otherwise is clearly indicated in the text.

⁴ Utah is a “taking or damages” State. Utah’s Constitution provides, “Private property shall not be taken or damaged for public use without just compensation.” Article I, § 22

ALABAMA. Although Alabama did not respond to this part of the survey, an interview by the team resulted in the comment that a statute precludes anyone but licensed/certified appraisers giving an opinion of value of real property. However, the Alabama Statutes [Code of Alabama] do allow waiver valuations:

“18-1A-22: Offer to purchase at full appraised value; amount of compensation; written statement and summary; waiver valuation.

<http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/1975/18-1A-22.htm>

The pertinent part of the statute reads as follows:

“(e)(1) The state or a political subdivision thereof may use a waiver valuation, in lieu of an appraisal, to acquire real property if either of the following apply:

- a. The owner of the real property to be acquired is donating the property and releases the state or a political subdivision thereof from its obligation to appraise the property.
- b. The state or a political subdivision thereof, with the written consent of the owner of the real property to be acquired, determines that an appraisal is unnecessary and the anticipated value of the proposed acquisition, based upon a review of available valuation data, is equal to or less than the amount provided for in 49 CFR §24.102(c)(2)(ii), or the appropriate replacement federal regulation.

(2) When an appraisal is determined to be unnecessary pursuant to this subsection, the state or a political subdivision thereof shall prepare the waiver valuation. The person preparing the waiver valuation shall make his or her determination based on the available evidence of the value of the real property in the local real estate market.

(Acts 1985, No. 85-548, p. 802, §203; Act 2019-234, §1.)”

” 18-1A-3: Definitions.

<http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/1975/18-1A-3.htm>

“As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(20) WAIVER VALUATION. The valuation process utilized, and the product produced by the state or a political subdivision thereof, in lieu of an appraisal, to acquire real property as specifically authorized by Section 18-1A-22.

(Acts 1985, No. 85-548, p. 802, §103; Acts 1996, No. 96-558, p. 828, §1; Act 2019-234, §1.)”

Analysis: Alabama Act 2019-234, HB98, amends Sections 18-1A-3 and 18-1A-22, Code of Alabama 1975, to authorize the state or a political subdivision of the state, in a condemnation action, to use a waiver valuation in lieu of an appraisal under certain conditions with the consent of the property owner.

EFFECTIVE DATE: May 22, 2019. Alabama is a “takings” State with a twist. Alabama Constitution Article I, §23 “...private property shall not be taken for, or applied to public use, unless just compensation be first made therefor.”

COLORADO. “Colorado Revised Statutes: Title 24. Government State § 24-56-117. Real Property acquisition policies.”

<https://leg.colorado.gov/colorado-revised-statutes>

[C.R.S. 24-56-117](#)

“(1) Any acquiring agency or political subdivision of the state which acquires real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of such program or project shall comply with the following policies:

(a) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property; except that the department of transportation may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.” [Emphasis added.]

Colorado Revised Statutes also exclude waiver valuations under the Federal regulation from the definition of “appraisal” for professional regulation purposes:

[C.R.S. 12-10-602](#)

“As used in this part 6, unless the context otherwise requires:

(1)

(a) "Appraisal", "appraisal report", or "real estate appraisal" means a written or oral analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate that is transmitted to the client upon the completion of an assignment. These terms include a valuation, which is an opinion of the value of real estate, and an analysis, which is a general study of real estate not specifically performed only to determine value; except that the terms include a valuation completed by an appraiser employee of a county assessor as defined in section 39-1-102 (2).

(b) The terms do not include an analysis, valuation, opinion, conclusion, notation, or compilation of data by an officer, director, or regularly salaried employee of a financial institution or its affiliate, made for internal use only by the financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the financial institution or affiliate and that is not represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. An appraisal prepared by an officer, director, or regularly salaried employee of a financial institution who is not licensed or certified under this part 6 shall contain a written notice that the preparer is not licensed or certified as an appraiser under this part 6.

(c) "Appraisal", "appraisal report", or "real estate appraisal" does not include a federally authorized "waiver valuation", as defined in 49 CFR 24.2 (a)(33), as amended.”

Analysis: Colorado DOT has express statutory authority to use waiver valuations. Local condemning authorities are not expressly included. Colorado is a taking or damages State. “Private property shall not be taken or damaged, for public or private use, without just compensation.” Colorado Constitution Article 11 § 15.

CONNECTICUT. “Chapter 135 Department of Housing: Uniform Relocation Assistance Act.” This survey response is a general reference to only the relocation assistance compliance provisions of the Connecticut version of the Uniform Act.

https://www.cga.ct.gov/current/pub/chap_135.htm

Within the cited section there is general language authorizing compliance with the overall Federal Uniform Act as follows:

“Sec. 8-267a. Compliance with federal Uniform Relocation Assistance and Real Property Acquisition Policies Act. All state agencies, as defined in section 8-267, are authorized to comply with the applicable provisions of 42 USC Sections 4601–4655 and any subsequent amendments, for the purpose of participating in a federal or federally assisted project or program.”

https://www.cga.ct.gov/current/pub/chap_135.htm#sec_8-267a

42 USC §4651. Uniform policy on real property acquisition practices

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

- (1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.
- (2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, ***except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.***

Analysis: Connecticut does **not** have express statutory authority to use waiver valuations. Connecticut is a taking State. “The property of no person shall be taken for public use, without just compensation therefor.” Connecticut Constitution Article 1, § 11. The search found no express waiver valuation enabling language in these related Connecticut statutes:

[Sec. 13a-73. Acquisition of real property. Condemnation of land for: state highway, highway maintenance storage area or garage; military purposes; highway drainage or preservation of historical monument; rights of access and egress. State owned property. Review and approval of State Properties Review Board. Exception.](#)

[Sec. 13a-74. Payment of damages.](#)

DELAWARE. Delaware did not respond to this part of the survey, but subsequent research yielded the following authority:

<https://delcode.delaware.gov/title29/c095/index.shtml>

In pertinent part Title 29, Chapter 95, §9505(14) of the Delaware Code reads as follows:

§9505 “(14) For a real property acquisition necessitated by a highway project, an appraisal is unnecessary if the Department of Transportation determines that the valuation of the property to be acquired is uncomplicated and the market value is estimated at \$50,000 or less, based on

a review of available data. If an appraisal is determined to be unnecessary, the Department of Transportation shall prepare a waiver of valuation. The Department of Transportation may seek from the federal agency funding the project, approval on a case-by-case basis to increase the waiver amount on any valuation over \$10,000 and up to a maximum of \$25,000, or the amount currently approved by the federal agency, provided that the Department of Transportation offers the property owner the option of having an appraisal prepared. In all cases in which the estimated market value of a property to be acquired is over \$10,000, the property owner must be given the option of having an appraisal prepared.”

Analysis: Delaware DOT has express statutory authority to use waiver valuations.

IDAHO. “Idaho Statutes: Title 54 Professions, Vocations, And Businesses Chapter 41 Idaho Real Estate Appraisers Act.” This is a general reference to the regulatory statutory chapter for licensed appraisers.

<https://legislature.idaho.gov/statutesrules/idstat/Title54/T54CH41/>

There is a general exception that authorizes employees of the Idaho DOT and local highway authorities and agents to use waiver valuations as follows:

<https://legislature.idaho.gov/statutesrules/idstat/Title54/T54CH41/SECT54-4105/>

“(5) The provisions of this chapter requiring mandatory licensure or certification shall **not** apply to employees or agents of the Idaho transportation department or a local highway jurisdiction when estimating the market value for property that is subject to eminent domain by the department or local highway jurisdiction, or property owned by the department or local highway jurisdiction that has been declared surplus, where a noncomplex appraisal would normally be ordered, and the market value is ten thousand dollars (\$10,000) or less. Such estimates of market value shall be reviewed and approved by an Idaho state certified general real estate appraiser. Idaho state certified general real estate appraisers who estimate or review market value of property under this section shall be exempt from the requirements of uniform standards of professional appraisal practice. A value estimate shall be provided to the property owner who shall also be informed of his right to request and receive an appraisal of his property.” [Emphasis added.]

Analysis: Employees and agents of Idaho DOT and Idaho local highway authorities have express statutory authority to use waiver valuations, but the property owner has the right to request and receive an appraisal. Idaho Constitution Article I, § 14 states, “Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.”

GEORGIA. Georgia responded to the survey that it did not know whether there was express legal authority to use waiver valuations. There is a provision in Georgia Statutes that provides an exemption from the appraisal requirement if the property owner agrees. Here is the provision in Title 22, Eminent Domain, Chapter 1, General Provisions, § 22-1-9, as provided through Georgia’s agreement with LEXIS:

<http://www.legis.ga.gov/en-US/default.aspx>

<http://www.lexisnexis.com/hottopics/gacode>

“§ 22-1-9. Policies and practices guiding exercise of eminent domain

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for property owners, and to promote public confidence in land acquisition practices, all condemnations and potential condemnations shall, to the greatest extent practicable, be guided by the following policies and practices:

(1) The condemning authority shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Where the condemning authority seeks to obtain a fee simple interest in real property, real property shall be appraised before the initiation of negotiations, and the owner or his or her designated representatives shall be given an opportunity to accompany the appraiser during his or her inspection of the property, except that the condemning authority may, by law, rule, regulation, or ordinance, prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value;”

Analysis: Georgia is a “takings and damages” State with a number of twists including that “just and adequate compensation” be paid. Article I, § III, para. I. “...private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.”

KANSAS. “36-16-1 Acquisition of real property for state highway purposes; relocation assistance.” The Kansas response is problematic. There is no Kansas Statute 36-16-1 as cited in its response. For Kansas, the 36-16-1 refers to a Kansas Administrative Regulation (KAR) that is intended to help implement KSA 68-413. A follow up with Kansas yielded no express reference to waiver valuation enabling legislation. This uncertainty may be the result of Kansas eminent domain procedures where appraisers appear to be instructed by the court and statutes as to what is to be considered. The Kansas DOT is authorized to acquire property for highway purposes by Kansas Statute 68-413:

http://www.kslegislature.org/li/b2019_20/statute/068_000_0000_chapter/068_004_0000_article/068_004_0013_section/068_004_0013_k/

The statute specifies that the Kansas DOT is to follow standard eminent domain procedures as follows:

“(b) (1) Exercise of the right of eminent domain by the secretary shall be in accordance with and governed by article 5 of chapter 26 of the Kansas Statutes Annotated, and amendments thereto.”

The procedures set out in that article 5 of Chapter 25 are found at:

http://www.kslegislature.org/li/b2019_20/statute/026_000_0000_chapter/026_005_0000_article/

The specific provisions for determining the value of the property taken or damaged is provided in Kansas statute 26-513:

http://www.kslegislature.org/li/b2019_20/statute/026_000_0000_chapter/026_005_0000_article/026_005_0013_section/026_005_0013_k/

The Kansas Administrative Code cited in the response does adopt 49 CFR Part 24, “as of March 2, 1989, and all amendment thereto”. Such prospective adoption of all amendments thereto is subject to challenge as an unconstitutional delegation of legislative and rulemaking authority. The adoption is not specific enough to override otherwise clear Kansas law in eminent domain proceedings but may be argued to encourage waiver valuations by the Kansas DOT.

https://sos.ks.gov/publications/pubs_kar.aspx

“36-16-1. Acquisition of real property for state highway purposes; relocation assistance. (a) 49 C.F.R. Part 24, as of March 2, 1989, and all amendments thereto, is adopted by reference. (b) The provisions of 49 C.F.R. Part 24, as of March 2, 1989, and all amendments thereto, shall be applicable to all acquisitions of real property by the department of transportation for the state highway system including those acquisitions in which federal funds are not available for or used in payment of acquisitions. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, 68-404; implementing K.S.A. 58-3501 through 58-3506; effective, E-68-16, May 13, 1968; effective, E-69-8, May 28, 1969; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; amended, E-71-31, Aug. 1, 1971; amended Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended, E-76-33, July 1, 1975; amended May 1, 1976; amended May 1, 1983; amended May 1, 1986; amended Sept. 18, 1989.)”

Analysis: We do not find express statutory authority for Kansas DOT to use waiver valuations but there is statutory language which arguably encourages their use. Kansas has no Kansas Constitutional provision whatsoever and is subject to the “takings” provision of the US Constitution. Under Kansas eminent domain procedures and statutes there may be a practice of accepting waiver valuations when challenges are unlikely and there is little exposure due to greater court participation in the valuation process itself. The applicable Kansas Statute puts Kansas in a “takings and damages” category:

26-513. “Same; compensation required for taking and damage; determination. (a) *Necessity.* Private property shall not be taken or damaged for public use without just compensation.”

MAINE. “Maine Statute: §153-B. Property for highways; acquisition”

<http://legislature.maine.gov/legis/statutes/23/title23sec153-B.html>

“§153-B. Property for highways; acquisition2. Survey and appraisal. When property is to be purchased or taken over and held for the State, unless the department determines that an adequate description already exists, the department shall first cause the property or interest in the property to be acquired to be surveyed and described, and a plan of the property made, and to be appraised by one or more appraisers. The owner or the owner's designated representative must be given an opportunity to accompany the appraisers during the appraiser's inspection of the property. All persons employed by the department are authorized, to the extent necessary for surveys, appraisals and preliminary engineering, to enter and cross all lands within, adjoining and adjacent to the area proposed for acquisition in carrying out the objectives of this section. The department may prescribe procedures to waive the appraisal in cases involving the acquisition by sale or donation of property or interest in property. The department may prescribe procedures to waive the appraisal in cases in which the fair market value of the property or interest in the property to be taken is estimated at \$15,000 or less and valuation can be established by another method. In any case in which the department and the owner do not reach an agreement about the value of property or interest in property to be acquired, or if the owner requests, the department shall perform an appraisal.” [Emphasis added and note that the \$15,000 limit applies to state aid projects only]

Analysis: Maine DOT has express statutory authority to use waiver valuations, subject to agreement by the property owner. The Property owner may also request the Maine DOT perform an appraisal. Unlike the Idaho enabling statute, the Maine statute does not extend to local highway authorities. Maine is a “takings” State: “Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.” Maine Constitution Article 1, § 21 Maine has a written waiver valuation procedure in its ROW Manual.

MINNESOTA. “Minnesota Statutes: 117.036 Appraisal and Negotiation Requirements”

<https://www.revisor.mn.gov/statutes/cite/117.036>

“Subd. 2.Appraisal.

(a) Before commencing an eminent domain proceeding under this chapter for an acquisition greater than \$25,000, the acquiring authority must obtain at least one appraisal for the property proposed to be acquired. In making the appraisal, the appraiser must confer with one or more of the owners of the property, if reasonably possible. For acquisitions less than \$25,000, the acquiring authority may obtain a minimum damage acquisition report in lieu of an appraisal. In making the minimum damage acquisition report, the qualified person with appraisal knowledge must confer with one or more of the owners of the property, if reasonably possible. Notwithstanding section [13.44](#), the acquiring authority must provide the owner with a copy of (1) each appraisal for property acquisitions over \$25,000, or (2) the minimum damage acquisition report for properties under \$25,000, the acquiring authority has obtained for the property at the time an offer is made, but no later than 60 days before presenting a petition under section [117.055](#). The acquiring authority must also inform the owner of the right to obtain an appraisal under this section. Upon request, the acquiring authority must make available to the owner all appraisals for properties over \$25,000, or the minimum damage acquisition report for properties under \$25,000. If the acquiring authority is considering both a full and partial taking of the property, the acquiring authority shall obtain and provide the owner with appraisals for properties over \$25,000 for both types of takings, or minimum damage acquisition reports for properties under \$25,000.”

Analysis: Minnesota DOT and local condemning have express statutory authority to use waiver valuations. Property owners may acquire their own appraisal at public expense and may obtain valuation information from Minnesota DOT. Minnesota is a “taken, destroyed or damaged” State. Minnesota Constitution Article 3, § 17 “Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.”

NORTH CAROLINA. North Carolina responded it did not know if it had legal authority to use waiver valuations. Further investigation yielded the following statutory authority information:

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_136/GS_136-19.6.pdf

§ 136-19.6. Right-of-Way Claim Report.

(a) Intent. – It is the intent of the General Assembly to provide the Department of Transportation with the resources and flexibility necessary to accelerate the time in which projects are completed while maintaining fairness to affected property owners and other citizens of this State. It is the belief of the General Assembly that providing the Department with the flexibility allowed under subsection (b) of this section will help toward achieving this intent. Therefore, the Department is encouraged to utilize the flexibility provided in subsection (b) of

this section for all acquisitions of land in which the estimate of the acquisition is ten thousand dollars (\$10,000) or less.

(b) Permissive Exception to Appraisal. – When the Department acquires land, and except as otherwise required by federal law, an appraisal is not required if the Department estimates that the proposed acquisition is forty thousand dollars (\$40,000) or less, based on a review of data available to the Department at the time the Department begins the acquisition process. If the Department estimates the acquisition to be forty thousand dollars (\$40,000) or less, the Department may prepare a Right-of-Way Claim Report instead of an appraisal. The owner of the land to be acquired may request the Department provide an appraisal for any right-of-way claim of ten thousand dollars (\$10,000) or more. The Department may contract with a qualified third party to prepare a Right-of-Way Claim Report. Any person preparing a Right-of-Way Claim Report must have a sufficient understanding of the local real estate market.

(c) Construction. – Nothing in subsection (b) of this section shall be construed as superseding or altering any provision of federal law requiring the Department to obtain an appraisal of a property the Department is attempting to acquire. (2017-57, s. 34.5(a); 2018-74, s. 1(a).)”

Analysis: North Carolina DOT has express statutory authority to use waiver valuations. The authority does not extend to other condemnors or local condemning authorities.

OHIO. Ohio addresses the waiver valuation in both law (Ohio Revised Code sec 163.59), and regulation (Ohio Administrative Code 5501:2-5-06). The Ohio law provides for a lead agency to write rules for land acquisition (revised code 163.58) and Ohio Administrative Code identifies the Ohio DOT as that lead agency (Administrative Code 5501:2-5-01). The Ohio DOT obtains its condemnation authority from Title 55, Chapter 5519, Appropriation of property, section 5519.01:

<http://codes.ohio.gov/orc/5519.01v1>

“5519.01 Appropriation of property.

If the director of transportation is unable to purchase property for any purpose related to highways, roads, or bridges authorized by Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code, or, if the Ohio rail development commission is unable to purchase property for any purpose necessary for the implementation of rail service under Chapter 4981. of the Revised Code, the director shall issue, or the commission shall enter on the records of the commission, a finding that it is necessary, for the public convenience and welfare, to appropriate such property as the director or commission considers needed for such purposes. The finding shall contain a definite, accurate, and detailed description of the property, and the name and place of residence, if known or with reasonable diligence ascertainable, of the owner of the property appropriated. The commission shall submit to the director a copy of its record finding that the appropriation of property is necessary. The commission shall not proceed with the appropriation unless it is first approved by the director.

The director or commission, in such finding, shall fix what the director or commission considers to be the value of such property appropriated, together with damages to the residue, and deposit the value thereof, together with the damages, with the probate court or the court of common pleas of the county within which the property, or a part thereof, is situated. The power

to appropriate property for any purpose authorized by such chapters shall be exercised in the manner provided in sections [163.01](#) to [163.22](#) of the Revised Code.

Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section [5301.012](#) of the Revised Code.”

All agencies or persons with eminent domain authority that acquire real property in Ohio are required to follow the real property acquisition statutes found in Title 1, Chapter 163, Section 163.59:

<http://codes.ohio.gov/orc/163.59v1>

The pertinent part of the Ohio Revised Code reads as follows:

“163.59 Policy for land acquisition.

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many state and federally assisted programs, and to promote public confidence in public land acquisition practices, heads of acquiring agencies shall do or ensure the acquisition satisfies all of the following:

(A) The head of an acquiring agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(B) In order for an acquiring agency to acquire real property, the acquisition shall be for a defined public purpose that is to be achieved in a defined and reasonable period of time. An acquisition of real property that complies with section [5501.31](#) of the Revised Code satisfies the defined public purpose requirement of this division.

(C) Real property to be acquired shall be appraised before the initiation of negotiations, and the owner or the owner's designated representative shall be given a reasonable opportunity to accompany the appraiser during the appraiser's inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. If the appraisal values the property to be acquired at more than ten thousand dollars, the head of the acquiring agency concerned shall make every reasonable effort to provide a copy of the appraisal to the owner. As used in this section, "appraisal" means a written statement independently and impartially prepared by a qualified appraiser, or a written statement prepared by an employee of the acquiring agency who is a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date, supported by the presentation and analysis of relevant market information.”

Ohio also addresses the waiver valuation in regulation: “Ohio Code: 5501: 2-5-06 Real property acquisition” The reference is not to an Ohio Statute but to a rule, Ohio Administrative Code.

<http://codes.ohio.gov/oac/5501:2-5-06>

5501-2-5-06 (B)(3) “Appraisal, waiver thereof, and invitation to owner:

(a) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in paragraph (B)(3)(b) of this rule, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(b) An appraisal is not required if:

(i) The owner is donating the property and releases the agency from its obligation to appraise the property; or

(ii) The agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at ten thousand dollars or less, based on a review of available data.

(a) When an appraisal is determined to be unnecessary, the agency shall prepare a waiver valuation. Persons preparing or reviewing a waiver valuation are precluded from complying with standard rules 1, 2, 3 and 4 of the "Uniform Standards of Professional Appraisal Practice" (USPAP), as in effect in the current - edition, as promulgated by the "Appraisal Standards Board" of the Appraisal Foundation, which can be found at <http://www.uspap.org>

(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." [Emphasis added.]

Analysis: Ohio DOT is the lead agency in the State of Ohio and has both statutory authority, and regulatory authority to create rules for the acquisition of real property including to waive the appraisal requirement for projects receiving Federal or State aid (See ORC 163.58). The Ohio DOT and other Ohio government agencies are expressly authorized by both Ohio's Revised Code (Statute), and Ohio's Administrative Code (Regulation/Rule) to use waiver valuations. Administrative rules when properly adopted have the full force and effect of law. Ohio is a constitutional "taking" State. Ohio Constitution Article 1, § 19: "When taken ... for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, ...without deduction for benefits to any property of the owner." The applicable administrative code establishes criteria for valuation of property.

SOUTH CAROLINA. "South Carolina Code of Laws: Title 28 – Chapter 2 – The Eminent Domain Procedure Act" The survey response references the entire eminent domain chapter:

<https://www.scstatehouse.gov/code/t28c002.php>

There are 50 uses of the word "appraisal" in the Chapter and no use of the phrase waiver or any other indication an appraisal is not required. The statute does define what just compensation includes:

"SECTION 28-2-370. Just compensation to include only value of property taken, damage to remaining land, and benefits to landowner.

In determining just compensation, only the value of the property to be taken, any diminution in the value of the landowner's remaining property, and any benefits as provided in Section 28-2-360 may be considered.

South Carolina is a "takings: State. South Carolina Constitution Article I, §13: "Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor.

Analysis: South Carolina does **not** have express statutory authority to use waiver valuations.

UTAH. Utah's response to the survey makes general references to "Procedure for payment of compensation, Procedure for acquisition of property, Rule R933-1, Right of Way Acquisition, and

Rulemaking for sale of real property—Licensed or certified appraisers – Exceptions”. However, as noted above, Utah is a “taking or damages” State. Utah’s Constitution provides, “Private property shall not be taken or damaged for public use without just compensation.” Article I, § 22. The controlling Utah Statute has been significantly amended as follows effective 5/12/2020:

<https://le.utah.gov/xcode/Title78B/Chapter6/78B-6-S511.html>

“Effective 5/12/2020

78B-6-511. Compensation and damages -- How assessed.

- (1) The court, jury, or referee shall hear any legal evidence offered by any of the parties to the proceedings, and determine and assess:
 - (a)
 - (i) the value of the property sought to be condemned as a whole, including all improvements pertaining to the property; and
 - (ii) the value of each separate interest in the property.
 - (b) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff;
 - (c) If the property, though no part of it is taken, will be damaged by the construction of the proposed improvement, and the amount of the damages;
 - (d) separately, how much the portion not sought to be condemned, and each estate or interest in it, will be benefitted, if at all, by the construction of the improvement proposed by the plaintiff, provided that if the benefit is equal to the damages assessed under Subsection (1)(b), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit is less than the damages assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken;
 - (e) if the property sought to be condemned consists of water rights or part of a water delivery system or both, and the taking will cause present or future damage to or impairment of the water delivery system not being taken, including impairment of the system's carrying capacity, an amount to compensate for the damage or impairment; and
 - (f) if land on which crops are growing at the time of service of summons is sought to be condemned, the value that those crops would have had after being harvested, taking into account the expenses that would have been incurred cultivating and harvesting the crops.
- (2) In determining the market value of the property before the taking and the market value of the property after the taking to assess damages in partial takings cases as described in Subsection (1)(b), the court, jury, or referee:
 - (a) may consider everything a willing buyer and a willing seller would consider in determining the market value of the property after the taking; and
 - (b) may not consider the assessed value on the property tax assessment for the property unless the court determines that the assessed value on the property tax assessment constitutes an admission by a party opponent.”

Rule 933-1 cited in the survey response is the Utah Administrative Code:

<https://rules.utah.gov/publicat/code/r933/r933-001.htm>

It does contain a provision adopting by reference the Federal rules in 49 CFR Part 24 as follows:

[“R933-1-2. Incorporation of Federal Regulations for Federal Financial Assistance Projects.](#)

The State of Utah incorporates by reference 49 CFR 24 as amended in the Federal Register, on January 4, 2005, as its administrative rules on the acquisition of rights of way for projects receiving federal financial assistance.

[R933-1-3. Partial Incorporation of Federal Regulations for State Projects Funded Without Federal Financial Assistance.](#)

The State of Utah incorporates by reference 49 CFR 24 as amended in the Federal Register on January 4, 2005, as its administrative rules on the acquisition of rights of way for projects that do not receive federal financial assistance, except that 49 CFR 24.107 is not incorporated and shall not be the basis for recovery of attorney fees or other litigation expenses specified therein. Attorney fees and other litigation expenses shall only be recoverable for projects that do not receive federal financial assistance to the extent expressly provided for by state law.”

This would include any waiver valuation provisions under 49 CFR §24.102(c)(2) in as of January 4, 2005. The rules would still be invalid to the extent inconsistent with the Utah Constitution as interpreted by Utah courts.

Analysis: It appears that the amended Utah Statute as well as the Utah Constitution’s compensation and damages requirements expose condemning authorities to even greater uncertainty as to substantial severance damages and mitigate against the use of waiver valuations by condemning authorities in Utah. The language of the new statute may well allow non-expert testimony of owners to be admitted into evidence.

VIRGINIA. Virginia’s response to question 4 of the survey indicated it had enabling statutory and administrative rule authority to use waiver valuations without identifying the precise sources of the authority. Virginia is a “taking and damages” State. Article I, Section 11 of the Constitution of Virginia: “...the General Assembly shall not pass any law...whereby private property shall be taken or damaged for public uses, without just compensation...”

Virginia’s Eminent Domain Chapter recognizes an appraisal is not always required and authorizes waiver valuations as follows:

<https://law.lis.virginia.gov/vacode/title25.1/chapter4/section25.1-417/>

§ 25.1-417. General provisions for conduct of acquisition.

A. If a state agency acquires real property in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

1. The state agency shall make every reasonable effort to acquire expeditiously real property by negotiation.
2. Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property; however, the requirements of this subdivision shall not apply if the state agency's official who is responsible for the acquisition determines that the value of the property being acquired is less than \$25,000, based on assessment records or other objective evidence. Whenever the value of the property being acquired is determined to be between

\$10,000 and \$25,000, the state agency, at the time an offer is made initiating negotiations, shall disclose to the owner or his designated representative that the offer has been established based on assessment records or other objective evidence and not an appraisal and that he may request that an appraisal be prepared and used as the basis for establishing just compensation pursuant to this section.

Virginia also exempts government employees from appraiser regulations when performing valuation services within the scope of their public employment:

<https://law.lis.virginia.gov/vacode/title54.1/chapter20.1/section54.1-2010/>

“§ 54.1-2010. Exemptions from licensure.

A. The provisions of this chapter shall not apply to:

1. A real estate broker or salesperson licensed in the Commonwealth who, in the ordinary course of business, provides a valuation or analysis of real estate for a fee; however, such person shall not hold himself out as a real estate appraiser, and the valuation shall not be referred to as an appraisal and shall not be used in lieu of an appraisal performed by a licensed appraiser.

2. An officer or employee of the United States of America, or of the Commonwealth or a political subdivision thereof, where the employee or officer is performing his official duties, provided that such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in the Commonwealth or any political subdivision thereof in connection with the appraisal of real estate or real property.”

Analysis: The Virginia DOT and other State agencies have express statutory authority for valuation waivers. Property owners may request an appraisal.

WASHINGTON. Washington’s response to the survey indicated in very general terms that Washington State Code “Acquisition procedures” and “Criteria for appraisals” authorized waiver valuations. Washington’s specific answer to question 4 was that it relied on regulations rather than a statute. However, here is the relevant Washington Statute [RCW: Revised Code Washington] on acquisition procedures:

<https://app.leg.wa.gov/RCW/default.aspx?cite=8.26.180>

The part enabling waiver valuations is:

“RCW 8.26.180

Acquisition procedures.

Every acquiring agency shall, to the greatest extent practicable, be guided by the following policies:

(1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his or her designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during his or her inspection of the property, except that the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value.”

The corresponding administrative rule [WAC: Washington Administrative Code] provision relating to criteria for appraisals is found in:

<https://apps.leg.wa.gov/WAC/default.aspx?cite=468-100-102>

The relevant part dealing with waiver valuations reads as follows:

“WAC 468-100-102

Criteria for appraisals.

(1) **Standards of appraisal:** The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support the appraiser's opinion of value. At a minimum, the appraisal shall contain the following items:”

Analysis: Washington DOT and local condemning authorities are statutorily authorized to use waiver valuations. The Washington Administrative Code characterizes these valuations as minimum standard appraisals. Washington is a “takings and damages” State. Washington Constitution Article I. § 16 “No private property shall be taken or damaged for public or private use without just compensation having first been made, or paid into court for the owner...”

WISCONSIN. Wisconsin’s response to the survey cites to the eminent domain statute for transportation facilities (quick take), Wis. Stat. 32.05.

<https://docs.legis.wisconsin.gov/statutes/statutes/32/i/05>

32.05(2) Appraisal.

(a) The condemnor shall cause at least one, or more in the condemnor's discretion, appraisal to be made of all property proposed to be acquired. In making any such appraisal the appraiser shall confer with the owner or one of the owners, or the personal representative of the owner or one of the owners, if reasonably possible.

(b) The condemnor shall provide the owner with a full narrative appraisal upon which the jurisdictional offer is based and a copy of any other appraisal made under par. (a) and at the same time shall inform the owner of his or her right to obtain an appraisal under this paragraph. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired and may submit the reasonable costs of the appraisal to the condemnor for payment. The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal. If the owner does not accept a negotiated offer under sub. (2a) or the jurisdictional offer under sub. (3), the owner may use an appraisal prepared under this paragraph in any subsequent appeal.”

The Wisconsin Statute 32.09 governs the determination of just compensation:

<https://docs.legis.wisconsin.gov/statutes/statutes/32/i/09>

The Wisconsin DOT allows waiver valuations with detailed instructions in its Real Estate Manual.

<https://wisconsin.gov/dtsdManuals/re/repchap2/2-5-waiver-evaluations.pdf>

However, it would be converted to an appraisal or not used at all if there is any likelihood of a valuation appeal. An appeal may be taken up to 6 months after a negotiated acquisition:

32.05(2a) NEGOTIATION. Before making the jurisdictional offer provided in sub. (3), the condemnor shall attempt to negotiate personally with the owner or one of the owners or his or her representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor shall consider the owner's appraisal under sub. (2) (b) and may contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 as may be applicable to the property in one or more installments on such conditions as the condemnor and property owners may agree. Before attempting to negotiate under this subsection, the condemnor shall provide the owner or his or her representative with copies of applicable pamphlets prepared under s. 32.26 (6). When negotiating under this subsection, the condemnor shall provide the owner or his or her representative with the names of at least 10 neighboring landowners to whom offers are being made, or a list of all offerees if less than 10 owners are affected, together with a map showing all property affected by the project. Upon request by an owner or his or her representative, the condemnor shall provide the name of the owner of any other property which may be taken for the project. The owner or his or her representative shall also have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or his or her representative may obtain copies of such maps by tendering the reasonable and necessary costs of preparing copies. The condemnor shall record any conveyance by or on behalf of the owner of the property to the condemnor executed as a result of negotiations under this subsection with the register of deeds of the county in which the property is located. The conveyance shall state the identity of all persons having an interest of record in the property immediately prior to its conveyance, the legal description of the property, the nature of the interest acquired and the compensation for such acquisition. The condemnor shall serve upon or mail by certified mail to all persons named therein a copy of the conveyance and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the conveyance may, within 6 months after the date of its recording, appeal from the amount of compensation therein stated in the manner set forth in subs. (9) to (12) and chs. 808 and 809 for appeals from an award under sub. (7). For purposes of any such appeal, the amount of compensation stated in the conveyance shall be treated as the award and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

Wisconsin is a “takings” State. The applicable Wisconsin Constitutional provision:

Wis. Const. Art. I, § 13 is identical to the US Constitution:

“The property of no person shall be taken for public use without just compensation therefor.”

Analysis: Condemnors in Wisconsin are not statutorily authorized to use waiver valuations, but WisDOT does use waiver valuations in appropriate circumstances.

VIRGIN ISLANDS. The response was “Virgin Islands Code § 231a”, the reference for which is

<https://law.justia.com/codes/virgin-islands/2019/title-31/part-ii/chapter-23/231a/>

**“2019 US Virgin Islands Code
Title 31 - Public Works and Property
Part II - Public Property
Chapter 23 - Procurement and Sale
§ 231a. Government acquisition of real property**

Universal Citation: [V.I. Code tit. 31, § 231a \(2019\)](#)

(a) In all cases where the Government of the Virgin Islands is authorized to acquire real property by purchase or exchange for any public use, other than by condemnation, and the Governor shall express in writing his opinion that said real property is needed for a specific public purpose, the Commissioner of Property and Procurement shall appoint three appraisers, who are residents of the Virgin Islands, and who, by reason of occupation and experience are acquainted with Virgin Islands real property values, to severally or jointly make a careful inspection of the land and submit severally to the Legislature and the Commissioner of Property and Procurement a written statement of the value of the real estate or right to be acquired, accompanied by a comprehensive statement of the unit prices or factors included or the method used in the computation of the total value.

(b) Before entering upon these duties, the said appraisers shall subscribe to an oath to discharge their duties faithfully and impartially, and upon completion of their duties they shall be entitled to compensation for transportation expenses and a reasonable per diem allowance when actually employed.

(c) The offer by the Governor of purchase for any such real property shall provide for the payment of a purchase price not to exceed the average of the values submitted by the three appraisers. If said average of the values submitted by the other appraisers is unacceptable to the private owner, the Commissioner of Property and Procurement may negotiate a price with said owner; provided, however, that in no case shall the negotiated price exceed one hundred twenty-five percent of the average value determined by the appraisers. If no agreement is reached, the matter shall be referred to the Attorney General who shall cause an action for condemnation of the property to be commenced, if authorized by law, unless the Governor shall otherwise direct.

(d) The Attorney General shall require that all conveyances of title in fee simple, and all grants of easements of right of entry, to the Government, as grantee, except where otherwise waived in writing by the Attorney General for good and sufficient reason, shall include complete warranty of title in the grantor, and that the abstract of title or other title records pertaining thereto be delivered to the Government with the instrument conveying title, for proper recording of such documents, with a copy of any recorded deeds being transmitted to the Legislature.

(e) No method for the acquisition of real property by purchase or exchange other than that set out in this section or condemnation shall be permitted.

(f) No conveyance pursuant to this section shall be valid unless approval of the Legislature is obtained prior to conveyance of title.

(g) The provisions of this section shall not apply to the acquisition by the Government of the Virgin Islands of real property in whole or in part with Federal funds; provided, however, that the land acquisition requirements of the Federal agency funding the project shall be applied thereto.

(h) This section shall not be applicable to the acquisition of real property under the provisions of:

- (1) Title 21, chapter 1, relating to the Homestead programs;
- (2) Title 29, chapter 1, subchapter IX, relating to Home Ownership and Development; or
- (3) Title 21, chapter 2, relating to conveyances by the Virgin Islands Housing Finance Authority to the Government.”

Analysis: The Virgin Islands Code cited does not authorize use of waiver valuations but if Federal funds are involved in an acquisition by the Virgin Island Government it must follow Federal requirements.

Other Search Results

FISH AND WILDLIFE SERVICE. The financial assistance rules of the U.S. Fish and Wildlife Service allow recipients to acquire property with the use of waiver valuation as provided 49 CFR Part 24 as well as to use applicable State laws to the extent those laws may also allow qualifying waiver valuations:

<https://www.fws.gov/policy/520fw7.html# ACQUISITION PROCEDURES>

“Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 7 Real Property: Valuation, Negotiation, and Acquisition 520 FW 7

FEDERAL FINANCIAL ASSISTANCE

7.14 What options are available for acquisition of real property in a financially assisted project? We describe the options for acquisition of real property in a financially assisted project in subsections A through E below.

A. OPTION 1 — Basic acquisition policies with no exemption or exception. A buyer must follow the procedures in 49 CFR 24.102–503, as implemented and supplemented by 2 CFR 1402.329, Service Manual chapter 520 FW 6, and this chapter. These procedures are introduced in 49 CFR 24.102. Valuation is addressed in sections 24.103 and 104, but all of 49 CFR 24 is potentially relevant to acquisition. The major features include:

- (1) The buyer must obtain:
 - (a) An appraisal report recommended by an appraisal review report, or
 - (b) A waiver valuation if the valuation problem qualifies for its use.

The appraisal and the appraisal review report must conform to both the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA or the Yellow Book).”

Analysis: The Fish and Wildlife Service allows their subgrantees to acquire property using waiver valuations.

Regulations.

Three States responded to Question 4 of the survey that they are authorized by State regulations to use waiver valuations: Illinois, Washington, and West Virginia. The Washington Administrative Code was already cited above in conjunction with Washington’s Statutory authority for use of waiver valuations. It is repeated here for convenience:

WASHINGTON. The corresponding administrative rule [WAC: Washington Administrative Code] provision relating to criteria for appraisals is found in:

<https://apps.leg.wa.gov/WAC/default.aspx?cite=468-100-102>

The relevant part dealing with waiver valuations reads as follows:

“WAC 468-100-102

Criteria for appraisals.

- (1) **Standards of appraisal:** The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support the appraiser's opinion of value. At a minimum, the appraisal shall contain the following items:”

ILLINOIS. There is extensive instruction in Illinois law regarding waiver valuations, but it is found in the Illinois Statute regarding regulation of appraisals and appraisers in

225 ILCS 458/5-5 CHAPTER 225 PROFESSIONS AND OCCUPATIONS:

<https://www.ilga.gov/legislation/ilcs/documents/022504580K5-5.htm>

“(e-5) For the purposes of this Act, valuation waivers may be prepared by a licensed appraiser notwithstanding any other provision of this Act, and the following types of valuations are not appraisals and may not be represented to be appraisals, and a license is not required under this Act to perform such valuations if the valuations are performed by (1) an employee of the Illinois Department of Transportation who has completed a minimum of 45 hours of course work in real estate appraisal, including the principals of real estate appraisals, appraisal of partial acquisitions, easement valuation, reviewing appraisals in eminent domain, appraisal for federal aid highway programs, and appraisal review for federal aid highway programs and has at least 2 years' experience in a field closely related to real estate; (2) a county engineer who is a registered professional engineer under the Professional Engineering Practice Act of 1989; (3) an employee of a municipality who has (i) completed a minimum of 45 hours of coursework in real estate appraisal, including the principals of real estate appraisals, appraisal of partial acquisitions, easement valuation, reviewing appraisals in eminent domain, appraisal for federal aid highway programs, and appraisal review for federal aid highway programs and (ii) has either 2 years' experience in a field clearly related to real estate or has completed 20 hours of additional coursework that is sufficient for a person to complete waiver valuations as approved by the Federal Highway Administration; or (4) a municipal engineer who has completed coursework that is sufficient for his or her waiver valuations to be approved by the Federal Highway Administration and who is a registered

professional engineer under the Professional Engineering Act of 1989, under the following circumstances:

(A) a valuation waiver in an amount not to exceed \$10,000 prepared pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, or prepared pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs regulations and which is performed by (1) an employee of the Illinois Department of Transportation and co-signed, with a license number affixed, by another employee of the Illinois Department of Transportation who is a registered professional engineer under the Professional Engineering Practice Act of 1989 or (2) an employee of a municipality and co-signed with a license number affixed by a county or municipal engineer who is a registered professional engineer under the Professional Engineering Practice Act of 1989; and

(B) a valuation waiver in an amount not to exceed \$10,000 prepared pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, or prepared pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs regulations and which is performed by a county or municipal engineer who is employed by a county or municipality and is a registered professional engineer under the Professional Engineering Practice Act of 1989. In addition to his or her signature, the county or municipal engineer shall affix his or her license number to the valuation.

Nothing in this subsection (e-5) shall be construed to allow the State of Illinois, a political subdivision thereof, or any public body to acquire real estate by eminent domain in any manner other than provided for in the Eminent Domain Act.”

Analysis: Illinois allows waiver valuations, but the regulatory prerequisites are significant, strict, and very limiting. Illinois is a “taking and damages” State: Ill. Constitution, Article 1, §15: “Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.”

WEST VIRGINIA. The search found no statutory or administrative code of West Virginia that authorizes waiver valuation. West Virginia authorizes the use of waiver valuations in 2.02(5) and 6.25 of its Right-of-Way Manual:

<http://transportation.wv.gov/highways/engineering/Documents/WVDOHRightofWayManual.pdf>

More information regarding West Virginia eminent domain practice is available at:

https://wvyounglawyers.com/wp-content/uploads/2013/10/SJDOCS-7443928-v4-Eminent_Domain_Practice_Handbook.pdf

West Virginia is a “taking or damaged” State. West Virginia Constitution Article III, § 9: “Private property shall not be taken or damaged for public use, without just compensation,”

Discussion of Best Practices

- **Enabling Legislation.** Often, state laws and state regulations incorporate pieces and parts of the Federal laws and Federal regulations pertaining to the Uniform Act, but frequently, these pieces and parts are significantly edited to reflect the desires and norms of each individual state. Colorado was found to have a best practice example of enabling legislation that creates a specific instruction that waiver valuations are not appraisals: *"Appraisal", "appraisal report", or "real estate appraisal" does not include a federally authorized "waiver valuation", as defined in 49 CFR 24.2 (a)(33), as amended.*" This language allows a person who is knowledgeable in the market and otherwise trained and competent to perform a waiver valuation to do so. One of Ohio's contributions to a best practice included language in their enabling legislation that created a jurisdictional exception that precludes persons from complying with Standards Rules 1, 2, 3, and 4 of USPAP. This language allows licensed or certified appraisers to perform or review waiver valuations without having to also develop an appraisal to satisfy their workfile requirements imposed by licensing laws.
- **Documented Training and Competency Programs.** Ohio DOT was found to have a robust training program for waiver valuations and appraisals with minimum competency checks as part of their Appraisers Manual. This manual is included in the document library for this project. The Bonneville Power Authority, a Federal agency, was also found to have a robust training and competency program for waiver valuations and appraisals. Their manual is also found in the document library. Other States like Maine are acknowledged as requiring all persons performing waiver valuations to successfully complete the Appraisal Institute Basic Appraisal Theory and Basic Appraisal Practice courses.
- **Measurement of Overhead Burden.** The States of Georgia and Texas are acknowledged as having the most complete programs to measure the overhead burden of waiver valuations compared to appraisals and reviews. Both agencies indicated these performance measurement programs were instituted as a way to defend the waiver valuation programs and both State DOTs demonstrated significantly reduced burden.
- **Scoping of Waiver Valuations.** The State of Ohio and the US Forest Service are acknowledged as having the most robust documented guidance for the proper scoping of waiver valuations. The Bonneville Power Authority also has well documented scoping guidelines. While the other States interviewed confirm that they retain authority over approval of scoping on a project-by-project basis for themselves and the LPA's they support, published guidance on this point is relatively scant.

Analysis of Obstacles

- **Legal Obstacles.** Many states do not have enabling legislation that adopts into state law the same language as is found in the Federal laws codifying the uniform act (42 USC §§ 4601 - 4655). Similarly, state regulations often do not contain the same language as is found in the Code of Federal Regulations (49 CFR Part 24) implementing the uniform act. Those states that don't have enabling legislation for the Uniform Act and corresponding regulations that mirror 49 CFR part 24 also do not have any reference to waiver valuations in their state laws or regulations. This lack of statutory or regulatory authority in state laws and regulations hinders the State DOT's in their ability to implement the waiver valuation program fully, sometimes even resulting in not allowing waiver valuations in some states at all. There are States such as Alabama and

New Jersey who report little to no waiver valuation program because of legal obstacles. In the case of Alabama, despite enabling legislation that was amended in 2019, the laws regulating appraisers state that only licensed or certified appraisers may provide opinions of value with only two narrowly defined exceptions. The Alabama DOT expressed an interest in the development of a waiver valuation program and believes it would be appropriate in much of the State. They intend to pursue an expansion of the exceptions allowed under the statute but until that is successful, they will likely be precluded from developing a waiver valuation program.

The New Jersey DOT reports that they do not use waiver valuations. Maine reported in their interview that since they are unable to rely upon waiver valuations in court, and since a property owner must agree in writing to a waiver valuation, the negative impacts to project schedule cancel any benefits Maine might enjoy from use of waiver valuations.

- **Inconsistent Interpretation of Regulation.** We acknowledge that these regulations are intended to provide for flexible application toward the goal of good-faith negotiation with effected property owners. However, during this project we have observed significant differences of interpretation on some basic concepts.

There is significant difference in how agencies apply the maximum award amounts for waiver valuations allowed under Federal regulation. Most State DOT's either defer to the Federal maximum awards for the program limits, or they modify their own regulations to match; however, some DOT's treat costs-of-cure as a separate item. In those agencies, as long as the award for the land acquired is less than the waiver valuation program limit then costs-of-cure for things such as landscaping or gravel areas are considered above that amount (the waiver valuation program limits). There are others who interpret that all such costs (including minor costs-of-cures) are required to be included in the waiver valuation program limits, but Administrative Settlement can exceed the limits. FHWA should consider publishing an FAQ on this topic.

- **Lack of Guidance on Scoping Waiver Valuations.** While the best practices discussed above are again acknowledged, we are struck by the overall lack of published guidance on the topic of where, when, and under what circumstances waiver valuations are appropriate. Balancing of the need for flexibility due to differences in geography, legal structures, and right-of-way market costs with the need for consistent implementation to protect property rights is a significant challenge. The US Fish & Wildlife scoping checklist is the best practice found in this study.
- **Lack of Guidance on Training / Competence.** While the best practices discussed above are acknowledged, respondents nearly universally lack published training and competency programs. With the increasing pressure on State DOT's to rely on outside consulting services combined with the loss of institutional knowledge and experience through retirements the need to ensure the training and competence of personnel conducting waiver valuations will certainly increase. The Ohio DOT and the Bonneville Power Authority provide good examples to follow.

Chapter 6 – Conclusions and Recommendations

The analysis of the surveys, interviews, and literature resulted in the following conclusions and recommendations for FHWA.

- It would be useful to clarify the issues regarding what is included in the waiver valuation limits and whether Administrative Settlement can exceed the limitations. A possible avenue for these

clarifications is to edit them into the [Uniform Act FAQs](#) on FHWA's website, in the sections that discuss waiver valuations.

- That waiver valuations are not appraisals is already part of Federal regulation, but stronger, more definitive language similar to the example provided by Ohio may be advisable.
- Consideration of an adjustment that recognizes the impacts that inflation have on waiver valuation limits. This may take a form similar to that of the cost-of-living index that provides a straightforward multiplier to the existing base (current limits).
- Recommending that individual agencies adoption of a formal training, and minimum competency program such as that of Ohio DOT, Bonneville Power Authority, or Maine DOT as a prerequisite for staff and consultant authority to perform waiver valuations would be beneficial because this would improve the reliability and credibility of the waiver valuation program.

Appendix A. Survey Responses

Responses to each survey question are provided below. Questions that had a simple yes-no response are shown in a single table. Questions 2 and 48 asked for contact information and are not summarized below. Several questions were open-ended, and the verbatim responses are provided at the end of this appendix.

Q1. Does your agency use waiver valuations as a part of real property acquisitions?

Response	Number of Responses
Yes, we use it as a standard part of right-of-way acquisitions	51
No, we do not use it as a standard part of right-of-way acquisition, but we use it on an ad hoc basis	3
No, my agency does not use waiver valuations, and I do not know of any other agency that uses them	6
No, my agency does not use waiver valuations, but I know of other agencies that use them	3
Total Number of Respondents	63

Q4. Does your agency rely upon the following to authorize the use of waiver valuations?

Responses	No Responses	Yes Responses
Authorizes through enabling legislation	32	9
Authorizes through State regulations	36	5
Authorizes through other	24	17
None	32	9
Do not know	36	5

Q5. Do you have State or local laws, regulations, or court cases in your jurisdiction that affect the use of waiver valuations?

Laws, Regulations, Court Cases Affect Waiver Valuations?	Limit the use of waiver valuations	Neither limit nor affirm the use of waiver valuations	Affirm the use of waiver valuations	Missing	Total
A. Laws	4	22	7	30	63
B. Regulations	3	22	3	35	63
C. Court Cases	6	19	0	38	63

Q7. Do your Agency's waiver valuation limits match those found in 49 CFR part 24?

Response	Frequency
Yes, the limits are currently \$10,000	9
Yes, the limits are currently \$25,000	9
No	1

Q8. Does your agency have published policy or standard operating procedures that guide the use of waiver valuations?

Response	Number of Responses
No	4
Yes	47

Yes/No Questions	No Responses	Yes Responses
Q9. Have you changed waiver valuation limits since 1989	14	36
Q11. Are your limits different than 49 CFR 24.102?	5	0
Q13. Do you have a formal process to determine the valuation problem?	25	26
Q15. Do you have written minimum qualifications for staff who make assignments?	3	3
Q16. Do you use contractors for waiver valuations?	33	20
Q20. Are there laws, regulations, or court decisions in your jurisdiction that limit who can perform waiver valuations?	40	8
Q22. Do you have written minimum qualifications for staff who perform valuations?	24	27
Q23. Do you have written minimum qualifications for consultants who perform valuations?	29	21
Q24. Do you have written minimum qualifications for consultants who perform waiver valuations?	14	36
Q26. Do sub-grantee agencies operate under the same waiver valuation authority/limits as agency?	7	26
Q30. Side-by-side comparisons of waiver and standard approach?	40	12
Q34. Able to rely on wavier valuations to file condemnation actions?	33	15
Q38. Do you operate under law, regulation, or policy that requires transparency?	14	32
Q39. Do you provide a copy of the waiver valuations to property owners	15	34
Q40. Have you conducted property owner opinion surveys?	33	14
Q42. Do you provide written guidelines about surveys?	10	4
Q45. Offer incentives to acceptance waiver valuations	42	8
Q46. Have you developed new innovative approaches to your program?	43	6
Q47. Would you participate in a follow-up interview?	13	36

Q14. Who is allowed to make assignments to the valuer/appraiser in your jurisdiction? (Check all that apply.)

Response	No Responses	Yes Responses	All Responses
Appraisers-licensed or certified	28	23	51
Brokers	45	6	51
Realtors	47	4	51
Auctioneers	50	1	51
Agency staff	13	38	51
Other	37	14	51

Q17. What percentage of your agency's waiver valuations are performed by agency staff and not consultants?

Response	Number of Responses
0% to 25%	9
26% to 50%	2
51% to 75%	1
More than 75%	8

Q19. How many staff does your agency currently employ in the following categories?

Type of staff	Minimum	Mean	Maximum	Observations
Licensed/Certified Appraisers	0	8.3	55	50
Qualified by Not Licensed/Certified	0	12.4	50	43

Q21. Who is allowed to perform waiver valuations in your jurisdiction? (Check all that apply.)

Response	No Responses	Yes Responses	All Responses
Appraisers-licensed or certified	1	7	8
Brokers	6	2	8
Realtors	6	2	8
Auctioneers	8	0	8
Agency staff	2	6	8
Other	4	4	8

Q25. What format does your agency's guidance to LPA's take? (Check all that apply.)

Response	No Responses	Yes Responses	All Responses
Telephone guidance	14	21	35
Waiver valuation training seminars	28	7	35
Waiver valuation prequalification for LPA staff	29	6	35
Review and oversight of waiver valuations prior to LPA offer	14	21	35
Other	23	12	35

Q27. Do these sub-grantee agencies use waiver valuations less, about the same, or more than your agency?

Response	Number of Responses
Less than my agency	15
About the same as my agency	14
More than my agency	4

Q28. What proportion of initial offers of just compensation fall into each of the following categories? (Should sum to 100%.)

Cost category	Percentage of initial offers of just compensation
\$0-\$10,000	51.0%
\$10,001-\$25,000	15.0%
\$25,001-\$50,000	6.3%
\$50,001-\$75,000	4.9%
\$75,001-\$100,000	4.1%
\$100,001-\$125,000	3.5%
\$125,001-\$150,000	3.1%
>\$150,000	12.1%
Total Number of Respondents	61

Q29. In approximately what proportion of total acquisitions are waiver valuations used?

Response	Number of Responses
0% to 25%	29
26% to 50%	8
51% to 75%	9
More than 75%	7

Q31. For which of the following do you have information about the administrative burden of right-of-way valuations, excluding the cost of the acquisition itself?

Administrative Burden about:	No Responses	Yes Responses	All Responses
Waiver Valuations	4	7	11
Appraisals	1	10	11
Appraisal Reviews	4	7	11

Q32. How does the relative cost to administer waiver valuations compare to the costs to administer the traditional appraisals/reviews program?

Response	Number of Responses
Waiver valuations cost less to administer than traditional appraisals/reviews	12
Waiver valuations cost about the same to administer as traditional appraisals/reviews	0
Waiver valuations cost more to administer than traditional appraisals/reviews	0
We do not tract that information	1

Q33. What is the average cost per completed waiver valuation/appraisal/review to your agency of the following?

Average Cost of	Cost
Waiver Valuations	\$929
Appraisals	\$2,731
Appraisal Reviews	\$738

Q35. Regulations require waiver valuers to understand the local real estate market to be qualified to perform acquisitions. Does your agency use any of the following data sources to help yourselves comply with that requirement?

Data Sources	Number of Responses
MLS	71.4%
Costar/LoopNet	38.8%
STDB	4.1%
Local count records	81.6%
Quantum Listing	2.0%
acrevalue.com	2.0%
Others	42.9%

Q36. Does your agency use any of the following software programs (intended for financial institutions and appraisers) to expedite the creation of waiver or appraisal forms or reports?

Response	Percentage of Responses
Others	8.9%
None	91.1%

Q41. When do you conduct the property owner opinion surveys?

Response	Number of Responses
At closing or the conclusion of each waiver valuation	7
Multiple times during the process	0
Spot checks or surveys of a sample of completed waiver valuations	2
Other (Specify)	5

Q43. Approximately, what proportion of property owners provide feedback?

Statistic	Proportion
Minimum	0.10
Mean	0.40
Maximum	0.75
Observations	10

Q44. Which of the following statements best represents conclusions your agency has drawn from your property owner surveys?

Response	Number of Responses
Property owners are generally satisfied with waiver valuation approach	10
Property owners were indifferent between the waiver valuation approach and the full appraisal approach	4
Property owners are generally unsatisfied with waiver valuation approach	0

Verbatim responses to open ended questions.

Q3. Please explain why you do not use waiver valuations as a standard part of real property acquisition.

Verbatim Responses

- The waiver valuation is in conflict Massachusetts State Law M.G.L. Ch 79 Sec. 7A "Appraisal as a pre-requisite to payment of damages".
- FEMA funded real property acquisitions typically do not meet the criteria defined in 49 CFR 24.2 - Waiver Valuation. FEMA acquisitions are typically used to purchase and remove structures from hazard prone areas (typically floodplains). Such acquisitions generally involve purchase of real property (land and improvements), demolition of structures, and conversion of land to permanent open space uses.
- TVA Act calls for all offers to be based on a FMV appraisal.
- Alabama recently passed a law to allow the state and political subdivisions thereof to use waivers throughout the state-to date, ALDOT's Local Transportation Bureau is preparing the necessary documents and instructions. To explain why ALDOT does not, Alabama law defines any valuation as an appraisal as does USPAP, CFR 24.102 says a waiver is a valuation (A) and is used when a valuation problem is uncomplicated (c) (2) (ii), CFR also says the amount of the offer shall not be less than the approved appraisal. So, for as long as waivers had been in use, ALDOT used them considering them an appraisal for all intents and purposes and in later years to be restricted reports. However, in 2017 the FHWA made the decision ALDOT could no longer use waivers because our state law defined any valuation as an appraisal even though their use co-existed with state law for many years with no problem. State law 2019-234 was passed to make the waiver an available tool. However, the law is poorly written and negates the benefit of using a waiver over a value finding from ALDOT's perspective (ALDOT ROW Bureau was not consulted on the language of the law)
- State law prohibits them
- Most our acquisitions are above 100,000 and we require government estimate/valuation for all real property acquisitions
- Waiver valuations apply primarily to right of way acquisition and federally funded projects. Those do not really apply to GSA's core functions.
- Section 302 of New York State EDPL includes the provisions that "Real property to be acquired by the exercise of eminent domain shall be appraised on behalf of the condemner by an appraiser." Due to this State Law, NYS DOT does not use waivers.

Source: survey question 3.

Q6. What are the waiver valuation limits in your state laws?

Verbatim Response

- An Appraiser cannot perform waivers
- The South Carolina law does not put limits on waiver valuations. The SCDOT requested a \$20,000 limit from FHWA. The SC state law does not allow waiver valuations for condemnation proceedings. It is law that Fair market value is determined by an SC state license appraiser by the condemner.
- We have adopted 49 CFR Part 24 for federally funded projects, and most of 29 CFR Part 24 for state funded projects, and thus our limits are the same as the federal regulations.

Source: survey question 6.

Q10. What changes have occurred to waiver valuation limits?

Verbatim Responses

- the threshold value went from \$10K to \$25K
- Increased maximum value from \$10,000 to \$25,000
- Additional use for simple acquisitions.
- Value limits are up to \$25K.
- The SCDOT requested an increase from \$5,000 to \$20,000 for limits.
- Originally the waiver was allowed up to \$ 10,000. Now waivers are allowed up to \$25,000. If the value is between \$10,000 to \$25,000; the landowner is offered the opportunity to request an appraisal.
- Changes coincide with revised authorization limits.
- I believe the waiver valuation limit was raised to \$10,000 after the limits were raised with 49 CFR 24.02 in 2005.
- The waiver valuation limit increased from \$10,000 to \$25,000.
- Raised the limit for Waiver Valuations.
- West Virginia follows the CFR with regards to waivers whether it is a Federal or State funding source.
- We actually have two types of waivers. The first we call a Nominal Compensation Form. This is a one-page document that we use this for tracts under \$2,000 and where damages are uncomplicated or minimal. The other is simply called a Waiver Valuation. It is 3-4 pages long and is used for tracts where compensation is \$10,000 or less (excluding agricultural fencing). Prior to this, our limits were much lower. I don't remember for sure what they were, but I am thinking they were \$500 and \$2,500.
- The DDOT Right of Manual Chapter 6.5 reflects that an appraiser, review appraiser, or Appraisal Waiver Valuation preparer making an Appraisal, Appraisal review or Appraisal Waiver Valuation may be authorized by DDOT to act as a negotiator for real property for which that person has made an Appraisal, Appraisal review or Appraisal Waiver Valuation only if the offer to acquire the property is \$10,000, or less.
- Increased from \$10,000 to \$25,000, LPAs remain at \$10,000
- DOE internal guidance has been updated with references to federally authorized changes.
- Donations may be more than the \$10,000 or \$25,000 limit as set out in the 40 CFR 24. Donations are in compliance per 43 TAC 1.500-1.506, Texas Government Code, Chapter 575, and Transportation Code 201.206, 223.049.
- Raised the limit.
- Alaska ROW Manual reflects current \$25K limit for FHWA and \$10K limit for FAA.
- We increased the limit to \$25,000 pursuant to 49 CFR 24.7
- in 2017 The General Assembly changed waiver valuation limit for solely State Funded Projects to \$40,000 for simple claims with zero damages.
- We have adopted the new maximum waiver valuation threshold of \$25,000
- Adjusted limit from \$10,000 to \$25,000 with FHWA approval - per CFR allowances.
- We have not been employed with the Department since 1989, but we assume the ROW Operations Manual has been updated to reflect regulatory changes.
- Increased from \$10,000 to \$25,000.
- Went from \$2,500 to \$5,000 to \$25,000
- We have increased threshold to \$25,000 in 2005 or there about.
- From \$2,500.00 to \$10,000.
FHWA Regional office reluctant to increase to \$25,000
- \$25,000 Threshold
- Raised Limit to \$25,000 using a Data Book and \$15,000 when using a Detailed Cost Estimate

- Changes have mirrored those as Federally authorized. WSDOT pursued raising the limit of waivers to \$50,000 through SEP-16 Letter of Interest in January 2019 which was denied.
- Increased the Appraisal Waiver Limit from \$5,000 to \$10,000 to align with the Uniform Act regulations addressing appraisal waivers.
- Changes in manual have been made to match federal authorization.
- I do not actually know the answer to this question. I have only been here since 2016, and we have waived valuations sometimes when the value of the real estate interest was under \$10,000.
- Early on the limit was \$2,500. It is currently \$10,000. As a policy ARDOT holds to the \$10,000 limit for waiver valuations. However, circumstances arise that the limit has been exceeded but is less than \$25,000. These circumstances are handled on a case-by-case basis along with approval by our administration. For example, the appraiser values the land portion of the acquisition, and its value is less than \$10,000, but there is an outside bid for a cost to cure that causes the waiver to exceed \$10,000 this could be acceptable. The appraiser can't appraise the land and then come up with his own estimated cost to cure and exceed the \$10,000 limit. Only if cost to cure amount (i.e., moving a sign) is from an outside source and not developed by the appraiser.

Source: survey question 10

Q12. The 2010 rewrite of the Jurisdictional Exception Rule and the guidance in the frequently asked questions (FAQ's) published by The Appraisal Foundation suggests that licensed or certified appraisers performing the waiver valuations perform an expanded level of analysis. How has your agency responded to this change?

Verbatim Responses

- Yes, the agency created positions being licensed and licensed appraisers to perform waiver valuations.
- We include the Jurisdictional Exception Rule as an attachment to the Waiver Valuation and we inform the property owner to their right to have a detailed appraisal under USPAP.
- Licensed appraisers perform a compensation estimate. These are meant to free up appraisers to do other more complex valuation work but so far, none of the other ROW staff have done CE work since they claim they don't know the market like appraisers do so we are still doing CE even though other staff are eligible to.
- No, waiver valuations are not performed by contracted active real estate appraisers. Most feel that performing a waiver valuation would be a violation of USPAP. Waiver Valuations are only performed by internal staff. All ODOT internal staff are required to have inactive appraisal licenses (if they have an appraisal license), which allows them to perform a waiver valuation and not be subject to USPAP.
- In 2015, the South Carolina Real Estate Appraiser Board ruled the waiver valuation was an appraisal. The SCDOT adopted a policy that follows USPAP's restricted use report guidelines.
- The VDOT Staff Appraisers are NOT performing Waivers.
- Yes
<http://codes.ohio.gov/oac/5501:2-5-06>
 (a) When an appraisal is determined to be unnecessary, the agency shall prepare a waiver valuation. Persons preparing or reviewing a waiver valuation are precluded from complying with standard rules 1, 2, 3 and 4 of the "Uniform Standards of Professional Appraisal Practice" (USPAP), as in effect in the 2018-2019 edition, as promulgated by the "Appraisal Standards Board" of the Appraisal Foundation, which can be found at <http://www.uspap.org>
- FS trains Non-appraisers (Realty Specialists) on how to prepare an appraisal waiver.

- I was hired by the state agency in 2015 and am unaware of any direct response to the 2010 rewrite by the agency at the time, or since.
- We do not have certified appraisers perform the waiver valuations.
- Agents (not credentialed appraisers) typically perform waiver valuations. FDOT calls this an Agent's Price Estimate. In the event that certified appraisers were to perform an assignment such as an Agent's Price Estimate they should comply with the Uniform Standards of Professional Appraisal Practice (USPAP). Waiver valuations (Agent's Price Estimates) performed by FDOT credentialed appraisers would have an expanded scope and therefore would not require invoking the Jurisdictional Exception Rule to USPAP compliance.
- No official response, left to the preparer of the Waiver Valuation.
- At the WVDOT licensed of certified appraisers do not perform appraisal waivers. The appraisal waivers are done by right of way agents that have sufficient knowledge and understanding of the local real estate market.
- Nebraska State Statute allows our staff appraisers to do our waivers without expanded analysis as long as we do not sign the form with our appraisal credential. When I hire a fee appraiser, I instruct them to make sure their work file has all the requirements to be USPAP compliant, regardless of the form they are using.
- Per the DDOT Right of Way Manual Chapter 6.12.8, jurisdictional exceptions in the Appraisal process are not permitted without the prior written approval from the ROW Unit Manager. Because DDOT does not perform waiver valuation appraisal, DDOT requires specific jurisdictional exceptions be included in their Appraisals. DDOT is subject to Federal and District laws specifying how certain valuation issues are addressed. In 49 CFR 24.103(b) of the Federal regulation, it states that the appraiser shall disregard any decrease or increase in the FMV of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. As the Appraisal must be prepared in this manner, and the regulation is contrary to USPAP Standard Rule 1-4(f) if a jurisdictional exception is to be included in the Appraisal.
- Primarily use non appraisers. If an appraiser does the work, they are noted only as providing data, another official signs off as setting the value.
- No specific response to this change.
- For Texas, Jurisdictional Exception Rule does not apply for waiver valuations. The appraiser will still have to comply with USPAP if (and that is "IF") they are requested to do a waiver valuation. It is not reasonable or a cost savings to have an appraiser provide a value that is not an appraisal.

In addition, per TxDOT's ROW Appraisal and Appraisal Review Manual:

http://onlinemanuals.txdot.gov/txdotmanuals/apr/form_rowa7_real_estate_value_finding_report.htm

Texas Property Code Section 21.0113(b)(4) requires that, as part of the making of a bona fide offer to the property owner, a condemning authority must be before making a final offer, the entity obtains a written appraisal from a Department Certified Appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property. Since the ROW-A-7Real Estate Value Finding is not an appraisal, is to be prepared by a non-Department Certified Appraiser and assumes no remainder damages other than possible cost to cure damages, it must not be used as the basis of any final offer.

- As described in CFR 49 24.102 MDOT ROW uses personnel with a sufficient understanding of the local real estate market to be qualified to make the waiver valuation. MDOT ROW has chosen not use appraisers for producing Waiver Valuations, therefore there has been no response to this change.

- Our Appraisers don't complete waivers.
- The appraiser does not fill out the form. The compensation estimates (appraisal waivers) are based on the cost estimate performed by the staff appraiser. The real estate agent inspects the project to verify data in the cost estimate has not changed and uses the cost estimate data to complete the compensation estimate.
- Our agency does not allow licensed appraisers bound by USPAP to perform waiver valuations. There is no jurisdictional exception for waiver valuations in Alaska law/regulations at this time.
- We haven't changed our practice, policies, or procedures. Our current practice is not to have certified appraisers prepare waiver valuations.
- Appraisers generally do not complete Appraisal Waivers in NC
- When appraisers perform such functions, they have gathered more data (i.e., comparable sales), and increased their discussion of adjustments. The analysis is this more detailed, but we have not documented this in our Manual because we ask that appraisers exercise their professional judgment in carrying out their appraisal duties.
- DOT appraisers do not perform waiver valuations.
- CDOT has worked to enable staff appraisers to prepare Waiver Valuations essentially outside the Scope of USPAP, to include legislative solutions. First, in 2013 CDOT obtained written letter from the director of the Colorado Division of Real Estate, Dept. of Regulatory Agencies, which described that appraisers are not required to adhere to USPAP in the performance of a Waiver Valuation as described in the Uniform Act regulations but must be careful not to refer to WVs as an appraisal, nor misrepresent their role in preparing a Waiver Valuation. Portions of this letter are quoted in CDOT's ROW Manual Appraisal chapter. Then in 2018 CDOT proposed, and the Colorado legislature passed, and the governor signed, legislation that changed definitions in real estate law as to who is an appraiser and what is a Waiver Valuation. The law governing real estate matters: a) was amended to specifically define a federal Waiver Valuation as a type of valuation that is not an "appraisal" (CRS 12-61-702(1)c), and b) amended to specifically describe that a licensed/certified appraiser who prepares a Waiver Valuation (which per [a] above now is not an appraisal) is not an appraiser in performing such type valuation for purposes of law governing real estate appraisers and their activity (CRS 12-61-702(11)b(VI)). CDOT's statewide Appraisal Program perspective is that unlicensed agents mainly should perform WVs, but appraisers are encouraged to support those efforts and to feel comfortable to perform WVs themselves without dread of USPAP violation. Despite these regulatory-type successes, it seems half or more of CDOT staff appraisers remain skeptical to performing Waiver Valuations, resistant to performing them, and in some cases refuse to perform them.
- Our agency has not changed much. Most waivers are not done in house. We anticipate that appraisers performing waivers are following correct procedures.
- Yes
- Unknown
- MnDOT utilizes a restricted appraisal format identified as an MDV "Minimum Damage Valuation" - - - accommodating licensed appraisers to complete valuations of \$25,000 or less - - - this application allows approval to be completed at a broader level within the agency.
- Detailed Cost Estimates are completed by Certified General Appraisers and the waiver valuations are completed by in house staff. Expanded analysis has always been a part of this process.
- Our agency does not utilize licensed or certified appraisers to perform waiver valuations.
- No
- No, we have not.
- Internal appraisers who are completing waivers typically do not comply with USPAP requirements. We have attempted to have non-appraisers complete waivers with little success. Other employees

tend not to have the same level of familiarity with markets and property types. When waivers are contracted out to consultants, those appraisers provide more expanded levels of analysis. We have had very few consultants who are not appraisers do waiver valuations.

- Simple valuations where appraisal waivers are appropriate are done by staff. We do not engage appraisers to perform appraiser waiver valuations.
- The guidelines are the same for all qualified waiver value preparers
- To my knowledge, we do not have a policy on this.
- Recently outside firms doing waiver valuations have titled their reports "Restricted Appraisal Report". The report contains much of the essential information in developing a full analysis and is longer than the standard 2-page format waiver of ARDOT.

Source: survey question 12.

Q18. Please describe the evaluation criteria your agency uses to ensure contractor compliance with the waiver valuations provisions in the Uniform Act.

Verbatim Responses

- Guidance is included in state's EPG (Engineering Policy Guide) link attached previously.
- Only inhouse staff do waiver/CE.
- Our agency doesn't do this. While I don't think the agency would want to start doing this, part of the issue lies more with the appraiser. The consultant appraiser is bound by USPAP, and many see the waiver valuation option as a violation of USPAP.
- All waiver valuations/cost estimates are reviewed and approved by the Chief Appraiser.
- Agency approval process verifies compliance.
- Using the WVDOH Right of Way manual and oversight by WVDOH managers.
- We very rarely hire consultants for appraisal/valuation services. When we do, it is typically for a more complex project where waivers aren't appropriate. In the case where we do assign a waiver to a consultant, the consultant is a licensed/certified appraiser (as we only hire off our Approved Appraiser List). Instructions on how to complete waivers are included in the Scope of Work provided in the services contract. The consultant is also directed to our ROW Manual and informed that he will need to ensure that he is being USPAP compliant. All waiver valuations completed by consultants are also reviewed by a staff appraiser.
- The DDOT Right of Way Manual permits waiver valuations by third parties/contractors; however, DDOT nor its contractors perform waiver valuations. An appraiser, review appraiser, or appraisal waiver valuation preparer making an appraisal, appraisal review or appraisal waiver valuation may be authorized by DDOT to act as a negotiator for real property for which that person has made an appraisal, appraisal review or appraisal waiver valuation only if the offer to acquire the property is \$10,000, or less. Per Chapter 6.8 of the Right of Manual, an appraisal waiver valuation must include, as appropriate:
 - (i) A description of the land to be acquired.
 - (ii) Nominal improvement values, the contributory values of which can be readily supported by estimates of depreciated replacement cost; each improvement to be acquired must be listed.
 - (iii) Minimal costs-to-cures, supported by reference to research or documented discussions with professional estimators.

If appropriate and practical, inspect and photograph the area to be acquired. Owner contact is not required. To determine value, obtain information from Appraisals of similar properties or comparable sales used to establish a unit value that adequately reflects the current market. Assessed value is the value of a property according to the tax rolls in ad valorem taxation and is not necessarily equivalent to the property's market value. Assessed value is a value indicator for the purpose of illustrating trends but is not to be used as the only basis for value.

- Appraisal forms ROW-A-7 and ROW-A-8 are waiver evaluations and not appraisals as defined by Uniform Act and, therefore, are not required to comply with appraisal standards and requirements regardless of their source (49 CFR 24.102(c)(2).
http://onlinemanuals.txdot.gov/txdotmanuals/apr/appraisal_&_evaluation_forms.htm
- As described in CFR 49 24.102 MDOT ROW uses personnel with a sufficient understanding of the local real estate market to be qualified to make the waiver valuation.
- All waivers have to be reviewed and approved by the Division. Contractors are not allowed to approve any waivers.
- Requirements are set forth in the aforementioned Alaska Right-of-Way Manual. Contract compliance is administered by regional agency staff.
- Every waiver valuation is reviewed and approved internally by a lead agent of the agency.
- All Waiver Valuations are informally reviewed by CDOT staff (typically a Region Acquisition / Relocation supervisor) before being used as the basis for just compensation.
- Compliance review prior to authorization to conduct negotiations.
- These are estimates. Valuation on federally assisted FTA projects is left to the grantee who develop their own criteria in compliance with URA requirements.
- Process as described in the ROW Manual are followed. Unit values (land values) are approved by the appraisal section before making offers.
- All contractor work is overseen by the Senior Appraiser in the Region and further 25% of all valuation files are reviewed for compliance by Headquarters staff.
- We do not use a contractor to perform waiver valuations. All are done by in-house Staff.
- Must meet criteria of Pub. 378 Chapter 2.12 B. (already attached)
- I am not sure of the answer. We do not waive appraisals often at all. We do not have established guidelines or policies for this.
- 5.13. FEE APPRAISERS Fee Appraisers and specialists may be employed to provide cost studies, estimates or appraisals when: 5.13.1. ARDOT

Source: survey question 18.

Q37. Please describe your experience with these software programs (listed in question 36), both positive and negative.

Verbatim Responses

- Appraisal Waivers are prepared using FS form.
- Argus can be an excellent tool for valuing income producing properties, depending on the quality of the data available and the variables chosen by the appraiser.
- We have our own ARMS (Automated Right-of-Way Management System) software that generates all our forms (appraisal, negotiation, etc.).
- Our review appraiser has experience with them, but we do not own or use them for our purposes.
- FTA as the federal funding agency does not make these decisions for grantees.

Source: survey question 37.

Q37. Please describe your experience with these software programs (listed in question 36), both positive and negative.

Verbatim Responses

- Appraisal Waivers are prepared using FS form.
- Argus can be an excellent tool for valuing income producing properties, depending on the quality of the data available and the variables chosen by the appraiser.

- We have our own ARMS (Automated Right-of-Way Management System) software that generates all our forms (appraisal, negotiation, etc.).
- Our review appraiser has experience with them, but we do not own or use them for our purposes.
- FTA as the federal funding agency does not make these decisions for grantees.

Source: survey question 37.

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