



North Carolina Department of Transportation
Division of Highways

Right of Way

NCDOT Real Estate Appraisal Standards and Legal Principles

Forward Corrections To:

Grady R. Morris

grmorris@ncdot.gov

(919)707-4385

2018.05.31

NCDOT Real Estate Appraisal Standards and Legal Principles

Table of Contents

5.100 - Purpose Of The Appraisal	1
5.101 - Confidentiality Of Appraisal	1
5.102 - Items To Be Furnished To The Appraiser.....	1
5.103 - Interpretation Of Highway Plans.....	2
5.104 - The Narrative Appraisal Format	3
5.105 - Appraisal Summary Sheet.....	3
5.106 - Assumptions And Limiting Conditions	3
5.107 - Scope Of Work.....	4
5.200 - Inspection Of The Subject Property	5
5.201 - Description And Analysis Of The Market Area	6
5.202 - Description Of The Land.....	6
5.203 - Description Of The Improvements.....	8
5.204 - Zoning.....	8
5.205 - Property Tax	9
5.206 - Public And Private Restrictions	9
5.207 - History Of The Subject Property.....	9
5.208 - Highest And Best Use	10
5.209 - Valuation Of The Subject Property Before The Acquisition.....	10
5.210 - Comparable Sales And Leases	10
5.211 - Cost Approach.....	11

5.212 - Sales Comparison Approach	12
5.213 - Income Approach	12
5.214 - Reconciling Before Value Indications	12
5.215 - Description Of The Acquisition	13
5.216 - Description Of The Remainder And Effects Of The Acquisition.....	13
5.217 - Highest And Best Use Of The Remainder	14
5.218 - Partial Acquisition Of Building Affidavit.....	15
5.219 - Valuation Of The Subject Property After The Acquisition	15
5.220 - Reconciling After Value Indications.....	16
5.221 - Difference Between Before And After Values	16
5.222 - Allocation.....	16
5.223 - Appraisal Report Addenda	17
5.224 - Certificate Of Appraiser	18
5.225 - Right of Way Transmittal Summary.....	19
5.226 - Appraising NCDOT Residue/Surplus Real Estate	19
5.227 - Valuing NCDOT Enhancements	20
5.228 - Form Appraisal Reports	20
5.229 - Appraiser's Electronic Transmission Of The Appraisal Report And Value Finding	21
5.230 - Mineral Deposits And Timber.....	21
5.231 - Timber Valuation	22
5.232 - Equipment And Machinery	22
5.233 - Valuation Of Outdoor Advertising Signs	23
5.234 - Valuation Of Leasehold Interests	23
5.300 - Appraisal Review	23
5.301 - The Review Certification.....	24
5.400 - Internal Transmittal Of Appraisals.....	24

5.401 - Cooperation With Negotiators	25
5.402 - Conflicts Of Interest	25
5.403 - The Preliminary Parcel Study	25
5.404 - The Staff Appraisal Assignment.....	25
5.405 - Qualifications Of Fee Appraisers	25
5.406 - The Experience Questionnaire.....	26
5.407 - The Appraisal Fee Proposal/Contract.....	26
5.408 - The Appraisal Consultant Proposal/Contract.....	26
5.409 - The Statement For Appraisal Services	26
5.410 - Contract Extensions.....	27
5.411 - Outside Employment - General.....	27
5.412 - Outside Employment - Appraisal.....	27
5.500 - General Legal Principles	29
5.501 - Measure Of Damages	30
5.502 - Date Of Acquisition And Time When Property Is Valued.....	31
5.503 - Nature Of Acquisition - What Is Acquired.....	32
5.504 - Noise.....	33
5.505 - General And Special Benefits	34
5.506 - Competitive Sales As Evidence Of Value By The Court	34
5.507 - Prior Sales Of Subject Property	35
5.508 - Settlements, Offers, Etc.....	35
5.509 - Adaptability, Subdivisions	36
5.510 - Unity Of Lands	36
5.511 - Zoning As Related To Legal Guide	37
5.512 - Business Profits	38
5.513 - Leasehold Interests	39

5.514 - Temporary Acquisitions For Borrow Or Material Pits, Haul Roads,
And Detour Roads39

5.515 - Non-Compensable Damages40

5.516 - Non-Compensable Damages - Summary41

5.517 - Highway Easements Outside The Right Of Way.....43

5.518 - Specialized Equipment, Machinery, Trade Fixtures, and Timber43

5.519 - Map Act Corridor Preservation Restrictions

[Right Of Way Appraisal Forms](#) (Link to NC Connect website forms-click Chapter 5)

5.100 - Purpose Of The Appraisal

The North Carolina Department of Transportation is required by law to reimburse each landowner from whom property is acquired for highway purposes to the extent of the loss, if any, between the market value of the real property immediately before the acquisition and the market value of the real property immediately after the acquisition. Real estate appraisals are developed following NCDOT Real Estate Appraisal Standards and Legal Principles, North Carolina State Law, and the Uniform Standards of Professional Appraisal Practice (USPAP). Real estate appraisals and Value Findings are used as a basis for negotiations with property owners and to support the Department's request for reimbursement of right of way costs from the Federal Highway Administration.

5.101 - Confidentiality Of Appraisals

An appraisal is a confidential communication between the appraiser and the Department of Transportation, the North Carolina Attorney General's Office, and the Federal Highway Administration. In no instance shall the appraiser divulge the specifics of any appraisal to any unauthorized person without written permission from the NCDOT, except as directed by a court of law.

5.102 - Items To Be Furnished To The Appraiser

At the time of appraisal assignment, the fee or staff appraiser shall be furnished the following:

- 1) NCDOT Appraisal Guide
- 2) Appraisal Request Summary Sheet, Form FRM4-B
- 3) Form F Information Sheet, Form FRM4-H

Note: It shall be the responsibility of the appraiser to verify the information on Form FRM4-B and Form FRM4-H. Errors found should be reported immediately to the Area Appraiser. Under no

circumstance shall the appraiser make any changes to the forms without the prior approval of the Area Appraiser. Occasionally, it may be necessary to classify an improvement as either personal property or real estate. Ultimately, it is the responsibility of the State Appraiser to make this final determination with a recommendation from the Area Appraiser. The Area Appraiser may use Form FRM5-L, Equipment Considered Real Property – Fixed and Form FRM5-M, Equipment Considered Real Property – Realty to assist this process.

- 4) Any title information which may affect the value of the property if not listed on Form F
- 5) An explanation of the property rights to be acquired
- 6) An explanation of any construction features or other adjustments to the property, which may mitigate damages
- 7) Right of way plans
- 8) Cross sections
- 9) A sketch of the property to be appraised showing, if a **total acquisition**, property enclosure, location of improvements, and other significant features of the property if not otherwise provided on the right of way plans.
- 10) A sketch of the property to be appraised showing, if a **partial acquisition**, property enclosure, the area to be acquired, location of improvements affected by the acquisition, the area of each remainder, and any other significant features affected by the acquisition if not otherwise provided on the right of way plans.

5.103 - Interpretation Of Highway Plans

The appraiser is responsible for evaluating the highway plans for use in the appraisal report. Any inquiries by the appraiser, regarding the highway plans, should be directed to the Area Appraiser.

5.104 - The Narrative Appraisal Format

The NCDOT Appraisal Guide pertains primarily to the narrative appraisal report. All appraisal reports must follow the sequence outlined in the Appraisal Guide.

5.105 - Appraisal Summary Sheet

The Appraisal Summary Sheet, Form FRM5-H, shall be the first page of the appraisal report and shall serve as a transmittal letter to the Department of Transportation. No other cover sheet is necessary.

5.106 - Assumptions And Limiting Conditions

- 1) Hazardous Material Statement - Unless otherwise stated in the appraisal report, the subject property is being appraised as though free of hazardous material.
- 2) Americans with Disabilities Act - The appraiser has not considered compliance and or noncompliance issues with respect to the Americans with Disabilities Act (ADA).
- 3) Jurisdictional Exception – “An assignment condition that voids the force of a part or parts of USPAP, when compliance with a part or parts of USPAP is contrary to law or public policy applicable to the assignment.” (USPAP, January 1st, 2008). The use of the Value Finding, which is dictated by the Federal Highway Administration and the NCDOT is an example of Jurisdictional Exception.

Note: The appraiser is encouraged to provide any additional assumptions and limiting conditions deemed necessary.

5.107 - Scope Of Work

The Scope of Work for each appraisal shall be in accordance with The Uniform Standards of Professional Appraisal Practice (USPAP), and should include but not be limited to the following:

- 1) The identification of the client and intended user of the appraisal
- 2) The intended use of the appraisal
- 3) The type and definition of value

Note: When, in the opinion of the appraiser, an improvement is unaffected by the project, an estimated contributing value may be assigned to that unaffected improvement. Under this circumstance, a physical inspection, a detailed cost breakdown, and photographs of the unaffected improvement are not necessary. The estimated contributing value shall not be the improvement's ad valorem tax value, since it may not be admissible in a court of law. The estimated contributing value may be supported by the appraiser's experience, local building cost and cost service information, knowledge of the market area, and public information. The source of the cost information relied upon by the appraiser shall be included in the appraisal report. If it is determined at a later date that an improvement is affected by the project, then the appraiser shall inspect the improvement and provide an amended value conclusion.

- 4) The effective date of the appraiser's opinions and value conclusions
- 5) The development of an opinion of reasonable market exposure time linked to the value opinion
- 6) The identification of the specific parcel of real estate and the property rights that are to be appraised
- 7) The extent of inspection, if any, of the subject property and the market area

- 8) The type and extent of research of the market for comparable sales and other relevant information
- 9) The type and extent of the analyses used to arrive at opinions and value conclusions
- 10) An indication of which approach or approaches to value (Cost, Sales Comparison, and Income) were used and which were not and why
- 11) An indication of the form of reporting (Self-Contained or Summary) that was used to communicate the appraisal findings

Note: Restricted Use and Oral appraisal reports are not acceptable to the NCDOT.

5.200 - Inspection Of The Subject Property

Federal Statutes make it a requirement that the property owner or their representative be given an opportunity to accompany the appraiser during the inspection of the property. The appraiser shall contact the property owner personally, unless relieved of this responsibility by the Area Appraiser. The appraiser shall state the date or dates of inspection of the subject property and the name of the owner or the owner's representative with whom the property was inspected. The appraiser shall explain in this section why, if an inspection is made without the owner or owner's representative being present. Absentee owners or their representatives should be given a reasonable length of time to make arrangements to be present for the inspection of the property. The appraiser shall clearly indicate the effective date of the appraisal.

The appraiser is required to fully inspect the land, and all affected improvements, which are located on the subject property. The land and improvements should be photographed with particular emphasis being given to the areas affected by the project. The inspection of the land shall always be comprehensive. The level of inspection of the improvements may vary depending on the extent of the acquisition. When improvements contribute value to the subject property and will

be affected by the highway project, the inspection shall be comprehensive. Comprehensive inspections shall include the measurement of the improvements and photographs of the interiors. As discussed under section 5.107 - Scope of Work - Item 3, if an improvement does not contribute value to the subject property and/or is not affected by the project, a physical inspection and photographs of the unaffected improvement are not necessary.

The Right of Way Agent is responsible for interpreting the highway plans for the property owner. The appraiser should not answer any questions concerning negotiating procedures and highway plans. Any inquiries to the appraiser by the property owner, regarding the highway plans, should be directed to the right of way agent. The appraiser may discuss the appraisal process; however, the appraiser shall not discuss real estate value with the property owner.

5.201 - Description And Analysis Of The Market Area

The data included in this section should relate the four forces affecting value (economic, social, physical, and governmental) to the subject property and its market area. The description and analysis of the market area will vary with the complexity of the property and the magnitude of the appraisal problem. The appraiser shall indicate significant trends, which may affect the subject's market area.

Note: It is improper to base a conclusion or an opinion of value upon stereotyped or biased presumptions relating to race, color, creed, religion, gender, age, or national origin.

5.202 - Description Of The Land

The appraiser shall completely describe the subject land including, but not limited to, the following items:

- 1) Location
- 2) Size

- 3) Shape
- 4) Road Frontage
- 5) Access
- 6) Topography
- 7) Physical Appearance
- 8) Dimensions
- 9) Available Utilities
- 10) Flood Plain
- 11) Wetlands and Stream Buffers
- 12) Soil Types
- 13) Drainage
- 14) Present Use
- 15) Timber and Mineral Deposits
- 16) Easements and Encroachments
- 17) Air Rights
- 18) Allotments
- 19) Observed Hazardous Material

5.203 - Description Of The Improvements

The appraiser is required to describe all improvements on the subject property. The level of description may vary depending on the extent of the acquisition. When the improvements contribute value to the subject property and will be affected by the highway project, the description shall be comprehensive. As previously stated, if an improvement does not contribute value to the subject property and/or is not affected by the project, a physical inspection and photographs of the unaffected improvement are not necessary. The description of the improvements should include, but not be limited to, the following items:

- 1) Present Use
- 2) Type and Quality of Construction
- 3) Chronological & Effective Ages
- 4) Condition
- 5) Size
- 6) Number and Type of Rooms
- 7) Observed Deferred Maintenance Items
- 8) Fixtures and Equipment

5.204 - Zoning

The appraiser shall indicate the applicable zoning jurisdiction, classification, allowable uses, and requirements of the subject property. In addition, the appraiser shall state the probability and potential classification of any future zoning change. The appraiser shall include a statement indicating whether or not the subject property is in compliance with existing zoning requirements.

5.205 - Property Tax

The appraiser shall report the subject property's ad valorem tax ID number, value, annual tax burden, and date of last evaluation. The ad valorem tax value shall be allocated between the land and improvements. If there is a substantial difference between the appraised value of the subject property and the ad valorem tax value, or when the ad valorem tax value is higher than the appraised value, the appraiser shall comment on the difference.

5.206 - Public And Private Restrictions

The appraiser shall discuss public and private restrictions affecting the subject property. Examples include, but are not limited to, the following:

- 1) Deed Restrictions
- 2) Easements and Encroachments
- 3) Health Department Regulations
- 4) Wetlands and Stream Buffers
- 5) Restrictive Covenants

5.207 - History Of The Subject Property

The North Carolina Department of Transportation and the Federal Highway Administration require a five-year history of the subject property. The history shall include, but not be limited to, the following:

- 1) Any sale or listing of all or part of the subject property
- 2) Any other conveyance of all or part of the subject property
- 3) Zoning changes

- 4) Changes in building improvements
- 5) Current or expired building permits

5.208 - Highest And Best Use

The appraiser must state and support their opinion of the highest and best use of subject property. The appraiser shall indicate whether the property's highest and best use is consistent with its present use and its present or proposed zoning classification. The appraiser is cautioned to estimate the market value of the subject property based on highest and best use, not zoning classification. When the highest and best use of the property as if vacant and as improved are not the same, and the value of the property as improved is greater than the value as if vacant, the present use is an interim use. If the value of the site as if vacant is greater than the value of the property as improved, plus the demolition cost to remove the present improvements, then the highest and best use of the property is as vacant.

5.209 - Valuation Of The Subject Property Before The Acquisition

The appraiser must estimate the before value of the subject property assuming no knowledge of the project.

5.210 - Comparable Sales And Leases

Comparable sales and leases used in the appraisal report shall be presented on NCDOT Comparable Sale Form, FRM5-G, with all requested information being provided. Either the grantor, grantee, lessor, lessee, or an agent (broker/attorney) handling the transaction shall confirm all comparable information. However, it is preferable that both the buyer and seller or lessor and lessee confirm all comparable sales and leases. A minimum of three comparable sales, and leases if necessary, are required for each valuation method used. If a sale of the subject property is deemed to be comparable, then it may be used as one of the minimum three required sales. If a sale of the subject property is not used, the appraiser must explain why. If

current listings of comparable properties are used, they must be in addition to the minimum three comparable sales. A summary of the appraiser's comparable sales analysis is to be exhibited in chart form. The chart shall be accompanied by a narrative explanation of the analysis and justification for any and all adjustments. Comparable sales, which include a condemning authority as either a grantee or grantor, are not admissible as evidence in court and are not to be used in NCDOT appraisals.

5.211 - Cost Approach

The Cost Approach is particularly useful in condemnation appraising. This approach allows fair compensation for partial acquisitions, where only a portion of the land and improvements is being affected. The Cost Approach shall include a value estimate for the land separate from the value of the improvements. The appraiser is required to develop a reproduction cost estimate for each improvement affected by the highway project. Reproduction cost estimates derived from cost services shall be verified by local sources with the name of the contact being included in the report. Replacement cost estimates are not acceptable in NCDOT appraisals, except for use as a measure of functional obsolescence.

When measuring depreciation of improvements, which are affected by the highway project, the appraisal shall include the Breakdown Method accompanied by an individual explanation for each item of depreciation. When measuring the depreciation of "short-lived items" and/or site improvements, the appraiser shall present the depreciation estimate using an age/life method.

5.212 - Sales Comparison Approach

The Sales Comparison Approach is the primary approach used when valuing vacant land, and may be particularly useful in appraising the before value of improved property. The Sales Comparison Approach may also be used as a check on the Cost Approach. The appraiser shall show an allocation for land and improvements upon reconciling the final value conclusion indicated by the Sales Comparison Approach.

5.213 - Income Approach

The Income Approach is most relevant when the primary purpose of ownership of a property is for its ability to produce income. The income produced must be attributable to the real property itself and not to the owner, manager, or business operation. The appraiser is cautioned that from a real estate investment perspective, not all commercial property is income producing. The appraiser shall show an allocation for land and improvements upon reconciling the final value conclusion by the Income Approach.

5.214 - Reconciling Before Value Indications

When two or more approaches to value are used, the appraiser shall reconcile them into one final value conclusion. For NCDOT purposes, the appraiser must select the indication of value from the approach most relied upon and use that dollar amount as the final estimate of value. The selection of a single value indication from one approach aids the NCDOT in the allocation of value between land and improvements. The appraiser shall show an allocation between land and improvements in the final reconciliation.

5.215 - Description Of The Acquisition

The appraiser shall describe the property to be acquired under three subheadings:

- 1) Land - A physical description of the land to be acquired will be made including but not limited to size, shape, location and type of use.
- 2) Easements Outside the Right of Way - The appraiser shall describe separately any additional areas to be acquired outside the right of way designated as slopes, drainage, permanent utility, or construction easements. An easement outside the proposed right of way is a partial acquisition of property rights and not a fee simple acquisition or a damage to the remainder. The value of the easements acquired shall be accounted for in the all ocaation as land acquired and not damages.
- 3) Improvements – The appraiser shall describe all improvements to be acquired by the project. The appraiser shall specifically note whether any water supply and/or septic system will be acquired.

Note: In the event that the boundaries of the property being appraised fall entirely within the limits of the right of way, a statement describing the acquisition as a total acquisition will suffice. The description of the acquisition shall correlate with the magnitude of the appraisal problem.

5.216 - Description Of The Remainder And Effects Of The Acquisition

The appraiser shall describe in detail the remaining land and improvements assuming completion of the highway project. The description shall include the items as specified in sections 5.202, Description of the Land and 5.203, Description of the Improvements.

The appraiser shall clearly explain the changes that have occurred to the remainder as a result of the project. When the remainder property is essentially the same as in the before condition, a statement to that effect shall be included and a detailed description of the remainder is not necessary.

The appraiser shall discuss, in detail, the effects of the right of way acquisition including easements on the remainder. The appraiser shall elaborate on factors such as distance of the improvements from the existing and proposed R/W, legal control of access, physical accessibility, change in grade, cuts and fills, effect on water and sewer, change in use, isolation, severance, noise, and any other factor, which in the opinion of the appraiser, will affect the market value of the remainder in the after condition. The appraiser must analyze the highway plan cross-sections and discuss the effect of the project's elevation on the remainder. When considering the effects of an acquisition, the appraiser shall refer regularly to those sections of the General Legal Principles dealing with compensable and noncompensable damages and benefits.

5.217 - Highest And Best Use Of The Remainder

The appraiser must state and support their opinion of the highest and best use of remainder assuming completion of the highway project. If the acquisition has caused a change in highest and best use, the appraiser shall state the change, support their opinions and conclusions, and comment on any probable zoning changes. As in the before condition, the appraiser is cautioned to determine market value based on highest and best use and not zoning. If, in the opinion of the appraiser, the highest and best use of the property after the acquisition is the same as before the acquisition, a statement to that effect will suffice.

5.218 - Partial Acquisition Of Building Affidavit

When a structure is **partially** located within the proposed right of way and/or easement boundaries, the Area Appraiser shall secure a Partial Acquisition of Building Affidavit, Form FRM5-Q. An affidavit is not necessary when the structure is located **entirely** within the right of way and/or easement boundaries.

Independent Fee Appraisers - Affidavits related to appraisal assignments from independent fee appraisers shall be included as the second page of the appraisal, and shall be placed after the Appraisal Summary Sheet.

NCDOT Staff Appraisers - Affidavits related to appraisal assignments from staff appraisers must be prepared by independent fee appraisers as required by statute. It is the responsibility of the staff appraiser to include the affidavit as the second page of the appraisal prior to submitting the report for review.

5.219 - Valuation Of The Subject Property After The Acquisition

The appraiser must estimate the after value of the remainder assuming completion of the highway project. The appraiser is cautioned to appraise the remaining property, not the acquisition. Merely subtracting the value of the part acquired from the estimate of before value to arrive at the after value renders the report unacceptable.

When easements are acquired, the appraiser must remember that this is a partial acquisition of property rights and not a fee simple acquisition or a damage to the remainder. When determining the after value, the appraiser must appraise the property as if the project is complete and all of the easements have been acquired.

5.220 - Reconciling After Value Indications

As in the before condition, when two or more approaches to value are used, the appraiser shall reconcile them into one final value conclusion. For NCDOT purposes, the appraiser must select the indication of value from the approach most relied upon and use that dollar amount as the final estimate of value. The selection of a single value indication from one approach aids the NCDOT in the allocation between land and improvements. It is not acceptable for the appraiser to select a value conclusion within the range of the approaches to value. The appraiser shall show an allocation between land and improvements in the final reconciliation.

5.221 - Difference Between Before And After Values

When the appraiser's estimate of value of the property remaining immediately after the acquisition is less than the value of the entire property immediately before the acquisition, the difference represents a loss in value attributable to the acquisition. In the event the value of the property after the acquisition exceeds the value of the property before the acquisition, the difference represents benefits to the remainder. When an after value reflects benefits to the remainder, the value should be indicated in the appraisal report, and "Benefits" should be shown on the Summary Sheet as the "Difference Between Before and After Value."

5.222 – Allocation

The appraiser shall account for the difference between the before and after values by allocating the difference to land, improvements, damages to the remainder, and benefits, if any. The total of the allocation should equal the difference between the before and after values.

If any improvement on the property being appraised is tenant-owned, a disclaimer must be signed by the property owner in order to breakout separately the value of the tenant owned improvements. If any portion of the property is encumbered by leasehold interests

involving billboards or federally leased property such as post offices, military installations, and federal agencies, then the appraiser shall show, in the Allocation, separate values for these items.

Example:

Value of Land Acquired	\$000
Value of Improvements Acquired	\$000
Damages to Remainder	\$000
Benefits to Remainder	<u>\$000</u>
Difference Between Before and After Values	\$000

5.223 - Appraisal Report Addenda

The Addenda of the appraisal report shall contain, but not be limited to, the following data and/or exhibits.

- 1) Photographs of the Subject Property - The appraisal report shall contain a sufficient number of photographs of the land, any improvements, features, or unusual conditions of the subject property, which are affected by the project. The appraiser should select positions, which show all sides of any affected improvement(s), as well as the land area to be acquired. Each photograph is to be properly identified by the following: date photograph was taken, by whom, position taken from, and direction of view. When any improvement is affected or acquired by the project, the appraiser should provide interior photographs.
- 2) Sketch of the Subject Property - The sketch shall include the areas, boundaries showing total enclosure, and dimensions of subject property with any existing roads and/or other means of access, all buildings, and other improvements. In addition, the sketch shall include a North arrow, project and parcel numbers, owner's name, and any other important property features. Subject photographs shall be illustrated on the sketch by indicating the photograph number and position and direction from which the photograph is taken. The sketch does not need to be to scale. The sketch shall include an illustration of the proposed right of way acquisition. Use of the highway plans as an illustration of the proposed

- acquisition is encouraged; however, if the highway plans do not include a total enclosure of the property a separate sketch including a total enclosure is necessary.
- 3) Floor Plan of Improvements - A floor plan showing dimensions, size, and shape of all structures located within the right of way limits or which are affected by the acquisition shall be included. The distance between the existing and/or proposed right of way lines and any affected structure is required and shall be shown on the property sketch, the floor plan drawings, or both.
 - 4) Comparable Sales (Form FRM5-G) - Photographs and property sketches of comparable sales and leases shall be presented on Form FRM5-G. The sketch shall indicate a close approximation of the property boundaries, land area, any existing highways and/or other means of access, and a North arrow if the sketch is not already oriented to the north. Sketches of comparable sales do not need to be to scale. It is important to be able to locate the property from the sketch provided.
 - 5) Location Map - A legible and detailed location map showing the exact location of the comparable sales and leases referred to in the appraisal shall be provided. The map shall show the location of the subject property in relation to the comparable sales and leases. It is important to be able to locate the property from the location map provided.
 - 6) Additional Exhibits - The appraiser is encouraged to include any additional exhibits, such as subdivision maps, deeds, tax maps, zoning maps, aerial photographs, or other data, which will enhance the appraisal report.

5.224 - Certificate Of Appraiser

The appraiser is required to include a completed Certificate of Appraiser, Form FRM5-J as the last page of the appraisal report.

5.225 – Right of Way Transmittal Summary

The Right of Way Transmittal Summary Form, FRM5-K, is intended for use with all claims except where damages to the remainder other than “Cost to Cure” will exist. This form along with the reporting requirements under Standard Rule 2-2 of the Uniform Standards of Professional Appraisal Practice (USPAP) is an appraisal report. This Right of Way Transmittal Summary Form is used to acquire fractional interests when claims involve acquisitions that have no associated damage to the remainder greater than the “Cost to Cure”. It is the Area Appraiser’s responsibility to determine when the Right of Way Transmittal Summary will be used. When improvements, such as asphalt, concrete and fencing are to be acquired, the appraiser shall provide a basic RCN less depreciation for the improvement. For example, when 200 SF of asphalt is acquired, the appraiser shall show: 200 SF of asphalt x \$3.00/SF less 30% depreciation equals \$420. Value estimates for wells, septic systems and landscaping shall be lump-sum RCN values. The value of indigenous landscaping shall be included in the land value.

The Right of Way Transmittal Summary addenda shall include a copy of the project plans showing the acquisition areas, total property sketch (if not shown on project plans sketch), zoning map, flood map, subject deed, subject tax card, land comparable sales along with location map, photographs of the subject property, assumptions and limiting conditions (if any), and the Certificate of Appraiser. The appraiser is encouraged to attach a paragraph of further explanation when needed.

5.226 – Appraising NCDOT Residue/Surplus Real Estate

Assemblage Value as it relates to NCDOT residue/surplus real estate is defined as, “the additional highest value contributed to an adjoining property by combining the residue with the adjoining property, which maximizes the residue’s highest and best use and value contribution.” The “adjoining property” shall first be appraised without the residue to arrive at the before value. Then, the residue shall be combined with the “adjoining property,” creating a new larger parcel in the after condition. The appraiser shall then appraise the new larger parcel to arrive at the after value. The resulting increase in value is the assemblage value of the NCDOT residue. In no case shall the

assemblage value be less than the residue's stand-alone market value.

Note: As stated in the Assemblage Value definition above, the appraisal process for NCDOT residue/surplus real estate is essentially the reverse of the appraisal process for acquisitions.

Market Value as it relates to NCDOT stand-alone residue/surplus real estate is defined as, "the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress." *Appraisal Institute Dictionary of Real Estate Appraisal, 4th Edition, Page 177.

5.227 – Valuing NCDOT Enhancements

Enhancement Value is defined as, "the additional highest value contributed to a subject property as a result of some action by the NCDOT." Examples of enhancements may be, but are not limited to the following: a break in control of access or a realignment of an existing road. As with residue appraising, the subject property shall first be appraised without the NCDOT action to arrive at the before value. Then, the subject property shall be appraised with the NCDOT action to arrive at the after value. The resulting increase in value of the subject property is the enhancement value.

Note: As stated in the Enhancement Value definition above, the appraisal process for NCDOT enhancements is essentially the reverse of the appraisal process for acquisitions.

5.228 - Form Appraisal Reports

Form appraisal reports may be assigned at the discretion of the Area Appraiser. Approved appraisal forms should include, but not be limited to, the following items in the order specified below:

- 1) Appraisal Summary Sheet (Form FRM5-H)

- 2) Written explanation of the inspection and history of the subject property*
- 3) Approved appraisal form with required attachments (seal not required)
- 4) Photograph of Subject Property*
- 5) Sketch of Subject Property*
- 6) Floor Plan of Improvements*
- 7) Comparable Sales (Form FRM5-G)
- 8) Location Map*
- 9) Certificate of Appraiser (Form FRM5-J)

* Refer to previous explanations in the Guide for required level of detail.

5.229 – Appraiser’s Electronic Transmission Of The Appraisal Report And Value Finding

All appraisals and Value Findings are required to be electronically transmitted to the Area Appraiser. The appraisal must be digitally formatted using software specified by the NCDOT. The Appraisal Summary Sheet and Certificate must be electronically signed, dated, and sealed as required by the North Carolina Appraisal Board.

5.230 - Mineral Deposits And Timber

When land containing mineral deposits and/or timber is acquired, the measure of compensation is the market value of the land including the minerals and/or timber. These items cannot be valued as potential merchandise. Land sales of similar properties containing similar mineral deposits and/or stands of timber should be used to estimate

the value of the subject property before and after the acquisition. Timber cruises and geological studies are sometimes necessary for supporting the estimated contributing value of the mineral deposits and/or timber.

5.231 - Timber Valuation

In some cases it may be necessary or advisable to make a determination of timber value separate from the land. The responsibility for obtaining a timber cruise shall rest with the Area Appraiser. The timber cruise may include all or a portion of the merchantable timber located on the subject property. The appraiser shall include a copy of the timber cruise and a discussion of the information included in the timber cruise in their appraisal report. The Area Appraiser should write a cover letter explaining the reason for the timber cruise and how the timber cruise is incorporated into the appraisal report. The cover letter should be attached to the appraisal report.

Retention Value of timber is defined as the value of the merchantable timber located within the proposed right of way. If the owner is permitted to retain and cut this timber, then the value of the timber should be excluded from the difference indicated by the appraisal report.

5.232 - Equipment And Machinery

The State Appraiser, with a recommendation from the Area Appraiser, is responsible for determining whether an item is personal or real property. When it is determined that an item is real property then the appraiser will be given Forms FRM5-L and/or FRM5-M, as needed. The appropriate form(s) shall be included in the appraisal report. The total contributing value of the equipment and/or machinery shall be added to the value of the other improvements. The total value shall be presented in such a way so that it clearly indicates the individual value contributions of the equipment, machinery, and the other real property, as separate ownership may be involved. All questions regarding these issues shall be directed to the Area Appraiser.

5.233 – Valuation Of Outdoor Advertising Signs

Outdoor advertising signs shall be appraised when designated as real estate on the Appraisal Summary Sheet, Form FRM5-H. Questions regarding the classification of outdoor advertising signs as personal property or realty should be directed to the Area Appraiser.

5.234 – Valuation Of Leasehold Interests

Appraisals of leasehold interests shall be in accordance with the General Legal Principles as set forth in this Appraisal Guide.

When appraising property leased to federal agencies, the leasehold interest shall be appraised and assigned a separate value. Please refer to NCDOT Right of Way Manual, Section 10.58.

5.300 - Appraisal Review

All appraisals and Value Findings obtained by the NCDOT must be reviewed for conformity with NCDOT Real Estate Appraisal Standards and Legal Principles and Uniform Standards of Professional Appraisal Practice (USPAP).

The Review Appraiser is required to complete a desk review of each appraisal, accompanied by a field inspection of each subject parcel and each comparable sale and/or lease. The review appraiser may approve, adjust, or not approve any appraisal obtained by the NCDOT. In addition, the review appraiser may recommend obtaining an additional appraisal. In the event an appraisal needs to be corrected; the Review Appraiser will notify the staff or fee appraiser indicating which items need to be corrected. After corrections have been made, the entire appraisal shall be resubmitted electronically to the Area Appraiser.

Once an appraisal has been reviewed, the Review Appraiser's conclusions shall be communicated using a Review Summary, Form FRM5-R, review letter, or review letter of adjustment. The Review

Appraiser has the authority to approve appraisals establishing compensation up to and including \$500,000. Appraisals showing compensation in excess of \$500,000 up to and including \$1,000,000 are referred to the Area Appraiser. All appraisals showing compensation in excess of \$1,000,000 are referred to the State Appraiser with a recommendation from the Area Appraiser. The State Appraiser has the authority to approve, adjust, or not approve any appraisal report.

5.301 – The Review Certification

After an appraisal has been reviewed and approved or recommended for approval, the Review Appraiser shall prepare a Review Certification, Form FRM5-S. The Review Certification shall be attached to the front of the appraisal report. The Review Appraiser shall indicate whether or not the remainder or any portion of the remainder is considered an uneconomic remnant by checking the appropriate box under the date of the certification. If more than one remainder exists, the Review Appraiser should specify which remainder is/are classified as uneconomic.

5.400 - Internal Transmittal Of Appraisals

Transmittal of approved appraisals within the NCDOT will be completed electronically. The Area Appraiser will transmit the approved appraisal to the NCDOT server. Upon transmittal, an email notification will be sent to the State Appraiser and to the Division Right of Way Agent. Email notification will also be sent to the Attorney General's Office and other field right of way agents as necessary.

Printed file copies of all appraisals will be retained in the Area Appraiser's office. These files will be made available for inspection to authorized representatives of the Right of Way Branch and the Federal Highway Administration. Upon receipt of a tabulation request from the Division Right of Way Agent, indicating that the claim has been SETTLED, the Area Appraiser will dispose of the contents of the office file.

5.401 - Cooperation With Negotiators

Any negotiator's questions regarding an approved appraisal shall be directed through the Area Negotiator to the Area Appraiser. In some cases, it may be advisable for the Area Appraiser to arrange a conference with the negotiator at the time an appraisal is approved for negotiation. Such a conference might be helpful in explaining something unusual about the appraisal or something that might be of particular benefit during negotiations.

5.402 - Conflicts Of Interest

Conflicts of Interest shall be governed by the Ethics Rule under USPAP, and the General Statutes of North Carolina, GS 136-13.

5.403 – The Preliminary Parcel Study

The Area Appraiser shall use the Preliminary Parcel Study, Form FRM5-P, to record a preliminary inspection of each parcel to be appraised.

5.404 – The Staff Appraisal Assignment

The staff appraiser will receive a work assignment on the Staff Appraisal Assignment, Form FRM5-N. When necessary, the staff appraiser shall request an extension of assignment from the Area Appraiser. The appraisal of property owned by Department of Transportation employees shall be assigned to independent fee appraisers only.

5.405 – Qualifications Of Fee Appraisers

Fee Appraisers employed by the NCDOT must be Certified by the North Carolina Appraisal Board. Evidence of State Certification shall be submitted to the NCDOT appraisal section annually.

5.406 – The Experience Questionnaire

Every Fee Appraiser employed by the Department of Transportation shall submit a completed Experience Questionnaire for Fee Appraisers, Form FRM5-A.

5.407 – The Appraisal Fee Proposal/Contract

The Area Appraiser shall order an appraisal from an outside fee appraiser using the Appraisal Fee Proposal/Contract, Form FRM5-C. The appraiser shall submit a completed fee proposal to the Area Appraiser for each parcel to be appraised. Any questions regarding the appraisal premise should be directed to the Area Appraiser. Negotiations involving the appraisal fee are not permitted until the fee proposal is returned to the Area Appraiser.

5.408 – The Appraisal Consultant Proposal/Contract

The approved Consultant shall order an appraisal using the Appraisal Consultant Proposal/Contract, Form FRM5-CC.

5.409 – The Statement For Appraisal Services

Statements for appraisal services shall be submitted to the Area Appraiser on the Statement of Appraisal Services, Form FRM5-E. This statement shall be forwarded to the State Appraiser with the Area Appraiser's recommendation for payment. The statement should be transmitted to the State Appraiser by attaching it to the Statement Transmittal, Form FRM5-F. When witnesses are hired by a trial attorney, and are not covered by an appraisal contract, the statements will be handled entirely by the Attorney's General Office.

5.410 - Contract Extensions

In the event a contract extension is needed, the appraiser shall submit a request in writing to the Area Appraiser. The request should include the reasons for the extension. The appraiser is encouraged to request an extension in a timely fashion. If the extension is approved, then the extension becomes part of the original contract, and shall be forwarded to the State Appraiser. If an appraiser is delayed by an action of the Department, such as a plan change, the Area Appraiser may grant, in writing, a reasonable extension.

5.411 - Outside Employment - General

Employees of the Department of Transportation may accept secondary employment outside the Department only when such employment involves no direct or indirect conflict of interest, and only when the Department has granted permission for such employment. Application for outside employment and permission by the Department shall be in writing using Form PO-102, and shall be updated annually. The employee shall comply with the Department's Secondary Employment Policy and Procedures. At no time shall any Right of Way personnel engage in the sale of real estate as a broker.

5.412 - Outside Employment - Appraisal

Appraisers employed by the Department of Transportation may not accept any appraisal assignment where the property to be appraised is affected by a highway project at the present, or in the foreseeable future. No employee will be permitted to accept appraisal assignments from any other condemning authority or any individual or firm doing business with the Department of Transportation. Outside employment must not involve the use of any State-owned property or equipment. It is absolutely forbidden for a staff appraiser to work for any fee appraiser who performs appraisal work for the Department of Transportation.

This page was intentionally left blank.

5.500 - General Legal Principles

The following references are furnished for the purpose of informing appraisers for the Department of Transportation of the applicable law to guide them in arriving at an unbiased and competent opinion of fair market value. The Supreme Court of North Carolina has formulated various rules relating to "just compensation" and the measure of damages where private property is acquired for public use by the Department. Each piece of land presents its own set of facts to which this law is applicable. These references are not for the purpose of telling an appraiser what method or approach to use in making his appraisal, but are merely guides as to what may under the law be considered in making the appraisal and what will constitute competent evidence if presented in Court. Regardless of the ability of an appraiser, or knowledge of the facts presented by the property, and property values in the area, it is impossible to make a valid condemnation appraisal without applying these rules and legal concepts. Some of these rules differ from state to state. A good condemnation appraisal based on Virginia or South Carolina law might be worthless in North Carolina. The Area Appraiser will furnish certain necessary information when requesting an appraisal, such as maps, plans, title certificates, and date of acquisition. This information plus the facts presented by the property, plus the law as applied by the court, together with the appraiser's own knowledge and experience in valuations should be sufficient for an accurate and unbiased fair market value appraisal of the subject property.

The appraisal is the means of arriving at the difference in fair market value for the purpose of negotiation, and in the event that settlement is not reached, it must serve as the basis for the appraiser's testimony in Court. It is essential that the appraisal follow the rules of law laid down by the Court. A summary of the most important of these rules of law follows:

5.501 - Measure Of Damages

The measure of damages for the acquisition of part of a tract for highway purposes is the difference between the fair market value of the entire tract, including improvements, immediately before the acquisition and the fair market value of the remainder tract including improvements immediately after the acquisition. The sum includes compensation for the part taken and compensation for injury to the remaining portion, and is to be offset by both general and special benefits accruing to the property from the construction or improvement of the highway.

Where the entire tract is taken the measure of damages is the fair market value of the entire tract, including the improvement located thereon, at the time of the acquisition. The measure of damages has been enacted by the General Assembly as follows in G.S. 136-112: The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

(1) Where only a part of a tract is taken, the measure of damages for said acquisition shall be the difference between the fair market value of the entire tract immediately prior to said acquisition and the fair market value of the remainder immediately after said acquisition, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.

(2) Where the entire tract is taken, the measure of damages for said acquisition shall be the fair market value of the property at the time of acquisition.

Fair market value is not the value of the property to the owner, or the value, which he places on it, nor is it governed by his willingness or unwillingness to sell. Market value is not the same as replacement value, nor is it the same as replacement value less physical depreciation unless many other factors which affect market value, such as design, style, demand for particular structure in the area, utility, and other sources of functional and economic obsolescence, are taken into consideration. Market value of property is the price, which it will bring when it is offered for sale by one that desires but is not obligated to sell it and is bought by one who is under no necessity

of having it. This definition assumes that both the willing buyer and the willing seller are fully informed of the physical characteristics of the property and all the uses including the highest and best use to which it may be put. Market value, then, is not the value to the owner for his particular purposes or to the condemnor for his special uses. It is recognized that an owner often receives less than the value of the property to him and that the condemnor pays more than the property is worth for its purposes, but experience has shown that the rule is reasonably satisfactory. Since market value does not fluctuate with the needs of condemnor or condemnee, but with general demand for the property, evidence of loss of profits, damage to good will, expense of relocation, and other such consequential losses are non-compensable. In estimating values on property in condemnation proceedings, the appraiser may consider any and all uses or purposes to which the property is reasonably adapted and to which it might, with reasonable probability, be applied, but has never been applied. However, the availability of the property for future uses must be such as enters into and affects its present market value, and regard must be given to the existing business or wants of the community, or such as may be reasonably expected in the immediate future to affect present market value. The test is "what is the fair value of the property in the market". The uses to be considered must be so reasonably probable as to have an effect on the present market value. Purely imaginative or speculative value should not be considered. Values that are peculiar to the owner and add nothing to the market value are not compensable.

5.502 - Date Of Acquisition And Time When Property Is Valued

In condemnation proceedings the value of the property must be established immediately before and immediately after the date of acquisition. The date of acquisition of the property is usually established as of the date of filing of the Complaint and the Declaration of Taking and Deposit in Court, at which time title to the property and the right of possession vests in the Department of Transportation. This date will be furnished by the Area Appraiser. Sometimes the appraisal will be made before and sometimes it will be made after the date of acquisition, but the values must be as of the time of acquisition. "Immediately before" refers to the property in the state in

which it existed prior to the date of acquisition. In arriving at this before figure the appraiser should not consider any effect, which the contemplation, or knowledge of the pending construction might have upon its market value. "Immediately after" refers to the entire remaining tract in the condition in which it exists except this value must contemplate and be based upon the highway improvement in a completed state rather than some state of construction.

In those instances where the appraisal is made prior to any construction, it is important that the appraiser become familiar with the plans for the project as they may affect the property at the time the appraisal is made, so that in event of testimony in court, the appraiser will be able to testify that his appraisal was made taking into consideration the cuts and/or fills with the road, etc., as shown in the plans.

5.503 - Nature of Acquisition - What Is Acquired

When the taking occurs, the entire area within the right of way vests in the Department of Transportation. For the purpose of the appraisal, it makes no difference whether the Department of Transportation acquires a permanent easement or fee simple title to the land. In other words, when the taking occurs, all of the real property within the right of way becomes the property of the Department of Transportation and that outside of the right of way remains the property of the landowner. All improvements on the right of way, which are a part of the realty and are not personal property, become the property of the Department of Transportation. If the right of way line goes through an improvement, such as a building, the Department of Transportation will make a determination of whether to take only that portion located within the right of way or the entire improvement (but not the title to the land outside of the right of way upon which it is located) and the appraiser will be advised of this determination. The owner does not have the right to remove improvements taken, nor does the Department of Transportation have the right to move an improvement from the right of way to some other portion of the property in the absence of an agreement.

The appraiser may, however, be advised from time to time by the Area Appraiser that by agreement a certain improvement located within the right of way will be or has been moved to a point designated by the landowner; and if such an agreement does exist between the Department of Transportation and the landowner, the appraiser will not consider the improvement which has been or is to be moved in making his appraisal.

When an improvement is located on the property remaining after taking, the landowner is not entitled to have such improvements moved to a location more suitable to him even though such an improvement may be located in proximity to the right of way after completion of the highway construction. Therefore, the appraiser is not to consider the cost of moving an improvement as an element of damage.

Items of personal property permanently affixed to the realty by the common owner of both to enhance the value of the realty, called "fixtures", are a part of the realty and should be considered as such insofar as they relate to market value. "Trade fixtures" (items of personal property affixed to the realty by one other than the owner of the realty, used exclusively for trade and business, having other than a localized use, and removable without injury to the affixed item of the realty), furniture, stocks of goods and merchandise, farm machinery, etc., are personal property and are not to be considered as taken or as having a bearing on the market value of the property. There is often a fine legal distinction between personal property and real property, especially when dealing with business property and leasehold interests. The Area Appraiser will furnish the appraiser with information on each parcel to be appraised as to which items should be considered as realty. If there is any doubt, the appraiser should confer with the Area Appraiser.

5.504 - Noise

Where it may be relevant, the effect of the introduction of traffic noise from the use of the part taken for highway purposes may be considered in appraising the fair market value of the remainder. Its relevance depends upon highest and best use.

5.505 - General and Special Benefits

"Special benefits" are those benefits or enhancements in market value which the property owner receives peculiar to his land and not in common with the other landowners in the vicinity by reason of the construction of the improvement. "General benefits" are those benefits, which actually enhance the market value of the property, although they are common to other property in the vicinity. The appraiser is to reduce the damages to the remainder and the value of the part taken by all benefits accruing to the land, whether special or general or both. This differs from the rule in most states in that benefits may be offset and deducted from the value of the part taken, as well as damage to the remainder. This, of course, means that if the benefits are equal to or in excess of the value of the part taken and damage to the remainder, then the property owner is entitled to recover no monetary compensation due to the increased value of the land being such compensation, especially since the after value is equal to or in excess of the before value. Of course, the property owner owes the Department of Transportation nothing if the after value exceeds the before value. It might be well here to point out that when the appraiser has arrived at an opinion of market value before and after, the difference will include the elements mentioned above. This can be reduced to a formula:

Market Value of part taken + damage to market value of remainder - benefits to market value of remainder = market value before - market value after.

5.506 - Competitive Sales as Evidence of Value by the Court

The appraiser may consider the price paid at voluntary sales of land similar to the land being taken at or about the time of the taking as independent evidence of the value of the land taken. The land must be similar to the land taken; otherwise, the evidence is not admissible on direct examination. Actually no two parcels of lands are exactly alike. Parcels may be compared only where the dissimilarity is reduced to a minimum and allowances or adjustments are made for such dissimilarity. Where the land used as a comparable is markedly dissimilar in nature, condition, location, and zoning classification,

then the courts will not permit the use of such comparable sales as an independent evidence of the value of the land taken. It is within the discretion of the trial judge to determine whether there is a sufficient similarity to render the evidence of the sale admissible. Therefore, if the appraiser is relying upon comparable sales, he or she should make a personal examination of the property and be certain that the comparable sales are sufficiently similar to the land taken before using them as independent evidence of the value of the land actually taken.

5.507 - Prior Sales of Subject Property

It is an acceptable legal premise that when land is taken in "eminent domain", it is appropriate for evidence of market value to show the price at which it was bought if the sale was voluntary and within a reasonable time of the date of taking. The reasonableness of time is dependent upon the nature of the property, its location, and the surrounding circumstances and conditions. In any event, if the property has been purchased within the past five years, the appraiser should include full details of the purchase in the appraisal report.

5.508 - Settlements, Offers, Etc.

The appraiser should not consider as comparable sales any settlements, which have been made by the Department of Transportation with adjoining property owners or other owners of land involved in construction of the road improvement. These are in the nature of a settlement of a lawsuit and have no bearing on the market value of the property being appraised; furthermore, they are not acceptable as evidence. The appraiser should not consider any unaccepted offers to buy or sell this or any other property as they are not competent evidence of market value, primarily because it is impossible to know the circumstances surrounding them. At best, unaccepted offers are only second-hand opinions of value to a particular person who may not be under a compulsion to buy or sell.

Ad valorem tax valuation is not to be considered as bearing on the market value as set by the tax authorities. However, the appraiser should note in his or her report any valuation by the owner whether for income, inheritance, or estate tax or for insurance purposes, whether or not the appraiser considers such valuation controlling upon his or her valuation.

5.509 - Adaptability, Subdivisions

In arriving at an opinion of the fair market value of the property before and after the taking, the appraiser should consider the use or uses to which it was being put and to which it was naturally adapted. He or she should consider it in the light of its highest and best use, and this may not be the same use(s) before and after the taking. If the property, or any part of it, was naturally adapted or suitable for building sites or subdivision purposes, and if the appraiser should find that such adaptability enhanced the market value of the land, he or she may take it into consideration insofar as such adaptability affects its present market value. However, in the absence of a bona fide developed subdivision, it is not permissible to estimate the number of lots which might be cut from the tract or any part of it, nor is it permissible to estimate the amount for which each lot could be sold to arrive at an estimated value of the tract. Proposed or intended uses of the property are not to be considered as a basis for market value.

5.510 - Unity of Lands

In determining the unity of lands, the factors most generally emphasized are unity of ownership, physical unity, and unity of use. Under certain circumstances, the presence of all these unities is not essential; however, usually the unity of use is given greatest emphasis. The parcels claimed as a single tract must be owned by the same party or parties, but for unity of ownership, a party does not have to have the same quantity or quality of the interest or estate in all parts of the land. Where there are tenants in common, one or more of the tenants must own some interest and estate in the entire tract. The general rule is that parcels of land must be contiguous in order to constitute a single tract for possible severance damages and benefits.

It is generally held that parcels of land separated by an established city street and used by the public are separate and independent as a matter of law. Where land is unoccupied and is held for purposes of sale and building costs, a physical division by wrought roads and streets creates independent parcels as a matter of law. Mere paper division by lot or property line and undeveloped streets and alleys are not sufficient alone to destroy the unity of land.

The unifying use must be a present use - a mere intended use cannot be given any effect. Therefore, in a proposed subdivision, which has merely been laid out on a map and for which there are no developed streets and alleys actually on the land, the parcel will be treated as one tract notwithstanding any division into imaginary lots. Where the highway crosses an established subdivision where streets and alleys have actually been established on the ground by a physical act or where lots have been sold, and/or where lots are occupied by separate dwellings, the parcels are to be considered as separate properties. In such cases, lots and buildings adjoining the rear of lots and buildings abutting on the highway where the land taken are not to be valued as remaining property with that immediately affected. The Area Appraiser will normally advise the appraiser whether the area is to be considered as separate lots or as a unity so as to include the entire tract.

5.511 - Zoning as Related To Legal Guide

In the appraisal of property, any existing zoning ordinance restricting the use of property is to be considered in determining the market value of the land being condemned, because in determining the market value of realty, all circumstances and conditions which become either an advantage or detriment to the property should be considered. If the land taken is not presently available for a particular use by reason of a zoning ordinance or other restriction imposed by law, but there is a reasonable probability of change in the near future in the zoning ordinance or other restriction, then the effect of such probability upon the market value may be taken into consideration in the appraisal. However, if the possible change in zoning ordinance restricting the use of the property condemned is purely speculative then such a possibility is not to be considered. All features of the zoning

ordinance that have an effect on the before or after value of the property should be reported by the appraiser. In considering the possibility of a zoning change, the appraiser should interview people in the affected area, as well as city officials concerned with zoning problems, and note their opinion and attitude in the report.

5.512 - Business Profits

In arriving at the amount of compensation due to owners of the property (difference in before and after values) the appraiser is not to take into consideration any loss of profits from a business conducted on the property or operated in connection therewith. Neither injury to a business, inconvenience; nor loss of profits is an appropriation or taking of property which must be paid for. The business located on the land may be considered only insofar as it enhances or detracts from the fair market value of the property. Where the property itself is producing income in the form of rent, this may be considered under the property capitalization approach in determining market value.

The appraiser is not to consider the expenses of removal or relocation of personal property in placing value on the real property taken. In cases of losses caused to a business by reason of a condemnation of a leasehold or of the land on which it is conducted, the appraiser is not to consider in his or her appraisal the removal cost of a stock of merchandise, or other personal property, or the breakage or other injury to such property caused by such removal from a leasehold or fee in land. Neither will he or she consider the expense of moving trade fixtures to another location nor shall he or she consider that moving a business to another location might result in the loss of business, customers, and good will. Neither shall the appraiser consider the loss of business resulting from the diversion of traffic. In summary, it is generally held that injury to a business is not an appropriation of property, which must be paid for.

Therefore, in making the appraisal, the appraiser will not use income or profits from a business conducted on the property in the Income approach, since evidence of income or profits derived from a business conducted on a property is too speculative, uncertain, and remote to be considered as a basis of ascertaining market value of property.

Business profits depend on the capital investment, the skill in management of the owner, and other elements extrinsic to the property itself. However, if the property itself is an income producing property - that is having a fixed rental value, then the rental value may be taken into consideration as bearing upon the market value.

5.513 - Leasehold Interests

Leasehold interests are rarely any concern to the Right of Way Branch. Leaseholds generally are a matter to be resolved between the lessor and the lessee. Unless otherwise specified by the Area Appraiser, the appraiser shall consider each property as if free and clear of all liens and encumbrances. If called upon to appraise a leasehold interest, the appraisal procedure shall be in accordance with the General Legal Principles.

However, on those claims involving property, which is leased to federal agencies, the leasehold interest shall be appraised and assigned a separate value in the approved appraisal. Please refer to NCDOT Right of Way Manual, Section 10.58.

5.514 - Temporary Acquisitions For Borrow Or Material Pits, Haul Roads, And Detour Roads

Under General Statutes 136-120, the Department of Transportation is authorized to enter upon lands and structures to make surveys, borings, soundings, or examinations as may be necessary in performing its duties. Such action shall not be deemed a taking. However, the landowner is entitled to damages as may result to the land as a result of such activities. Where an area is temporarily appropriated for the purpose of acquiring borrow material, the appraiser will consider this a permanent damage, and the measure of damages is the fair market value of the property immediately before and immediately after the injury. However, the taking of a borrow pit

differs from the appropriation of a permanent easement in that the appraiser may consider in his after value the fact that the area will be returned or abandoned to the use of property owner. The appraiser should not value the material taken from the pit at so much a ton or yard.

In the case of haul roads or other temporary injuries of a similar nature, the measure of damages is the diminution in the rental or usable value of the property taken, together with such special damages by way of injury to crops, improvements, etc., and permanent injury to the remaining land. Therefore, as a general rule, the diminished market value of the property will not be used as a measure of damages for a temporary injury to real estate, but only when the injury to the realty is permanent. Therefore, in the case of a temporary taking, such as a haul road, where the plaintiff has been deprived of the use of the premises by reason of the injury thereto, he may recover the rental value for the time during which he was deprived of the use.

5.515 - Non-Compensable Damages

In the case of loss and diminution of access where the property appraised is being taken for a limited or controlled access project, the appraiser must first of all find out from the Area Appraiser what access rights, if any; the property owner will have to the project. The right of an abutting property owner to access - that is ingress and egress from and to an existing highway, is a property right in the nature of an easement appurtenant to the property. Where this right is totally extinguished and no substitute way of access is provided, it is a taking of real property right and in this event, the before value will be the fair market value of the property with access and the value after the taking will be the fair market value of the property with the right of access eliminated. Where the highway is on new location or where additional right of way is taken, matters of access is merely another factor to consider in the before and after value. Where, however, an existing highway is converted to a controlled access facility and direct access to the main traveled lanes is denied but access is provided by service road to these lanes, there is no taking of access. Factors such as circuitry of route in reaching the main traveled lanes caused by the construction of the project and a diminution of the volume of public

travel immediately in front of the premises are not items of legal damage. This is true also where an existing rural highway is, in effect, converted to a service road to serve the newly constructed main traveled lanes even though the property under investigation is left in a cul-de-sac by reason of a barricade placed at one end of the existing highway bounding the new construction.

Generally speaking, a landowner is not entitled against the public to unlimited access to this land at all points in boundary between his land and the highway, although entire access may not be cut off without compensation. If ingress and egress are not substantially interfered with, no compensation is allowed. There are also many other rules, which the Department of Transportation may impose upon access to and use of the highways without payment of compensation. These include regulation of speed, parking, routing of traffic along one-way streets, channelization, and moderate regulations upon the number of and types of driveways entering a highway from a specific property, i.e., minimum standards for commercial entrances adopted by ordinances of the Department of Transportation. Damages due to the exercise of the "police power" of the State are not compensable as they are not a taking of private property rights in the constitutional sense. The major distinguishing feature between the power of "eminent domain" involves a taking of property while "police power" is concerned with the regulation of property to prevent a use detrimental to the public interest.

5.516 - Non-Compensable Damages - Summary

There are many different types of damages that a landowner may suffer from the construction of a highway which are generally non-compensable by law. Therefore, these should not be considered by the appraiser in making his or her appraisal. Listed below are some of the non-compensable damages frequently encountered by the appraiser. This list is not intended to be all-inclusive, and the appraiser should consult with the Area Appraiser when in doubt as to what items should be reflected in the appraisal. Items 1 through 5, while not items of legal damage, may be considered on the question of whether there are any benefits to the subject property arising from the construction of the project.

- 1) Decrease in traffic volume in front of the premises (which might be caused by moving the main traveled lanes away from a business or by a rerouting or diversion of traffic or by one-way streets.
- 2) Circuity of travel to achieve access to main traveled lanes or roads.
- 3) One-way street; median strips which prevent turning; fences; and trees and shrubbery erected or planted on the right of way by the Department of Transportation.
- 4) Lowering or raising the grade of an existing street or highway within the old right of way where access is not controlled.
- 5) Cul-de-sac which results when an existing rural highway is dead-ended.
- 6) Loss of use and occupation of the property caused by the construction of the project.
- 7) Personal annoyance due to interference with peaceful living conditions caused by traffic noise, fumes, and vibrations; however, the appraiser may consider the use to which the condemnor will put any portion of the subject property, but not other property obtained by the condemnor, in arriving at market value of the subject premises after the taking, in so far as concerns damage to the subject property.
- 8) Moving expenses including the expense of removal of or relocation of personal property and trade fixtures; breakage or other injury to such property caused by removal.
- 9) Loss of business, good will, or the interruption of business.
- 10) Anticipated losses from intended uses or purposes, which the owner has in mind, and all other speculative losses.

5.517 - Highway Easements Outside The Right Of Way

As noted in the Uniform Appraisal Standards for Federal Land Acquisition Guide, "An easement denotes ownership of limited real property rights; thus, falling short of full fee simple estate ownership. When an easement or servitude over land is condemned for the public use, the appraisal should be in the amount of the difference between the fair market value of the land before and the fair market value immediately after imposition of the easement. Full consideration shall be given to a due allowance made for the substantial enjoyment and beneficial ownership remaining to the easement. "An easement outside the proposed right of way shall not be considered a fee simple taking. An easement is a partial taking of property rights. The degree of servitude controls the effect of easements. Compensation should not be greater than the adverse effect of the easement, or the difference in the fair market value of the property before the taking for the easement and the fair market value of the remainder subject to the easement. The appraiser and the Area appraiser must have a mutual understanding concerning the property rights affected by the proposed easement before the assignment is made. There are instances where the taking for an easement, such as a slope easement, may result in benefits to the remainder.

5.518 - Specialized Equipment, Machinery, Trade Fixtures, And Timber

In the event an appraisal assignment necessitates the valuation of specialized equipment, machinery, trade fixtures, mineral deposits, or timber, the appraiser may, at his or her election, employ a specialist or consultant for assistance. However, the appraiser shall set forth any intention to hire a specialist or consultant and state that name on the Appraisal Fee Proposal, Form 5-B. The Appraisal Fee Proposal shall contain the specialist's fee as part of the appraisal fee. The Department of Transportation is concerned only with the total appraiser fee. Caution: The appraiser shall correlate and analyze the specialist's opinion and estimate as part of the appraiser's own opinion and final estimate of value. The inclusion of any consultant's estimate by simply adding it to the appraiser's estimate, without explanation, shall render the report unacceptable. The specialist's or consultant's

report shall be included in the Addenda of the appraisal report. Item (16) of the Appraisal Contract reads: "The DEPARTMENT and the Federal Highway Administration shall have the right to approve or reject any firm or individual that the APPRAISER may propose as a subcontractor or employee whose services will be employed in the preparation of the appraisals herein set out."

5.519 Map Act Corridor Preservation Restrictions - Addendum to NCDOT Real Estate Appraisal Standards and Legal Principles, as revised October 15, 2014, published by the North Carolina Department of Transportation, Division of Highways and Right of Way Branch

In *Kirby v. Department of Transportation*, 368 N.C. 847, 786 S.E.2d 919 (2016), the North Carolina Supreme Court held that the extent to which a landowner may be entitled to compensation for Map Act corridor preservation restrictions imposed pursuant to N.C. Gen. Stat. § 136-44.51 must be determined by calculating the value of the land before the corridor map was recorded and the value of the land afterward, taking into account all pertinent factors. There are no final “highway plans” for the agent to interpret – only the corridor map. Lines labeled as “right of way” or “control of access” on a corridor map do not represent a present taking of ownership, but merely foreshadow the area in which the Department may eventually take ownership if and when the project proceeds to construction (at some future date).

The Map Act corridor preservation restrictions apply to the landowner’s rights to improve, develop, and subdivide the property within the official corridor. The restrictions are on the following specific rights:

- Right to obtain a building permit for any new improvement or structure within the transportation corridor (improve);
- Right to obtain a building permit for existing structure to increase the size thereof or change type of building code occupancy (develop); and
- Right to obtain approval for a subdivision (subdivide).

The property rights taken do not give the Department any right to enter, occupy, possess or use the property, nor any right to exclude the landowner. The landowner retains the full right to enter, occupy, possess, use, maintain and dispose of or sell property within the corridor, subject to the Map Act corridor preservation restrictions detailed above. In addition, a landowner whose property is within the corridor remains

entitled to make improvements for which no building permit is required, and nothing in the Map Act limits, prevents or imposes conditions or additional approval requirements on such improvements.

In *Kirby* the court stated that the landowner has the burden to prove “substantial interference” with his or her rights to improve, develop and subdivide the property, and “not every act or happening injurious to the landowner, his property, or his use thereof is compensable.” Applying these principles requires a fact-specific analysis. To determine how the corridor preservation restrictions on an owner’s rights to improve, develop or subdivide property impact valuation of the subject property, it is necessary to analyze what, if any, site-specific rights exist prior to the recording of the corridor map. Consideration should be given to whether development constraints were in existence prior to recording the corridor preservation map and whether such pre-existing constraints limited or prevented the landowner’s ability to improve, develop or subdivide the property. If so, such pre-existing constraints should be identified and the effect of the corridor preservation restrictions should be given independent consideration. Examples of pre-existing constraints include, but are not limited to zoning restrictions, restrictive covenants, environmentally protected areas, power line and other utility easements, flood zone restrictions and any other similar features.

Landowners whose properties are located within the corridor preservation area may seek administrative relief from the corridor preservation restrictions by applying for a building permit or subdivision plat approval, a variance, or an advanced acquisition of the property due to an imposed hardship. The corridor preservation restrictions will remain on the property indefinitely unless the owner makes such an application. By applying, the landowner starts a 3-year time period during which the Department must either purchase the landowner’s property or, by operation of law at the end of the 3-year period, the corridor preservation restrictions automatically dissolve and no longer apply to the property.

The appraisal of just compensation should be in the amount of the difference between the fair market value of the land before recording the corridor preservation map and the fair market value of the land

immediately after recording the map and imposing the Map Act corridor preservation restrictions taking into account all pertinent factors, including the site-specific potential for improving, developing and subdividing the property before and after map recording. Compensation should not be greater than the adverse impact of the corridor preservation restrictions.

Kirby also refers to the effect of reduced *ad valorem* taxes pursuant to N.C. Gen. Stat. § 105-277.9 and N.C. Gen. Stat. § 105-277.9A as a pertinent factor in determining any just compensation to which a landowner may be entitled. The application and effect of the tax reduction is a factor that can be addressed by Department separate and apart from the appraisal report. Appraisers are not required to determine whether the County in which the subject property is located actually applied the tax reduction to the subject property in accordance with the statute (unimproved property within an Official Corridor assessed at 20% of the appraised value and improved property assessed at 50% of the appraised value).

Kirby does not require the appraiser to assume the completion of the project in determining the value of the land after the taking. The Department is not required to complete the project and might choose not to do so in some areas, or might do so using a revised corridor map that does not include the subject property or includes a different portion of it. In the event that the Department proceeds with the project at a future date, there may be another condemnation action to acquire the land that is required for construction of the project.

To the extent that any section of the NCDOT Appraisal Standards conflicts with the *Kirby* decision or subsequent controlling court opinions, the conflicting provisions of the Standards must be disregarded in performing the appraisal. The correlation table below lists sections of the Appraisal Standards that have been identified as conflicting with *Kirby*, but additional sections may conflict depending upon the circumstances of a particular case.

NCDOT Appraisal Standards Section	Comments re: Application in Map Act Inverse Condemnation Cases
Sect. 5.102 - Pages 1-2	Subsections 6, 7, 8, 9, and 10 on Page 2 are not applicable.
Sect. 5.103 - Page 2	Not applicable.
Sect. 5.200 - Pages 5-6	<p>With respect to inspections, note that the Map Act's restrictions never involve the taking of an improvement. The owner is always free to continue to use existing improvements on the property.</p> <p>The third paragraph is not applicable in the Map Act setting. There are no "highway plans" to interpret - only the corridor map. Lines labeled as "right of way" or "control of access" on a corridor map do not represent a present taking, but merely foreshadow what may eventually be taken if the project proceeds at some future date.</p>
Sect. 5.209 - Page 10	For Map Act cases, in the title to this Section strike "Before the Acquisition" and replace with "Before the Corridor Preservation Map is Recorded."
Sect. 5.215- Page 13	Not applicable to the extent it discusses land, easements and improvements "acquired" by the Department because recording a

	<p>Corridor Preservation map is not an acquisition of any area. Recording such a map only imposes restrictions on any rights the owner has to improve, develop or subdivide the subject property.</p>
<p>Sect. 5.216 – Page 13-14</p>	<p>Not applicable. The “remaining land” is always the same as the land prior to the imposition of restrictions. The land afterward is, of course, subject to the Corridor Preservation restrictions.</p>
<p>Sect. 5.217 - Page 14</p>	<p>In the title, strike “Highest and Best Use of the Remainder” and replace with “Highest and Best Use of the Land Following Imposition of Corridor Preservation Restrictions.”</p> <p>In the first sentence, strike “completion of the highway project” because there is no present project associated with the recording of a Corridor Preservation map - only the foreshadowing of an eventual project, which might never be constructed.</p> <p>In the remainder of the paragraph, strike references to “the acquisition” and replace with “recording the Corridor Preservation map.”</p>

Sect. 5.218 – Page 15	Not applicable. There is no acquisition of buildings, partial or otherwise, associated with the recording of a corridor map. The owner may continue to use existing buildings and other existing improvements.
Sect. 5.219 – Page 15	Not applicable. The “completion of the highway project” language does not apply.
Sect. 5.225 - Page 19	<p>The second paragraph does not apply. There is no “project plan” to submit in a Map Act case - only the corridor map exists.</p> <p>Strike the phrase “acquisition areas” and replace with “areas within the corridor.”</p>
Sects. 5.226, 5.227 and 5.228 - Pages 19-21	Not applicable.
Sects. 5.230, 5.231, 5.232, 5.233, and 5.234 - Pages 21-23	Not applicable because the owner may remove any and all timber, equipment and machinery without limitation following the recording of the corridor map. Equipment, machinery, advertising signs and leases can continue without interruption.
Sect. 5.300 - Pages 23-24	Appraisal review in Map Act cases is limited to review in consideration of applicable sections of the Appraisal Standards because not all

	Appraisal Standards apply in such cases.
Sect. 5.501 - Page 30	The “entire tract” is never taken in a Map Act case, so the second unnumbered paragraph and subparagraph (2) are not applicable.
Sect. 5.503 - Pages 32-33	Not applicable. There is no “right of way” taking associated with a Map Act case. None of the property within the corridor “becomes the property of the Department of Transportation.”
Sect. 5.504 - Page 33	Not applicable. There is no noise associated with the imposition of Map Act restrictions.
Sect. 5.505 - Page 34	Unlikely to apply to a Map Act case.
Sect. 5.514 - Page 39-40	Not applicable.
Sect. 5.517 – Page 43	Generally, this section is not applicable in Map Act cases because such cases do not involve the taking of any ownership rights. However, this section does correctly state certain general principles applicable to easements outside the right-of-way. These principles may or may not be relevant, by analogy, to specific Map Act valuations.
Sect. 5.518 - Pages 43-44	Not applicable.