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# AVIATION RIGHT OF WAY MANUAL



DIVISION OF  
**AVIATION**



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## I. FUNDING

### **General Considerations:**

Funding or reimbursement is always subject to the availability of the state and federal funds and the project's priority. The airport owners and their agents hereinafter "the Sponsor" must follow federal and state guidelines. Failure to follow such guidelines and the procedures outlined herein may result in the loss of federal or state funding, or reimbursement for the project. Funding and financing options are more fully discussed in Chapter 3: NCDOT Aviation Airport Programs and Chapter 5: Funding for Airport Improvement Projects.

### **Sponsor Only Funding:**

There may be occasions when it is in the best interest of the airport to purchase property with no outside funding. Certain situations may not allow the time necessary to apply for grants or loans even if funds are available. Occasionally, the delay resulting from such applications can be costly. For example, if another party buys a property the airport will in the future need, and constructs a home or business on the parcel, the costs may increase substantially. The subsequent purchase of land would then include the improvements and relocation costs. If the Sponsor chooses to purchase the property in advance of application for funding in order to avoid such increased costs, it is strongly advised that all aspects of the acquisition comply with all federal and state guidelines regardless of the funding source at the time or purchase. Failure to do so may jeopardize federal or state funding and/or reimbursement for the project at a later date - even if the parcel is acquired through sponsor only funding.

## II. PRELIMINARY ACQUISITION CONSIDERATIONS

### **Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs ("The Uniform Act"): [42 U.S.C. §4601 \(1971\) et. seq.](#)**

This law applies to any federal project or program that requires real property acquisition and displacement of people from their acquire home, business, farm or nonprofit organization real property. The Uniform Act ensures the fair and consistent treatment for owners of real property in order to encourage and expedite acquisition by agreements with such owners, minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally-assisted land acquisition programs.

Likewise, the Uniform Act requires fair, consistent and equitable treatment for persons displaced as a direct result of federal or federally-assisted projects, so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

Finally, the Uniform Act promotes efficient and cost-effective federal agency implementations of these regulations.

IT IS THE POLICY OF NCDOT THAT ALL PROJECTS, REGARDLESS OF THE FUNDING SOURCE AT THE TIME OF ACQUISITION, COMPLY WITH THE UNIFORM ACT AS WELL AS OTHER FEDERAL AND STATE REQUIREMENTS. FAILURE TO DO SO COULD RESULT IN THE LOSS OF FEDERAL OR STATE FUNDING, OR REIMBURSEMENT STATUS FOR THE PROJECT. The Airport Sponsor must certify that the real property was acquired in conformance to the Uniform Act. [View FAA Sample Real Property Acquisition Sponsor Certification Form here.](#)

### **Sponsor Program Requirements:**

Airport Sponsors are obligated to follow a number of state and federal statutes and regulations including those noted in Appendix A: Statutory Guidance of this program guide. This includes the [Uniform Act, 49 CFR Part 24, FAA Order 5100.37: Land Acquisition and Relocation Assistance for Airport Projects](#), and [FAA AC 150/5100-17 CHG 7: Land Acquisition and Relocation Assistance for Airport Improvement Program \(AIP\) Projects](#) (hereinafter "AC150/5100-17 CHG 7" 17"). Likewise, Appendix B: Guide to Consultant Selection of this program guide outlines requirements for the selection and retention of consultants for project related service.

Sponsors and staffing involved in land acquisition and relocation for AIP assisted projects must demonstrate an adequate working knowledge of the Uniform Act requirements and the capability and expertise to complete the work proposed in conformance to the applicable requirements. [AC 150/5100 CHG 7](#) provides detailed guidance, procedures and quality control requirements to assist sponsor compliance and AIP reimbursement eligibility and those requirements are incorporated in this program guide. [See AC 150/5100-17 CHG 7: Sponsor Program Requirements.](#)

For AIP funded projects, the hiring of appraisers, acquisition and relocations consultants must conform to requirements of [AC 150/5100-14](#). Eligibility requirements for contracting professional services are detailed in Chapter 9 of the AIP Handbook ([FAA Order 5100.38](#)). When soliciting consultants or utilizing the land acquisition subcontractor for engineering services, or any professionals involved in relocation assistance are considered professional program management services and should be selected based on adequate qualifications. Sponsors should include the following qualification requirements in their request for proposals/qualifications:

- An understanding of the governing regulations provided at 49 CFR Part 24 FAA policies proscribed in [AC 150/5100-17 CHG 7](#) and other applicable law and regulations provided under state and local laws
- Experience and expertise to undertake real property acquisition and relocation functions as prescribed under the governing regulations and [AC 150/5100-17 CHG 7](#).
- Ability to undertake and complete the required work within your proposed project schedule

- A listing of references for current jobs and completed projects that the Sponsor may contact;
- Education and training evidencing expertise and competence to perform professional real property acquisition and relocation assistance work
- Professional designation, license, or certification
- Quality control system to ensure Uniform Act compliance and adequate documentation to ensure maximum FAA reimbursement.

### **Separation of Duties:**

To ensure federal or state participation, all agencies must comply with separation of function requirements when using federal or state funds on any portion of the project. *Separation of function requires the person who conducts the negotiations must not make the appraisal or act as the review appraiser.*

The Division of Highways has developed and utilizes a Right of Way Manual and Manual for Real Estate Appraisal Standards and Legal Principles – both of which are based on applicable state and federal laws, including but not limited to the Uniform Act, and decades of experience in acquiring property and managing matters related thereto in service of the public. While Airport Sponsors are not bound by all aspects of these manuals, Sponsors are required to follow all applicable federal and state laws. In order to promote operational efficiency and consistency in the application of the Uniform Act, designated personnel within the Division of Highways, including the Right of Way and Appraisal Units, will be available to assist Airport Project Managers as a resource for general or parcel specific matters. However, the execution of compliance with the Uniform Act and applicable state and federal regulations *remains the responsibility of the Airport Sponsor. **When consulting and collaborating with members of the Division of Highways, Airport Sponsors and their contractors should work through the NCDOT Aviation regional Airport Project Manager without exception. Please see functionally specific guidance discussed topically below.***

### **Other Preliminary Considerations:**

**Title Reports:** Federal law requires sponsors hold “good title, satisfactory to the Secretary” (of Transportation) to the airport being developed. To meet these requirements a sponsor’s title to airport property must be free and clear of any revisionary interest, lien, easement, lease or other encumbrance that would create undue risk that might deprive the sponsor of control or possession, interfere with its use for public airport purposes, or make it impossible for the sponsor to carry out their grant obligations and covenants. Pursuant to the FAA, this means a current attorney’s title opinion properly tied to an Exhibit “A” Airport Property Map. See [AIP-1331](#) for guidance to assist sponsors and attorneys in the preparation of title evidence that speaks to the Satisfactory Evidence of Good Title required by [AIP-1330](#).

**Wetlands & Archeological Sites or Historic Properties:** Prior to the disturbance, disposal, razing, digging or grading on land which is suspected to involve wetlands, conditions of archeological or historical significance, please consult with the NCDOT Aviation Regional Airport Project Manager.

**Hazardous Materials and Asbestos Abatement:** Acquisition of sites containing contamination should be avoided. The costs of “clean ups” are not eligible for federal reimbursement. Consequently, an investigation for the presence of hazardous material should be done as part of these preliminary procedures. It is recommended that a consultant be hired to investigate for hazardous substances; including asbestos if buildings are to be purchased. Demolition contractors are generally not licensed to perform this work.

Subsequent discovery of contamination by a hazardous material could compromise desired aeronautical use of the acquired site and sponsors are **strongly encouraged** to conduct an Environmental Site Assessment (ESA) prior to the acquisition of property intended for reimbursement under the AIP. For more information on the ESA process – including the Environmental Site Assessment and Environmental Oversight, See AIP – 1320.

### III. REAL PROPERTY APPRAISAL

#### Section 1 – REQUIRED SPONSOR APPRAISAL PROCESS

*AC 5100.17 – CHG 7, Ch. 2, sec. 1*

##### A. Generally:

*NCDOT is aligning with the FAA process for land acquisition at airports that relies on the airport sponsor to validate fair market value. As such, NCDOT would expect the federally recognized airport sponsor to sign as the administrative approval or provide a written statement concurring with the Fair Market Value based on review appraisal by USPAP certified personnel. The sponsor is required to maintain all documents related to land acquisition for the life of the airport or until the property is released.*

The Uniform Act requires the sponsor to provide an appraisal process that includes at a MINIMUM, the following:

1. The sponsor must appraise fair market value of the real property to be acquired before initiation of negotiations with an owner. The Sponsor may waive this requirement where the Sponsor determines that an appraisal is unnecessary on a particular parcel because the appraisal is non-complex and the estimated fair market value is \$35,000 or less, based on a review of available market data. See also Section B – Appraisal Waiver. The use of waiver valuations in lieu of appraisals must be approved by the Area Appraiser corresponding with the applicable NCDOT Aviation region.
2. The owner or designated representative must be afforded the opportunity to accompany the sponsor’s appraiser during inspection of the property. The Sponsor’s appraiser should note in the appraisal that an invitation to accompany the inspection was made to the property owner.

3. The sponsor must maintain an adequate appraisal review process to establish just compensation prior to the initiation of negotiations. The amount of just compensation established must not be less than the sponsor's approved appraisal of the fair market value of the property to be acquired.
4. The acquisition appraisal must disregard any change in fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would have been acquired for the project. Other than change due to physical deterioration within the reasonable control of the owner. In the case of partial acquisitions, project influence is disregarded in the appraisal conditions before the project (e.g., "before condition") but the effects of the project must be considered in the appraisal of conditions after the project (e.g., "after condition").
5. Appraisers must not consider, or include in the appraisals, any allowance for relocation assistance benefits.

#### **B. Waiver Valuation:**

An appraisal may be waived and a waiver valuation used in the following circumstances:

1. Where the owner is donating property and releasing the sponsor from its obligation to appraise the property, or
2. Where the Sponsor determines an appraisal is unnecessary because a review of available data estimates the market value at \$35,000 or less *and* the valuation is non-complex with no damages to the remaining property. For matters ranging from \$15,001 to \$35,000, waiver valuations must be prepared by an acquisition agent not negotiating that particular claim.

#### **C. Appraiser & Review Appraiser Selection:**

Sponsors are to select their own appraisers and review appraisers. Sponsors must establish qualification criteria that, at a minimum, assure the competence of the appraiser is consistent with the level of difficulty for the appraisal assignment. This includes a review of the experience, education, training and other qualifications of appraisers, and must use only those determined to be qualified. [You can find general criteria for evaluating appraisers and reviewing appraiser qualifications based on federal guidelines here. Figure 2-1 to AC 150/5100-17 CHG 7.](#)

*It is strongly recommended the sponsor use appraisers and review appraisers from Division of Highways approved appraiser list. Risks in using appraisers and review appraisers not on this approved list include, but are not limited to, the risk the appraiser will not be familiar with eminent domain, delays associated with editing and updated unacceptable appraisals, multiple reviews necessitated by nonconforming appraisals; jeopardizing funding and/or reimbursement status for an entire project.*

- 1) Certification: Private fee appraisers hired to prepare complex appraisals must be

certified under by the North Carolina Appraisal Board and in conformance with [Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 \(FIRREA\)](#), which provides the minimum education and experience requirements for real estate appraisers.

2) Soliciting Professional Appraisal and Review Appraisal Services: On AIP-funded

projects, the hiring of appraisers must conform to the requirements of [AC 150/5100-14 “Architectural, Engineering and Planning Consultant Services for Airport Projects.”](#) Ideally, the appraiser and review appraiser will be from different organizations. Likewise, Sponsors may wish to consider retaining the review appraiser before hiring the appraiser, as the review appraiser may assist in defining the appraiser’s scope of work or other administrative aspects touching appraisals or the qualifications of appraisers needed for a particular project or parcel. For your reference, the FAA has published examples of an acceptable [appraisal contract](#) and an [appraisal review contract](#). Appraisers and Review Appraisers should be provided a scope of work when soliciting and retaining their services.

**D. Conflicts of Interest:**

No person involved in producing an appraisal or a waiver valuation should have any interest, direct or indirect in the subject property that would in any way conflict, appear to conflict, with the valuation or appraisal process. Likewise, compensation for preparing an appraisal (or a wavier valuation) must not be based on the amount of the valuation estimate.

Where a Sponsor uses internal appraisal staff or a consultant for appraisal functions, the appraisal work should be organizationally separate from conflicting activities to ensure independence of the appraisal process.

Adequate separation of functions in project organization to preclude conflicts of interest in the performance of independent property valuations and appraisals is required. On complex and high-value acquisitions, and large and long-term projects, persons functioning as the negotiator may not supervise or formally evaluate the appraiser or review appraiser performing such work on the project. No person should attempt to unduly influence or coerce a person involved in any aspect of an appraisal, review or waiver valuation.

No person making an appraisal or waiver valuation of a subject property should act as a negotiator for that property, except when permitted by the sponsor for acquisition of property valued at \$15,000 or less. See Appraisal Waiver section above.

**E. Non-Allowable Land Costs:**

North Carolina State law may require a sponsor to include additional compensation with its market value appraisal beyond those prescribed as compensable in the Uniform Act. Likewise, the

Uniform Appraisal Standards for Federal Land Acquisitions and [NCDOT Real Estate Appraisal Standards and Legal Principles](#) describe certain items generally held to be non-compensable in eminent domain matters. The sponsor's review appraisal report must identify such items separate from the appraised market value for the real property to be acquired.

## Section 2 - APPRAISAL PROCEDURES

AC 5100.17 – CHG 7, Ch. 2, sec. 2

### A. Appraisal Assignment Scope of Work:

Appraisals must be prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and [NCDOT Real Estate Appraisal Standards and Legal Principles Manual \(NCDOT Appraisal Manual\)](#). The scope of work statement should include the requirements of both, as well as those of this manual. The scope of work should also be commensurate with the complexity of the appraisal problem and, at a minimum, include 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: 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 should be supported by the Cost Approach [See NCDOT Appraisal Manual Section 5.211](#), appraiser's experience, local building costs 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.*

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 valuation 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.

*NOTE: In cases where a claim proceeds to condemnation, total before and after values including ALL improvements are required. Please note that the potential for condemnation necessitates a full inspection of ALL improvements at the beginning of the acquisition appraisal process whenever possible, regardless of whether the improvements are considered to be affected by the project. In appraisals prepared for condemnation, it is recommended that improvements to the property not to be excluded from the valuation.*

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. "In developing and reporting the appraisal, the appraiser must disregard any change in fair market value of the real property caused by the project for which the property is to be acquired, or the likelihood that the property would be acquired for the project, other than changes due to physical deterioration within the reasonable control of the property owner (note that, if necessary, the appraiser may cite "jurisdictional exception" or "supplemental standards" under USPAP to ensure application of this regulatory requirement.) AC 150/5100-17 CHG 7, 2.2.1 (4)
12. That appraiser must provide property owner opportunity to accompany the inspection of the property AC 150/5100-17 CHG 7, 2.2.1 (5)
13. Assumptions and limiting conditions affecting the appraisal AC 150/5100-17 CHG 7, 2.2.1(6)
14. Data search requirements and parameters AC 150/5100-17 CHG 7, 2.2.1(7)
15. Identification of the technology requirements including approaches to value that will be used to analyze the data AC 150/5100-17 CHG 7, 2.2.1 (8)
16. Other specifications required to adequately appraise the property and meet FAA and regulatory requirements.

NOTE: Restricted Use and Oral appraisal reports are not acceptable to NCDOT. Restricted Use reports are not acceptable to FAA.

[You can find an FAA Sample Scope of Work in Figure 2-2 of AC 150/5100-17 CHG 7.](#)

## **B. Appraisal Report Requirements:**

The Sponsor must assure that the appraisal report reflects established and commonly accepted federal and federally-assisted program appraisal requirements, including to the extent appropriate, the Uniform Act, UASFLA and USPAP. Likewise, the report should confirm to all applicable laws of the State of North Carolina, including those pertaining to eminent domain. Details of the appraisal report should reflect the value and complexity of the appraisal assignment.

At minimum, the appraisal report must include the following:

1. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances (if any), title information, location, zoning, present use, an analysis of highest and best use, and at least a five-year sales history of the property;
2. All relevant and reliable approaches to value consistent with established federal and federally-assisted program practices (note that if the appraiser uses more than one approach, there must be an analysis and reconciliation of approaches to value use that is sufficient to support the appraiser's opinion of value);

3. A description of comparable sales, including a description of all physical, legal and economic factors such as parties to the transaction, source and method of financing and verification by a party involved in the transaction.
4. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits (if any) to the remaining real property, where appropriate
5. A statement to the effect that, consistent with 49 C.F.R.24.103(b), Influence of the project on just compensation: The appraiser shall disregard any decrease or increase in the fair market value 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, other than that due to the physical deterioration within the reasonable control of the owner
6. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

For a list of Appraisal Report Requirements and the corresponding Uniform Act provisions, [See AC 150/5100-17 CHG 7, Figure 2-3.](#)

### **C. Appraiser and Review Appraiser Certification**

Each appraisal and review appraisal report must contain the appraiser's certification, which states that, to the best of his or her knowledge and belief, the appraisal was conducted in an objective manner and that the conclusions are correct. Any subsequent change in the report affecting the estimate of just compensation or change in the date of valuation requires a new certification. [A FAA example of "Certificate of Appraiser" can be found here. \(FAA Form 5100-111.\)](#) NOTE: This certificate is required in addition to any certification required by USPAP.

### **D. Number of Appraisals Needed**

Unless waived at least one appraisal is necessary for each parcel to be acquired. Two appraisals are required for any property with an acquisition total (difference between before and after) at or over \$1,000,000. Damage is based on market data. Complex appraisal assignments may also require two appraisals to ensure adequate market research and analysis is secured to support appraisal values.

### **E. Partial Acquisitions - "Before and After" Valuation**

A partial acquisition involves the transfer of less than all property rights associated with a parcel, leaving the owner with a fee simple interest in some portion of the property. The sponsor must use the "before and after" method to appraise partial acquisitions except where there is clearly no damage to the remaining land or improvements due to a relatively minor acquisition of the property. The "before" value is the pre-project value of the real property disregarding any project influence. The "after" value is the appraised value of the remaining real property without the acquired part or rights subject to project impacts. When the after value reflects benefits to the remainder, the value should be indicated in the appraisal report. For an example, see [NCDOT Appraisal Manual 5.221 "Difference Between Before and After Values."](#)

## **F. Appraisal of Avigation Easements Acquired for Airport Operations and Standards**

When a fee title is deemed unnecessary, an avigation easement may be used to secure airspace for airport and runway approach protection, and for noise compatibility programs. An avigation easement is a conveyance of airspace over another property for use by the airport. The easement restricts the property owner's use subject to the terms of the airport sponsor's easement for overflight and other applicable restrictions on the use and development of the subject property. The avigation easement must "run with the land" and any future owner's use of the subject property is restricted consistent with the terms of the easement. An example of rights that may be acquired by easement can be found in [AC 150/5100-17 CHG 7 Figure 2-4](#).

It is imperative that the easement and the appraisal reflect the specific easement estate proposed for the acquisition. Where a right of flight is required, lesser rights, such as clearance easements, are insufficient to protect an airport owner from future claims of property owners due to over flights. In developing easement language, a sponsor should secure legal advice and confirmation that the easement is sufficient to provide the property rights needed.

Avigation easements are typically acquired for airspace requirements as indicated on the airport layout plan, including the approach area and approach protection zone (APZ) layout. Airport imaginary surfaces are established in relation to the airport and each runway. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that particular runway. Revisions to the approach area and approach protection zone layout may require revisions to related easements.

The Runway Protection Zone (RPZ) is trapezoidal in shape and centered along the extended runway centerline, beginning 200 ft. beyond the end of the area usable for takeoff and landing. [FAA AC 150/5300-13 "Airport Design"](#) provides details regarding the dimensions, configuration, and location of an RPZ to the associated airport runway. It is recommended that the RPZ be acquired in fee; however, if this is impractical, an easement must be acquired that adequately restrict land use. An effective easement prevents introduction of new or expansions of incompatible land use or development into the RPZ.

Other easements may be acquired to prevent incompatible land use or development that may conflict with airport development or operations. Where needed, the sponsor should also retain an easement on any sale of noise land or released airport land. See FAA AC 150/5190, "Airport Compatible Land Use" for more guidance.

For examples of various easement scopes, rights acquired and duration avigation easements [See AC 150/5100-17 CHG 7, Figure 2-4 Avigation Easements](#).

## **G. Appraisal of Noise Avigation Easements**

Outright purchase of an avigation easement for an airport's Noise Compatibility Program, or as mitigation for an expansion project, may require an appraisal. An appraisal is not required for easements conveyed in exchange for other noise mitigation measures provided under an airport's Noise Compatibility Program, such as soundproofing, purchase/sales assurance, or transaction assistance. The general consideration that the sponsor and their appraiser should make when appraising the market value of a proposed easement acquisition for noise compatibility are as follows:

Before Value Appraisal: The appraisal of avigation easements to be acquired for a noise compatibility program must consider the existing noise impact, as indicated by the noise contour for the location of the participating property. The existing noise impact is not an influence of the noise compatibility program and must be properly considered in the "before condition" appraisal. Therefore comparable sales to value the "before condition" would be selected from the same noise contour as the property appraised.

In contrast, for an airport expansion project that propose or requires acquisition of noise easements, the resulting new or increased noise impacts would be disregarded in the appraisal of the "before condition." Therefore, sales selection for expansion projects may be properly made from areas that represent the pre-project noise condition (i.e. "before condition") not affected by project development.

After Value Appraisal: Where there is not a significant physical effect or a proposed change in proximity of airport operations from the before condition, the task of the appraiser is to measure and report the effect of the easement conveyance on a subsequent market sale. Typically, this will be the measure of market value of an easement acquired as a mitigation measure of an airport's noise compatibility program. Specific market data corresponding to and indicting this value may be difficult to find. Market data sources and techniques that should be investigated by the appraiser include the following:

1. Sales of similar property encumbered with avigation easements when compared directly with the subject property will yield the after value. Recent resale of properties that had formerly conveyed easements for noise compatibility purposes will provide the best indication of the after value.
2. Airport noise compatibility programs may jointly offer sales assurance or easement acquisition as an approved mitigation measure. The sales assurance option involves the sponsor assisting homeowners to move from noise-impacted areas by ensuring the owner the appraised fair market value of their property on a timely sale. In exchange for this assistance, the property is listed on the open market as being subject to the airport's avigation easement and is purchased by a buyer with full knowledge of the easement restrictions on the property. The actual experience of properties sold subject to easements under a sponsor's sales assurance option will provide a good indication of avigation easement value. For noise compatibility programs, the

property appraised “as is” subject to the existing noise impact and any loss in value from the appraisal value may then be attributed directly to the imposition of the aviation easement on the property.

3. Sales of easement encumbered properties adjacent to a comparison airport to analyze the influence of those easements on affected properties at that site. The analysis can then be related to the properties currently being encumbered with easements at the subject airport. Although sales near different airports may involve variations in airport type, size and use, all available sales data should be investigated, included in the appraisal, evaluated by the appraiser and either assigned appropriate consideration or disregarded.
4. Given the lack of specific market experience with aviation easements, statistical analysis of relevant market activity for appraisal techniques may provide insight to the purchase of aviation easements. For Part 150 noise projects, the appropriate factor to be isolated for analysis is the effect on property value due to the imposition of an easement on a property owner’s title, and not the pre-existing effects of airport proximity and noise exposure. Sales of properties that are subject to other type of confiscatory easements (e.g., high-voltage power transmission lines, high pressure gas lines, highway slope, and public open space) should also be considered and analyzed as a source of appropriate market information.
5. Lacking sufficient specific data to draw reliable conclusions from the above analysis, general market-wide analysis of the typical marketing time of comparable properties - both unencumbered and encumbered title (e.g., easements, deed restrictions, encroachments, liens, or other title imperfections) may provide useful information to conclude a reasonable market discount, which may be necessary to attract a buyer for timely sale of a property subject to the proposed easement. Local assessor files and title companies in an area may be able to provide comparable information on property encumbrances.

## **F. Appraisal of Properties Containing Hazardous Materials**

1. Identification of hazardous materials sites: These matters and related costs should have already been determined by adequate environmental audit during earlier project development. See Section II - Preliminary Acquisition Considerations above.
2. Commercial and industrial properties: In appraising commercial and industrial properties

I impacted with hazardous materials, the following situations may be encountered:

- a) The property contains hazardous materials that must be cleared before any further use or activity, existing or otherwise, can be carried out on the property. In these instances, where the airport acquires the property prior to hazardous materials clearance, the appraised value must be made clear on the potential highest and best use, less the cost of clearing the materials in compliance with existing regulatory criteria.
- b) The property contains hazardous materials, but clearing or disposal may be delayed until a future date. In such instances, the property should be valued as unimpaired.
- c) The property has building components and/or site improvements that contain hazardous materials, which will require removal and disposal upon demolition or refurbishing to meet

environmental pollution and health regulations, (e.g. non-friable asbestos containing materials, polychlorinated biphenyls [PCBs], lead paint, acid sludge, or other regulated toxic and hazardous materials).

d) The property contained hazardous materials that the property owner has cleared or disposed of prior to acquisition by the sponsor. If the cleanup is in accordance with applicable government requirements, the property may be appraised and valued for sale on the open market.

3. Residential Property: Residential properties that may contain hazardous materials in building components should be appraised “as is.”

## **Section 3 – APPRAISAL REVIEW**

*AC 5100.17 – CHG 7, Ch. 2, sec. 3*

### **A. Responsibility of the Airport Sponsor:**

For any acquisition of real property for an AIP project, the sponsor must have an appraisal review process and, *at a minimum*, satisfy the following criteria:

1. A qualified review appraiser must examine the presentation and analysis of market information in all appraisal reports to ensure they:
  - a) Conform to the definition of appraisal as defined in 49 CFR 24.2(a). “A written statement, independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property, as of a specific date, supported by the presentation and analysis of relevant market information.”
  - b) Meet applicable FAA and 49 CFR 24 appraisal requirements
  - c) Provide adequate documentation and support of the appraiser’s opinion of value
  - e) Prior to acceptance, the review appraiser must seek necessary corrections or revisions
  - f) The review appraiser must report the approved appraisal value as the recommended amount of just compensation to be offered to the property owner.
  - g) The review appraiser should review for compliance with USPAP and NCDOT Appraisal Manual
2. If the review appraiser is unable to approve an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the sponsor that it is not practical to obtain an additional appraisal, the review appraiser may develop appraisal documentation in accordance with FAA requirements to support an estimate of just compensation. The review appraiser report must include the additional analysis and documentation required to supplement the reviewed appraisals and support the approved appraised value. No further appraisal review is required.

3. In no instance may the approved just compensation be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The review appraiser must consider all pertinent value information that is available and then make a recommendation of a single conclusion of value. The reviewer may not utilize a “range” of values.

#### **B. Review Appraisal Report:**

The review appraiser must prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser’s report. The review report should identify those damage items compensable under North Carolina law, but not generally held to be compensable under eminent domain and not eligible for federal reimbursement, if any.

The appraisal review report shall include the review appraiser’s certification and state the approved appraisal value as the basis for the sponsor’s offer of just compensation. The review report should also indicate whether or not the remainder or any portion of the remainder is considered an uneconomic remnant. If more than one remainder exists, the review appraiser should specify which remainder is/are classified as uneconomic. [See NCDOT Appraisal Manual 5.301.](#)

The appraisal review report should include whether a field inspection was completed and, if not, why not. The report should include a statement that the reviewer has no direct or indirect, present or contemplated, future personal interest in such property, or in any monetary benefit from its acquisition.

## **IV. REAL PROPERTY ACQUISITION**

The execution of compliance with the Uniform Act and applicable state and federal regulations *remains the responsibility of the Airport Sponsor*. When consulting and collaborating with members of the Division of Highways, Airport Sponsors and their contractors *should work through the [NCDOT Aviation Regional Airport Project Manager](#) to contact the office of the State Negotiator and/or the Office of the State Appraiser for general or parcel specific assistance.*

### **Section 1 - REQUIREMENTS**

*AC 5100.17 – CHG 7, Ch. 3, sec. 1*

#### **A. SPONSOR OFFER OF JUST COMPENSATION.**

At a minimum the sponsor shall meet the following requirements to present an acceptable purchase offer to a property owner for their real property or an interest in their real property. The sponsor should plan and schedule its acquisition process in order to accommodate the following steps to prepare its offer of just compensation to initiate purchase negotiations with the property owner:

1. Expeditious acquisition. The Sponsor shall make every reasonable effort to acquire the real property expeditiously by negotiation of an amicable purchase agreement. The sponsor will need to provide sufficient time prior to project need (lead time) to allow for an adequate appraisal and appraisal review, and sufficient time for the property owner to consider the sponsor's just compensation offer.
2. Adequate property survey and description. Whole property may be acquired by deed description, as supported by adequate title investigation. Partial acquisitions must be described by adequate survey of the part required and description of the remainder tract.
3. Property title search. The sponsor shall determine the legal property owner and the condition of marketable title for acquisition. Typically, a title insurance commitment is secured to evidence marketable title and any exceptions to be cleared. The appraiser shall include at least a 5-year sales history of the property in the appraisal report.
4. Notice to owner. As soon as feasible, (and no later than the appraisal assignment) the Sponsor shall notify the owner in writing of the Sponsor's interest in acquiring the real property and the basic protections provided to the owner by law and this part. The FAA brochure, [Land Acquisition for Public Airports](#), may be used to provide this general information notice.
5. Appraisal Requirement. Before the initiation of negotiations, the real property to be acquired shall be appraised, unless the waiver valuation is applicable, or the owner is donating the property and releases, in writing, the sponsor from its obligation to appraise the property.
6. Appraisal Review and Sponsor Just Compensation Offer. Before the initiation of negotiations, the Sponsor shall establish an amount which it believes is just compensation for the real property. The just compensation offered at the initiation of negotiations shall not be less than the amount of the appraised market value of the property approved by the review appraiser. In the case of a partial acquisition the approved market value will take into account the value of allowable damages or benefits to any remaining property.
7. Written Offer Required. Promptly after the review appraiser approves the appraisal, the sponsor shall make a timely written offer to the owner to acquire the property for the full amount of just compensation. [See AC 150/5100-17 CHG 7, Figure 3-1 for an FAA sample offer letter.](#)
8. Summary Statement Required. The written offer shall include a summary statement of the basis of the just compensation offer that shall include:
  - (a) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be stated separately.
  - (b) A description and location identification of the real property and the interest in the real property to be acquired.
  - (c) An inventory of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation.

- To comply with [49 CFR, Part 24](#), any building, structure, fixture, or other improvement that would be real property if owned by the owner of the land will be considered to be real property, notwithstanding the right or obligation of a tenant, such as against the owner of any other interest in the real property, to remove such improvement at the expiration of the lease term.

(d) Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

## **B. EXCESS LAND**

When the sponsor acquires a parcel of land (other than an economic remnant) that is in excess of airport needs, or contains improvements not needed for aeronautical purposes, the grant reimbursement may be based on the full value of the parcel, including that part which is in excess, provided that the land or improvements will be immediately disposed. The net proceeds from the sale of the excess property will be deducted from the grant amount before project closeout. In cases where the sponsor does not intend to sell the excess property immediately after acquisition, the amount of the purchase price attributable to each excess property should not be included in the grant. The cost of acquiring uneconomic remnants may be submitted for federal reimbursement. The remnant parcel may be incorporated into airport property or, upon disposal for non-airport purposes, sales proceeds will be credited to AIP grant funds.

## **C. DONATIONS**

Property owners whose real property is to be acquired for an airport project may make a gift or donation of the property, or any part of it, or any of the just compensation amount to the airport sponsor. A donation may be made at any time during the development of a project or during the acquisition phase of the project. At the time of the donation the property owner must be informed of his or her right to receive just compensation. Also, the sponsor has the obligation to perform an appraisal of just compensation and disclose the amount to the property owner, unless the owner releases, in writing, the sponsor from this obligation. The sponsor shall document in writing the owner's acknowledgment and waiver of the right to just compensation. The sponsor is cautioned that prior to accepting a donation, ownership of the property must be verified and adequate title assured, and assurance secured that the property is not subject to hazardous waste contamination and/or clean-up liability that may exceed the value of the property.

## **D. PURCHASE OF LIFE ESTATES**

A life estate, in lieu of full fee title, may be considered an eligible project expense with concurrence of FAA. A life estate may be desirable for a property owner and an acceptable acquisition where possession of the property may be deferred indefinitely. Property owner requests to convey life estates have been found acceptable for [14 CFR Part 150](#) projects. Where life estates may be acceptable the following terms and conditions should be included in life estate transactions:

1. The life use occupant shall not add to or materially alter the character of existing improvements or structures, initiate any new construction, or change the topography of the land without first having obtained permission of the airport owner.
2. Any building or structure damaged or destroyed by fire or other casualty, deteriorated by the elements, or wear and tear may be maintained, repaired, renovated, remodeled, or reconstructed as long as the basic character of the building or structure is not materially altered.
3. The life use occupant shall keep the grounds of the property in a clean and neat condition and shall maintain all structures and improvements in good repair. The occupant is responsible for all costs of maintenance, repair, and utility charges.
4. The life use occupant is responsible for the payment of any taxes or assessments that may be levied against the occupant's interest in the reserved property.
5. The life use occupant shall hold the airport owner harmless for any liability arising out of the use of the reserved property. The occupant shall carry such public liability insurance as is customary by homeowners in the vicinity, provided such insurance is available. The occupant is also responsible for insuring his or her interest in the reserved property.

#### **E. INSPECTION/ABATEMENT/DEMOLITION OF STRUCTURES WITH HAZARDOUS MATERIALS**

It is necessary that hazardous material contamination problems be dealt with at the earliest stage of the project development; See [FAA Order 5050.4B](#), National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects). If hazardous materials are discovered after acquisition, at a minimum the sponsor should take the following measures to determine the extent of contamination and cleanup costs:

1. The Sponsor will be legally responsible for any identified problem and the required time for remediation under applicable federal, state, and local regulations. If not done previously, initiate consultation with the appropriate state environmental protection agency concerning action required on the contaminated property to be acquired.

2. After a parcel is purchased/or condemned, then the hazardous materials inspections occur. The property owner has no responsibility at that time.

3. As appropriate and in accordance with applicable law or regulation, alert the responsible enforcement agency of the contaminated property to secure site cleanup.

4. If any proposed acquisition requires a Phase II or Phase III environmental site assessment (ESA), coordinate with the FAA prior to initiating the next phase in the ESA process.

## Section 2 - PURCHASE NEGOTIATIONS

AC 5100.17 – CHG 7, Ch. 3, sec. 2

### A. BASIC NEGOTIATION PROCEDURES.

The sponsor shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. In order to satisfy this requirement, Sponsors must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but fourteen (14) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

**1. Updating offer of just compensation.** The sponsor shall consider the owner's presentation. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the sponsor shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Sponsor shall promptly reestablish just compensation and offer that amount to the owner in writing.

**2. Coercive action.** The sponsor shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

**3. Administrative settlement.** The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and the Sponsor approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement.

**4. Payment before taking possession.** Before requiring the owner to surrender possession of the real property, the Sponsor shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Sponsor's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Sponsor may obtain a right-of-entry for construction purposes before making payment available to an owner.

**5. Uneconomic remnant.** If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Sponsor shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

**6. Fair rental.** If the Sponsor permits a former owner or tenant to occupy the real property after acquisition for a short term or a period, subject to termination by the Sponsor on short notice, the rent shall not exceed the fair market rent for such occupancy.

**7. Inverse condemnation.** If the Sponsor intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

**8. Conflict of interest.** No appraiser or other person making an appraisal or a waiver valuation shall act as a negotiator for real property for which that person has made an appraisal or a waiver valuation, except that the Sponsor may permit such person to negotiate an acquisition where the offer to acquire the property is \$15,000, or less.

**9. Negotiations Contact Record.** To document compliance the Sponsor's negotiator must maintain adequate records of the negotiation contacts with the property owner and/or the owner's representative. The record shall be written in permanent form and completed within a reasonable time after each contact with the property owner. Contact entries should indicate the date, place of contact, persons present, offers made (dollar amounts), counteroffer, and the sponsor's response to any valuation information provided by the property owner. When negotiations are successful, the negotiator will certify that the written agreement embodies all considerations agreed to between the negotiator and the property owner and that agreement was reached without coercion. When negotiations are unsuccessful, the negotiator shall record recommendations for whatever action is considered appropriate along with any additional information essential to further processing of the acquisition. The report will be signed and dated by the negotiator.

## **B. EXPENSES INCIDENTAL TO TRANSFER OF TITLE.**

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

- (1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the airport owner. However, the airport owner is not required to pay costs solely required to perfect the property owner's title to the real property;
- (2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
- (3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the airport owner obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the sponsor shall pay these costs directly at closing or provide in escrow so that the property owner will not have to pay such costs and then seek reimbursement at a later date.

## **C. CLOSING ON ACQUIRED LAND.**

The Sponsor must provide evidence to the FAA that adequate title has been obtained. The interest obtained must be sufficient to allow the airport owner to carry out the obligations and covenants in the grant agreement and be free of encumbrances that might deprive the airport of possession or control for public airport purposes. [Appendix 4 to AC 150/5100-17 CHG 7](#) provides a sample Sponsor Title Certification.

#### **D. ACQUISITION OF EASEMENTS OR OTHER PARTIAL INTERESTS IN REAL PROPERTY.**

The sponsor shall acquire property rights sufficient for the operation and maintenance of the AIP assisted project. Eligible land acquisition for airport development is described in the AIP Handbook at Chapter 7 and Chapter 8 for Noise Compatibility projects. Consistent with AIP eligibility generally fee simple acquisition is required for airside development and for the Runway Protection Zone (RPZ). If fee simple acquisition is determined to be not practical for the RPZ, the sponsor may acquire an aviation easement that adequately restricts land use and precludes incompatible land use. See [FAA AC 5190-4](#), Airport Compatible Land Use. See also acceptable restrictions for the RPZ easement acquisition described in III. Real Appraisal, Section 2, F – Appraisal Procedures.

#### **E. ACQUISITION OF TENANT-OWNED IMPROVEMENTS.**

If any improvement owned by tenants has to be removed, or if it will be adversely affected by the project, the Sponsor must offer to acquire an interest at least equal to the acquired underlying land.

- a. Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of acquisition.
- b. No payment shall be made to a tenant-owner for any real property improvement unless:
  - (1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the airport owner all of the tenant-owner's right, title, and interest in the improvement; and
  - (2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
  - (3) The payment does not result in the duplication of any compensation otherwise authorized by law.
- c. Just compensation for a tenant-owned improvement is in the amount that the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. When estimating the value of tenant-owned improvements, value in place and contributory value are essentially the same. The following procedure is used to estimate the value of tenant-owned improvements:

- (1) Determine the highest and best use of the property then allocate the value of tenant-owned improvements from the value of the whole.
  - (2) Consider the full value or interim-use value of tenant owned improvements as follows:
    - (a) Full contributory value in place of building, structure, or other improvements for their remaining economic life is applicable when such building, structure, or other improvements are consistent with the highest and best use of the land.
    - (b) Interim use is applicable when the value of the buildings, structure, or other improvements is not the highest and best use of the land for a specific time period longer than the lease term (include present worth of salvage value).
    - (c) Value in place of the building, structure or other improvement, plus the present worth of the salvage value at the end of the lease term
    - (d) Valuation of items not readily measured in the marketplace are provided in specialty reports
    - (e) In instances when a situation may not fit accepted appraisal guidelines/techniques, an administrative settlement may be used with a written justification and explanation.
- d. Nothing shall be construed to deprive the tenant-owner of any right to reject payment under this paragraph to obtain payment for such property interests in accordance with other applicable law concerning the purchase or condemnation of the tenant's interest.

## **F. PROTECTIVE LEASE AGREEMENTS**

Where shown to be cost effective the sponsor may enter into agreements with a property owner to preclude leasing of the property in anticipation or during purchase negotiations. The protective lease agreement will preclude new or additional tenants from entering occupancy on the property and possibly becoming eligible for relocation payments.

Any protective leasing of needed property must be on a short term basis (e.g. less than 6 months) in anticipation of closing or filing condemnation for a property. There is no obligation or need to compensate for rental income subsequent to the sponsors purchase of a property. The rental rate on a protective lease should also recognize the property owner's reduced cost in leasing vacant space to the sponsor. A protective lease agreement may be cost effective to preclude subsequent occupants on residential property as well to maintain commercial property vacant in anticipation of acquisition for a project.

## **G. ELIGIBLE LITIGATION EXPENSES UNDER 49 CFR 24.107**

There is no obligation under [49 CFR Part 24](#) for the Sponsor to reimburse the property owner for legal, appraisal, or other expenses of condemnation necessary to secure possession for a AIP assisted project. However, if any one of the three following conditions exist, the sponsor is required under 49 CFR 24.107 to reimburse the property owner for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees for necessary services that were actually incurred:

- (1) If the acquiring airport starts a condemnation action, but the court decides that the airport owner does not have authority to acquire the property by condemnation.
- (2) If the acquiring airport owner starts a condemnation action and abandons it other than under an agreed-upon settlement.
- (3) If the property owner successfully maintains, by judgmental award or by settlement, an inverse condemnation suit or similar proceeding.

Federal participation in settlement and litigation expenses will be handled on a case-by-case basis depending on the airport owner's compliance with its commitments to accomplish airport development under a project receiving Federal financial assistance and documentation that the airport has followed proper action in the processing of the case.

*NOTE: See IV. Real Property Acquisition, Section 4, Condemnation, below.*

#### **F. Reimbursement of owner taxes on condemned property under N.C.G.S. §40A-6.**

An owner whose property is totally taken in fee simple by a condemnor is entitled to reimbursement of the pro rata portion of real property taxes paid by the owner that are paid by the owner that are allocable to a period subsequent to vesting of title in the condemnor, or the effective date of possession of the real property, whichever is earlier. See [N.C.G.S. §40A-6](#).

## **Section 3 - ACCEPTANCE OF ADMINISTRATIVE SETTLEMENT**

*AC 5100.17 – CHG 7, Ch. 3, sec. 3*

### **A. ADMINISTRATIVE SETTLEMENT**

*NCDOT is aligning with the FAA process for land acquisition at airports that relies on the airport sponsor to validate fair and reasonable administrative settlement offers. As such, NCDOT would expect the federally recognized airport sponsor to gather the required supporting documentation to support administrative settlement offers based on guidance from the UNIFORM Act. Typically, we suggest a letter denoting anticipated legal fees and local condemnation costs to support such settlement. Questions should be directed to your attorney and/or acquisition expert. The sponsor is required to maintain all documents related to land acquisition for the life of the airport or until the property is released.*

Administrative settlements are agreed upon settlement made in excess of the sponsor's offer of just compensation for acceptable administrative reasons to reflect the public interest. During negotiations, an administrative settlement may be proposed to preclude more costly and unfavorable litigation and/or to settle a disputed acquisition at reasonable cost. Under the Uniform Act, reasonable attempts to expedite acquisitions by agreements with owners to avoid litigation and relieve congestion

in the courts are encouraged. Significant cost savings may be documented in the use of administrative settlements versus condemnation or terminating stalemated negotiations.

There is no need to inflate or diminish the airport's appraisal as support for an administrative settlement. If the owner presents credible documented appraisal information, then the just compensation offer is updated to complete negotiations. An administrative settlement however is a judgmental matter to be carefully considered by the sponsor as an option to condemnation or termination of a proposed acquisition where negotiations have reached an impasse on the amount of just compensation. Sound project management requires administrative settlements to reflect the public interest, not merely as a matter of convenience. Adequately supported settlements are an eligible property acquisition cost.

## **B. ADEQUATE WRITTEN DOCUMENTATION REQUIRED FOR FAA ACCEPTANCE OF AN ADMINISTRATIVE SETTLEMENT**

The sponsor must prepare and maintain adequate written justification that the settlement is reasonable, prudent and in the public interest. At a minimum the items listed below shall be stated, as applicable, to support a settlement amount. The written explanation must be commensurate with the settlement amount involved. Small settlements or within 10% of the appraised value may only require brief discussion noting the amounts involved and evidencing the sponsor's approval. Settlements that involve substantial amounts or large increases require full analysis and discussion to verify the settlement amount is clearly cost effective and reflects the public interest. Amounts attributed to noncompensable items under Federal law, should be excluded from Federal participation. At a minimum, the sponsor must include the items below, if applicable, to support a settlement amount:

1. The probable range of testimony in litigation including the airport's approved appraisals and the property owner's appraisals.
2. The type of property involved and damages, if any.
3. Recent court awards in the vicinity (particularly involving similar property).
4. A summary of the negotiation effort and the recommendation of the negotiator to conclude the purchase with a settlement.
5. The estimate of trial cost, including preparations.
6. The advice and opinion of the sponsor's legal counsel.

The appropriate airport official having management responsibility for the acquisition project will ultimately approve the administrative settlement.

## Section 4 – CONDEMNATION

*AC 5100.17 – CHG 7, Ch. 3, sec. 4; N.C.G.S. Chapter 40A*

### A. CONDEMNATION GENERALLY

When negotiations for an amicable purchase agreement are not successful, the sponsor qualified under Articles 2 or 3 of [N.C.G.S. Chapter 40A](#) may apply its eminent domain authority to file condemnation for possession of needed property. The sponsor's legal counsel represents the sponsor in condemnation and is responsible for subsequent negotiations, the selection of trial witnesses, and settlement and appeal determinations. Legal counsel must consult with the sponsor and its project management prior to the settlement of the condemnation case for an amount substantially different from the established just compensation or any other legal decision that affects the cost for possession of the needed property.

Eminent domain proceedings are governed by [N.C.G.S. Chapter 40A](#), which distinguishes public and private condemners in certain key areas including but not limited to the vesting of title to the condemner. In no event shall the owner be required to surrender possession of the real property the Sponsor shall deposit with the court, for the benefit of the owner, an amount not less than the Sponsor's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property.

### B. MEDIATION AND SETTLEMENT CONFERENCES

At any time prior to court trial the Sponsor's legal counsel may secure a settlement in lieu of trial. Mediated settlement conferences are required in most civil actions in North Carolina Superior Court. See [N.C.G.S. §7A-38.1](#). An administrative settlement may be made if justified as described in Section 2 (above). Where the Sponsor's legal counsel makes a settlement, the administration settlement justification described in Section 2 (above) should be supplemented by the following:

- a. A signed statement by the attorney who handled the case describing reasons that the settlement is in the sponsor's interest with supporting data and analysis as appropriate.
- b. A signed statement by the sponsor management indicating concurrence in the proposed settlement and explanation of any reservations on the proposed settlement.

Amounts attributed to noncompensable items under federal law, should be excluded from federal participation See "Non Allowable Land Cost" above.

### C. CONDEMNATION AWARDS

A condemnation award is eligible for reimbursement with Federal funds provided that the amount of the award is reasonable. Amounts attributed to noncompensable items under Federal law, should be excluded from Federal participation See "Non Allowable Land Cost" above. The condemnation award must be supported by adequate trial report citing the range of value testimony, major issues, and any comments and recommendations on possible legal error and possible success in requesting a new

trial, remittitur, and/or appeal. The sponsor should indicate their concurrence and/or acceptance in the trial report and any legal recommendations.

#### **D. Reimbursement of owner for taxes paid on condemned property**

An owner whose property is totally taken in fee simple by a condemnor is entitled to reimbursement of the pro rata portion of real property taxes paid by the owner that are paid by the owner that are allocable to a period subsequent to vesting of title in the condemnor, or the effective date of possession of the real property, whichever is earlier. [See N.C.G.S. §40A-6.](#)

#### **E. Costs in Condemnation Actions pursuant to N.C.G.S. Chapter 40A.**

In public and private condemnation actions, the court has discretion to award the owner a sum to reimburse them for charges paid for appraisers, engineers, and plats, provided such appraisers or engineers testify as witnesses, and such plats are received into evidence as exhibits by order of the court. See [N.C.G.S. §40A-8\(a\).](#)

If a condemnor files a condemnation action on a property and (i) if the final judgement is that the condemnor is not authorized to condemn the property, or (ii) if the condemnor abandons the action, the owners may be reimbursed for: his reasonable costs; disbursements; expenses (including reasonable attorney, appraisal and engineering fees); and, any loss suffered by the owner because he was unable to transfer title to the property from the date of the filing of the compliant under [N.G.G.S. §40A-41](#). See [N.C.G.S. §40A-8\(b\).](#)

If a property owner files an action against a condemnor under [N.C.G.S. §40A-20](#) or one for inverse condemnation under [N.C.G.S. §40A-51](#) seeking compensation for the taking of any interest in property and judgment is for the owner, the court shall award to the owner the costs described directly above. See [N.C.G.S. §40A-8\(c\).](#)

## **V. RELOCATION ASSISTANCE**

### **Section 1 – REQUIREMENTS**

*AC 5100.17 – CHG 7, Ch. 4, sec. 1; N.C.G.S. §133, Article 2*

#### **A. Sponsor Relocation Program**

Any sponsor (or its agent) with the power to condemn must make fair and reasonable relocation payments to any displaced persons, business concerns and farm operations. Sponsors must provide an adequate relocation assistance program, ensuring prompt and equitable relocation and reestablishment of persons displaced as a result of its federally-assisted airport projects. For these purposes, the term “person” refers to any individual (i.e., residential or business occupant), family, partnership, corporation, or association. See [N.C.G.S. §133-7](#). Sponsors must provide advisory assistance and conduct the

relocation program so that displaced persons receive uniform and consistent services and payments, regardless of race, color, sex, or national origin. Sponsors must maintain adequate documentation to evidence compliance with the Uniform Act and their grant assurances provided to FAA.

Compliance in every way with the Uniform Relocation Assistance and Real Property Acquisition Policies Act prevents disproportionate injuries as a result of programs designed for the benefit of the public and continues eligibility for federally aided programs for the State and its agencies and subdivisions. See also [N.C.G.S. §133, Article 2 – Relocation Assistance](#).

Relocation of displaced persons in compliance with the Uniform Act is situationally specific and what follows is a summary of certain relocation principles. Anyone acting as an agent of the Sponsor should understand thoroughly these regulations, and it is recommended they have the primary responsibility of administering the relocation assistance program. Federal and state laws must be observed without exception. When consulting and collaborating with members of the Division of Highways, Airport Sponsors and their contractors should work through the NCDOT Aviation regional Airport Project Manager to contact either the Eastern Relocation Supervisor (Divisions 1-6, 8) or Western Relocation Supervisor (Divisions 7, 9-14) for general or parcel specific assistance and copying the State Relocation Director on all such correspondence. While these members of the Right of Way Unit will be available to assist Airport Project Managers as a resource the execution of compliance with the Uniform Act and applicable state and federal regulations remains the responsibility of the Airport Sponsor.

## **B. Eligibility for Relocation Payments –**

All persons that are displaced from or for an AIP-assisted project may be eligible for relocation assistance and payments.

1) Displaced Persons: “Displaced person” refers to any person who moves from the real property, or moves personal property from the real property, as a direct result of (1) a written notice of intent to acquire, (2) the initiation of negotiations for, or (3) the acquisition of such real property, in whole or in part, for a project. Additionally, “displaced person” refers to any person who moves personal property from non- acquired real property, as a direct result of (1) a written notice of intent to acquire, or (2) the acquisition of other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such “displaced person” applies only for purposes of obtaining relocation assistance advisory services and moving expenses. See [N.C.G.S. §133-7\(a\)](#); [49 CFR Part 24](#); and [NCDOT ROW Manual 15.04\(G\)](#).

2) Persons Not Displaced: The following is a non-exclusive listing of persons who do not qualify as displaced persons under the Uniform Act:

a) A person who moves before the initiation of negotiations, unless the sponsor determines that the person was displaced as a direct result of the program or project

- b) A person who initially enters into occupancy of the property after the date of its acquisition for the project
- c) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act
- d) A person who is not required to relocate permanently as a direct result of a project. *Care must be exercised to ensure that occupants in this category are treated fairly and equitably on the sponsor's AIP-assisted programs because they are not necessarily considered displaced persons. Tenants on airport property (e.g., fixed base operators, terminal tenants) that is being renovated or demolished under an AIP-assisted project may or may not be considered displaced persons depending on their existing lease terms for the right of continued occupancy. An increase in rent corresponding to improved facilities is not considered sufficient justification to consider an existing tenant "displaced," even though the tenant may decline the opportunity to re-lease property from the airport*
- e) An owner-occupant who moves as a result of a "voluntary" acquisition
- f) A tenant displaced as a direct result of this type of "voluntary" transaction is a "displaced person" and is entitled to the relocation assistance and payments that he/she may be eligible for under the Uniform Act.
- g) A person whom the Sponsor determines is not displaced as a direct result of a partial acquisition
- h) A person who, after receiving a notice of relocation eligibility, is notified in writing that displacement from the project will not occur. The notice of relocation eligibility should only be issued if (i) the displaced person has not yet moved, and (ii) the sponsor agrees to reimburse any expenses that the person would incur due to relocation, in order to satisfy existing contractual obligations.
- i) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Sponsor
- j) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause under applicable law. Eviction for cause must conform to applicable state and local law. Any person in lawful occupancy at the start of negotiations is entitled to relocation assistance and payments, unless the sponsor discovers the following:
  - i. Either the person received an eviction notice prior to the start of negotiations and was later evicted as a result of that notice, or the person was evicted after the initiation of negotiations for serious and repeated violation of material terms of the lease agreement.
  - ii. The eviction was not undertaken to evade the relocation payment obligations.
- k) A person who is not lawfully present in the United States and who has been determined as ineligible for relocation benefits

**C. Denial of Federally Funded Relocation Assistance and Payments to Persons not lawfully present in the United States.**

1) Definition: An alien who is not “lawfully present” in the United States is defined in 8 CFR 103.12, including the following:

- a) An alien present in the U.S. who has not been admitted or paroled into the U.S. pursuant to the Immigration and Nationality Act, and whose stay in the U.S. has not been authorized by the U.S. Attorney General
- b) An alien who is present in the U.S. after the expiration of the period of stay authorized by the U.S. Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the U.S.

2) Self-Certification: As a condition of eligibility, each person seeking relocation payments or relocation advisory assistance must certify that they meet the following requirements:

- a) In the case of an individual, he or she must be either a U.S. citizen or U.S. national.
- b) In the case of a family, each family member must be either a U.S. citizen or U.S. national, or an alien who is lawfully present in the U.S., which may be certified individually or by the head of the household on behalf of other family members.
- c) In the case of an unincorporated business, farm, or non-profit organization, each owner must be either a U.S. citizen or U.S. national, or an alien who is lawfully present in the U.S., which may be certified individually or by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.
- d) In the case of an incorporated business, farm, or non-profit organization, the corporation must be authorized to conduct business within the U.S.

These certificates are provided on FAA Form 124, “Non-Residential Relocation Claim” and on FAA Form 125, “Residential Relocation Claim Form.” See also NCDOT ROW Manual 15.10.

3) Certification Acceptance: The sponsor must consider the certification provided as valid unless the sponsor determines it is invalid based on a review of a person’s documentation or other information that the agency considers reliable and appropriate. Any review by the sponsor of the certifications provided must be conducted in a nondiscriminatory manner. Each airport sponsor must apply the same review standards to all such certifications, but these standards may be revised periodically.

4) Verification procedure (required if certification is not accepted): After reviewing a person's documentation or other credible evidence, if the sponsor determines that his/her certification is invalid and, as a result, he/she may be an alien not lawfully present in the U.S., the sponsor must obtain verification through the following means before making a final determination:

- a) For a person who has certified that he/she is a U.S. citizen or U.S. national, if the sponsor determines that the certification is invalid, the displacing agency must request evidence of U.S. citizenship or nationality from the person and verify the accuracy of this evidence with the issuer if considered necessary.
- b) For a person who has certified that he/she is an alien lawfully present in the U.S., if the sponsor determines that the certification is invalid, the displacing agency must verify the person's status through a field office of the U.S. Citizenship and Immigration Service (USCIS).

5) Exceptional and extremely unusual hardship: A spouse, parent, or child of a person determined to be not lawfully present in the U.S. is considered under "exceptional and extremely unusual hardship" if the displacing determines that the denial of relocation payments and advisory assistance to the person would result in the following:

- a) A significant and demonstrable adverse impact on the health or safety of a spouse, parent, or child;
- b) A significant and demonstrable adverse impact on the continued existence of the family unit, of which a spouse, parent, or child is a member; or
- c) Any other significant and/or demonstrable adverse impact on a spouse, parent, or child as determined by the displacing agency.

#### **D. Eviction for Cause**

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations is presumed as entitled to relocation payments and other assistance set forth in manual, unless the sponsor determines that:

- a) Either the person received an eviction notice prior to the initiation of negotiations and was later evicted as a result of that notice, or the person was evicted after the initiation of negotiations for serious and repeated violation of material terms of the lease agreement.
- b) In either case, the eviction was not undertaken to evade the relocation payment obligations.

See also [NCDOT ROW Manual 15.09](#).

#### **E. No Waiver of Relocation Assistance**

The sponsor must not propose or request that a displaced person waive his/her rights or entitlements to relocation assistance and payments, as provided by the Uniform Act and 49 CFR Part 24.

#### **F. Advance Payments**

If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the sponsor must issue the payment, subject to appropriate safeguards that ensure the objective of the payment is accomplished. See [NCDOT ROW Manual 15.21C](#).

#### **G. Deductions from Relocation Payments**

The sponsor must deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The sponsor must not withhold any part of a relocation payment to a displaced person in order to satisfy an obligation to any other creditor. However, when acquiring real property, the Sponsor cannot deduct from relocation payments any rent that the displaced person owes to the Sponsor. See [NCDOT ROW Manual 15.21F](#).

#### **H. Claims for Relocation Payments**

A displaced person must place claims for relocation payments within 18 months of the move-out date or the date of final payment for the acquired property, whichever occurs later. The sponsor may extend this time period for good cause. Relocation payment claims must be signed, dated, and supported by relevant documentation that may be reasonably required to support expenses incurred (e.g., lowest approved bid or estimate, bills, certified prices). The sponsor must provide a displaced person any reasonable assistance that is necessary to complete and file any required payment claim. FAA Forms 5100-124 and 5100-125 may be used as claim forms. See [NCDOT ROW Manual 15.21A-B, D](#).

If the sponsor disapproves all or part of a payment claimed, or refuses to consider the claim on its merits because of untimely filing or other grounds, it must promptly notify the claimant of its determination in writing, including the basis for the determination and procedures for appeal.

## **Section 2 – RELOCATION PLANNING AND ADVISORY ASSISTANCE**

### **A. Acquisition Stage Relocation Plan/interview of Displaced Person (Residential & Business)**

For a description of the regulatory requirements for sponsor interviews of displaced persons and businesses, See [AC 17, Relocation Assistance - 4.2.2.2.1-2 \(See also Figures 4-1 and 4-2 accompanying the same\)](#).

This process is referenced as “Initial Contact with Displacee” found at 15.12 of the Right of Way Manual. Pertinent parts are summarized below:

- Prior to any initial contact with project displaces but once the project plans are received, the agent should make a project inspection to identify the number and type of displaces involved.
- During the initial interview, the sponsor’s agent will explain the owner/tenant relocation program as it affects the displacee’s situation and provide written information on relocation assistance.
- The sponsor’s agent should advise each residential displacee that they will be offered at least one comparable replacement dwelling and that no one will be required to vacate without at least a 90-day written notice.
- It should be stressed to the owner of any tenant-occupied property that the contact is made with a tenant for securing information only and that no authorization will be given at this time to the tenant to move.
- On initial contacts involving businesses where fixtures are involved, an inventory of the business should be made. The sponsor’s agent should satisfy all realty/personalty issues at that time to determine what items will be eligible for moving payments.
- Should there be questionable items involved, the sponsor’s agent should send the inventory list along with a letter to the fee owner (or his representative) copying the same to the tenant, lessee, or other indicated owners of equipment as applicable, and set a meeting (including a date, time and place) among all parties to determine ownership of the equipment. Copies of this letter should be sent to the Airport Project Manager so that they can inform any appropriate agent or appraisal staff. If at all possible, all parties should meet at the specified date for determination of ownership and any required revisions to the inventory list.
- Once the inventory list is finalized with true ownership of all items of trade fixtures determined, the sponsor’s agent will submit a separate inventory form for owner of equipment to the appraisal staff assigned to the claim, along with a request for an appraisal. Prior to determining a moving cost payment for the displaced business, the sponsor’s agent must confirm the inventory of personalty is accurate and all-inclusive. Items initially listed as realty or personalty may have subsequently changed due to legal rulings.
- Following the initial contacts period the sponsor’s agent should contact local municipal and county agencies to ascertain their cooperation in assisting the project displaces. Through these local authorities, the agent can procure pertinent land use regulations, health department requirements, building, mobile home and sign ordinances. Moreover, the agent can obtain utility schedules to be used in rent supplement computations as well as identify various housing resources in the locale.
- This is also a prime time for the sponsor’s agents and appraisers to meet and conduct possible field inspections. Such meetings should consider personalty and realty issues, septic/well problems, control access, treatment of mobile homes and signs, and potential plan revisions which could eliminate involved displaces.

See NCDOT ROW Manual 15.12. Also, see below “Section 3 – Relocation Notices.”

## **B. Minimum Advisory Services Requirements**

At a minimum, the sponsor's relocation advisory services program must include such measures, facilities, and services as may be necessary or appropriate to meet the following requirements:

1. Determine the relocation needs and preferences of each person to be displaced and provide information about relocation payments and other assistance for which the person may be eligible, related eligibility requirements and procedures for obtaining such assistance.
2. Provide current and continuing information on availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that a person cannot be required to move unless at least one comparable replacement dwelling is made available.
3. For residential displacement, as soon as feasible, must inform the displaced person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment. When feasible, selected replacement housing must be inspected prior to being made available in order to assure that it meets comparability requirements and decent, safe, and sanitary (DSS) standards. If such an inspection is not made, the person to be displaced must be notified that a replacement housing payment may not be made unless the replacement dwelling to be purchased is subsequently inspected and determined to meet DSS standards
4. Whenever possible, minority persons be given reasonable opportunities to relocate to DSS replacement dwellings, which are within their financial means and not located in an area of minority concentration. However, the sponsor is not required to provide a person a larger payment than is necessary to enable that person to relocate to a comparable replacement dwelling.
5. Offer transportation to all persons, especially the elderly and handicapped, as needed in order to inspect replacement dwellings.
6. Provide current information on availability, purchase prices, and rental costs of suitable commercial and farm properties, for displacement of business, farm, or non-profit organizations. Additionally, the sponsor must assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.
7. Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loans, programs administered by the Small Business Administration (SBA), and other federal and state programs assisting displaced persons, including related technical assistance for application.

8. Provide counseling, advice about available sources of assistance, and other appropriate help in order to minimize adjustment hardships for relocated persons.
  
9. Ensure advisory services for any person deemed eligible by the sponsor who occupies property acquired by the sponsor, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project.

See [NCDOT ROW Manual 15.08](#).

## Section 3 – RELOCATION NOTICES

AC 5100.17 – CHG 7, Ch. 4, sec. 3

### A. Relocation Information Provided at a Public Hearing

The sponsor should provide an information brochure that describes the relocation program developed for its AIP-assisted projects. [The FAA brochure entitled \*Land Acquisition for Public Airports\*](#) is available for use on sponsor projects.

### B. Manner of Notices

Relocation notices must be served personally or sent by certified or registered first-class mail, with return receipt requested and documented in the sponsor's files. The sponsor must provide notices with appropriate language translation and adequate interpretative assistance to displaced persons who may be unable to read English. Each notice must indicate contact information (e.g., names, telephone numbers, email addresses) for the sponsor's relocation staff.

### C. General Information Notice

As soon as feasible, persons scheduled for displacement must be given a general written description of the sponsor's relocation program. A relocation brochure may be used for this purpose if it is personally presented and explained concerning the displaced person's case. This notice must state that any alien not lawfully present in the U.S. is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.

### D. Notice of Relocation Eligibility

The sponsor must notify all occupants (owners and tenants) in writing of their eligibility for applicable relocation assistance and payments at the initiation of negotiations, or promptly thereafter. This notice must cite the specific relocation payment eligibility for the displaced person, and must identify and offer relocation assistance to the displaced person. Specific notification requirements related to tenant occupants are as follows:

1) Tenant occupants are entitled to relocation payments as of the initiation of negotiations, and a tenant occupant must be advised of relocation payment eligibility on or promptly after this date. During delivery of this notice, tenant occupants should be advised that they remain liable to their existing lease with the property owner until the sponsor acquires possession of the property.

2) For qualified voluntary transactions, tenant occupants should be further advised that the property may not be acquired if agreement is not secured with the property owner. Additionally, tenants should be advised to not initiate a move from the property until advised by the sponsor that the property will actually be acquired.

3) After initiation of negotiations, but prior to any occupant moving from the property, if the sponsor decides not to acquire the property, the owner and/or tenant occupants must be advised in

writing that the property will not be acquired and that they will not be displaced from the property. Occupants may claim payment for actual, reasonable, and necessary relocation expenses that they may have incurred prior to notification that they will not be displaced.

### **E. 90-Day Notice to Vacate**

No lawful occupant will be required to move unless he/she has received at least 90 days written notice in advance of the earliest required move date. The 90-day notice must either state a specific date as this earliest date, or state that the occupant will receive a further notice indicating the specific date to vacate the property at least 30 days in advance. For residential property, if the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state that the occupant will not be required to move earlier than 90 days after such a dwelling is made available. For residential property, it is typically recommended that the 90-day notice be provided along with the notice of relocation eligibility.

[AC 150/5100-17 CHG 7, Figures 4-3 and 4-4](#) provide sample notice of eligibility letters to residential property owner-occupants and tenants, respectively, including 90-day notices to vacate. [Figure 4-5](#) provides an example of a notice to a displaced business occupant, noting eligible cost for a non-residential move. This sample reflects a somewhat “simple” business move and, for more complex moves, several and separate notices may be required to adequately notify the displaced person of their payment eligibility.

See [NCDOT ROW Manual 15.17](#).

## **VI. PAYMENTS FOR MOVING AND RELATED EXPENSES**

### **Section 1- REQUIREMENTS**

*AC 5100.17 – CHG 7, Ch. 5, sec. 1*

#### **A. Eligibility**

Any owner-occupant or tenant who qualifies as a “displaced person” and moves from a dwelling (including a mobile home), or from a business, farm, or non-profit organization, is entitled to payment of his/her actual moving and related expenses, as the sponsor determines to be reasonable and necessary. See [NCDOT ROW Manual 15.23A](#).

#### **B. Ineligible Moving Related Expenses**

A displaced person is not entitled to payment for the following expenses:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership
  - a) This requirement does not preclude replacement housing payment eligibility for a displaced homeowner who chooses to retain and move the acquired dwelling as their replacement dwelling, if the sponsor determines this to be feasible.
2. Interest on a loan to cover moving expenses

3. Loss of good will
4. Loss of profits
5. Loss of trained employees
6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location, except as an eligible reestablishment expense
7. Personal injury
8. Any legal fee or other cost for preparation of relocation payment claims or for representation of the claimant before the sponsor
9. Expenses for searching for a replacement dwelling
10. Physical changes to the real property at the replacement location of a business or farm operation except as an eligible reestablishment expense
11. Costs for storage of personal property on real property already owned or leased by the displaced person
12. Refundable security and utility deposits

See [NCDOT ROW Manual Section 15.23E](#).

### **C. Moving Claims and Payments**

A displaced person may claim moving expenses within 18 months following the move-out date or the date of final acquisition payment, whichever occurs later. Claims must be supported by documentation of actual costs (e.g., bids, paid invoices, certified inventories of moved personal property, other evidence of actual and reasonable costs). FAA Forms 5100-124 & 5100-125 provide acceptable claim forms.

The sponsor must promptly pay acceptable claims and provide displaced persons any technical assistance necessary to claim all eligible actual, reasonable, and necessary moving expenses. The sponsor will not pay a moving claim until all personal property is removed from the acquired property. Under unusual hardship, a partial moving payment may be advanced to assist a displaced person to initiate a move. In accordance with sponsor appeal procedures, a displaced person may appeal moving claims denied by the sponsor.

## **Section 2 – RESIDENTIAL MOVING PAYMENTS**

*AC 5100.17 – CHG 7, Ch. 5, sec. 2*

### **A. Eligible Moving Expenses for Displaced Residential Occupants**

A displaced person is entitled to payment for the following expenses:

1. Transportation of the displaced person and personal property for a distance of 50 miles or less, unless the sponsor determines that transportation over 50 miles is justified

2. Packing, crating, unpacking, and uncrating of the personal property
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property
4. Storage of personal property for a period of 12 months or less, unless the sponsor determines that a longer period is necessary
5. Insurance for the replacement value of the property in connection with the move and necessary storage
6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his/her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available
7. Other moving-related expenses that are not listed as ineligible, as the sponsor determines to be reasonable and necessary

## **B. Moving Expense Payment Options**

A displaced person's actual, reasonable, and necessary expenses for moving personal property from a dwelling may be determined by different methods depending upon the type of move:

1) Self Move: A self-move may be performed by the displaced person in one or a combination of the following methods:

a) *Fixed residential moving cost schedule:* Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses. This payment must be determined according to the most recent edition of the Fixed Residential Moving Cost Schedule. Payment to a person with minimal personal possessions who is in occupancy of a dormitory style room, or a person whose residential move is performed at no cost to the person, must be limited to the amount stated in the Fixed Residential Moving Cost Schedule.

b) *Actual cost household move:* The actual costs of a move are eligible for repayment if supported by receipts for labor and equipment. Hourly labor rates and equipment rental fees should not exceed the cost paid by a commercial mover

c) *Move cost agreement:* In some cases where a displaced homeowner has significant non-household personal property located on the acquired residence the fixed schedule or commercial move options may not be feasible. For example, such items as numerous automobiles, large lots of automotive parts, extensive machinery and equipment, or an extensive collection (antiques, memorabilia, etc.) may require special handling that a commercial move cost may exceed the value of items to be moved. For such moves, the sponsor and displaced person may enter into a move cost agreement prior to initiating the move to establish the limits on cost eligibility for reimbursement. The agreement amount would reflect the moving costs anticipated and require actual cost receipts for reimbursement of the needed truck and equipment rental and packing material purchases. The agreement should cite the date the property will be cleared and provide that failing to complete all or any part of the move precludes payment for the work not

performed. The payment for accepted work prescribed in the self-move agreement may be claimed in addition to the commercial or fixed schedule expense of moving household items

2) Commercial Move: A professional moving service may be used on behalf of the displaced person if it follows certain guidelines, as follows:

- a) The sponsor may estimate the eligible cost based on the lower of two acceptable bids, or estimates, prepared for the move.
- b) The payment claim must be supported by an inventory of items of personal property actually moved, and invoices of the actual costs incurred.
- c) The moving cost bid and invoice must be of sufficient detail to assure that all eligible moving expenses are claimed.
- d) Payment for a low-cost or uncomplicated move may be based on a single bid or estimate. If the move is complex, the sponsor should develop the move specifications and two bids or estimates must be secured.
- e) The displaced person may obtain one or more move estimates and present them to the sponsor for review as to the reasonableness of the estimated cost. Alternatively, for complex or high-cost moves, the sponsor may secure the move cost bid to base the offer of relocation eligibility to the displaced homeowner.

### **C. Moving a Mobile Home**

The following conditions apply for moves of mobile homes depending on a displaced person's ownership and occupancy relationship with regard to the property, as described below:

1) owners-occupants

Eligible expenses for moving personal property from an acquired mobile home or mobile home site include those actual, reasonable, and necessary expenses. In addition, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling is also eligible for the following moving expenses:

- a. The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home (e.g., porches, decks, skirting, awnings), which were not acquired, anchoring the unit, and utility "hook-up" charges
- b. The reasonable cost of repairs and/or modifications so that a mobile home can be moved, and/or improved to meet DSS standards
- c. The cost of a non-refundable mobile home park entrance fee, to the extent that it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the sponsor determines that payment of the fee is necessary to effect relocation

2) non-occupant owner of a rented mobile home

A non-occupant owner of a mobile home that is not acquired as real estate (personal property) is eligible for actual expenses to move the mobile home and to move personal property from an acquired mobile home site.

3) personal property mobile home not relocated

If the mobile home is personal property, but the sponsor determines the owner-occupant is displaced and eligible for a replacement housing payment the owner is not eligible for payment for moving the mobile home but may be eligible for a payment for moving personal property from the mobile home.

### **Section 3 – NON-RESIDENTIAL MOVING PAYMENTS**

*AC 5100.17 – CHG 7, Ch. 5, sec. 3*

#### **A. Eligible Moving Expenses for Displaced Businesses, Farms, or Non-Profit Organizations**

Eligible expenses for non-residential moves include the following:

1. Transportation of the displaced person and personal property for a distance of 50 miles or less, unless the sponsor determines that transportation over 50 miles is justified
2. Packing, crating, unpacking, and uncrating of the personal property
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated appliances, business machinery, equipment, and other personal property; including substitute personal property, as applicable; including connection to utilities available within the building, modifications to personal property; including modifications in adherence with mandates by federal, state or local law, code or ordinance, necessary to adapt to replacement structure, the replacement site, or the utilities at the replacement site; and including modifications necessary to adapt the utilities at the replacement site to the personal property
4. Storage of the personal property for a period of 12 months or less, unless the sponsor determines that a longer period is necessary
5. Insurance for the replacement value of the property in connection with the move and necessary storage
6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his/her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available
7. Other moving related expenses not listed as ineligible, as the sponsor determines to be reasonable and necessary

8. Any license, permit, fees or certification required of the displaced person at the replacement location; payment may be based on the remaining useful life of the existing license, permit, fees, or certification
9. Professional services determined by the sponsor as actual, reasonable and necessary for the following:
  - a. Planning the move of the personal property
  - b. Moving the personal property
  - c. Installing the relocated personal property at the replacement location
10. Re-lettering signs and replacing stationery that is existing and usable at the time of displacement but made obsolete as a result of the move

## **B. Moving Expenses Payment Options**

Eligible expenses for moves from a business, farm, or non-profit organization include those expenses. Personal property, as determined by an inventory from a business, farm, or non-profit organization, may be moved by one or a combination of the following methods:

### **1) Commercial Move**

Eligible moving expenses for professional moving service are based on the lower of two bids or estimates prepared by a commercial mover. At the sponsor's discretion, payment for a low-cost or uncomplicated move may be based on a single bid or estimate. The general procedure to be used when using a commercial mover is as follows:

- a) The sponsor should inspect the displacement and replacement sites and generally determine the extent of personal property to be moved, loading, and unloading requirements, and what disconnect/reconnect work will be required. This inspection should be done in company with the displaced person or his/her agent in order to coordinate the move with the business requirements of the displaced operation. If the move is expected to be complicated or complex, the sponsor may prefer to contract with a specialist in the type of personal property being moved. The sponsor should accommodate the business concerns and needs as much as practical to minimize the impact of the relocation on the business operation.
- b) Upon establishing the general eligible move requirements with the displaced person, the sponsor should arrange with qualified commercial moving companies to provide firm bids or estimates of the cost to move the personal property of the displaced business. If possible, at least two firm bids or estimates should be obtained, based on an inventory of the personal property expected to be moved and on work specifications and equipment required to load/unload, place at the replacement site, and disconnect/reconnect personal property. The sponsor should provide these move requirements to all bidding movers at the inspection of the displacement and replacement sites to assure that the bids received are comparable. The bids submitted must reference, in detail, the inventory, and moving specifications. If there is a significant amount of plumbing, electrical, carpentry, communications, computer, or other services involved in the disconnect and reconnection of personal property, it may be more cost-effective to obtain these services through separate bids arranged independent of the commercial

mover.

- c) Upon completion of the move, in the claim submitted for payment, the owner of the displaced business must certify that the items listed were actually relocated. The amount claimed and paid by the sponsor must only reflect the inventory actually moved. Items that a displaced business, farm or non-profit organization owner or operator elects not to relocate may be claimed under Actual Direct Loss of Personal Property Purchase of Substitute Property Low Value/High Bulk or Related Non-Residential Eligible Expenses as may be applicable.

## 2) Self-Move Option

A self-move payment may be based on one or a combination of the following methods:

- a) *Negotiated self-move (estimated cost)*: If the displaced person elects to take full responsibility for the move of the business, farm operation, or non-profit organization, the sponsor may make a payment for the person's moving expense in an amount not to exceed the lower of two acceptable bids or estimates obtained by the sponsor. The same general procedure to secure the two bids is followed as described above). Moving costs are then claimed and paid as follows:

- i. Upon satisfactory completion of the move, the displaced person may claim payment for actual reasonable moving expenses, not to exceed the lower of two acceptable firm bids or estimates. When circumstances warrant, the sponsor may also negotiate an amount less than the lower of two acceptable bids or estimates. If not included in the bid amount secured, a displaced person may claim other removal and reinstallation expenses as actual costs upon submitting actual cost invoices or other adequate evidence of actual cost. The sponsor may accept the actual costs that are determined reasonable expenses for the move.

- ii. At the sponsor's discretion, payment for a low-cost or uncomplicated move may be based on a single bid or estimate (citing acceptable move specifications as described above) obtained by the sponsor or prepared by qualified staff. For this type of move, additional documentation (e.g., receipts of moving expenditures) is unnecessary as long as the payment is limited to the amount of the lowest acceptable supported bid or estimate.

- iii. Upon completion of the move, the owner/operator of the displaced business must certify that the items listed were actually relocated in the claim submitted for payment. The amount claimed and paid by the sponsor must only reflect the inventory actually moved. Those items that a displaced business, farm, or non-profit organization owner/operator elects not relocate may be claimed

- b) *Self-move, actual reasonable cost*: If reliable bids or estimates cannot be obtained, or if circumstances (e.g., large fluctuations in inventory) prevent reasonable bidding in the opinion of the sponsor, the displaced business may be paid for actual reasonable moving costs when the costs are supported by receipts or other evidence of actual

expenses incurred. The allowable expenses of a self-move under this provision may include the following:

- a. Amounts paid for truck and/or equipment hired
- b. If vehicles or equipment owned by a business being moved are used, a reasonable amount to cover gas and oil, the cost of insurance, and depreciation allocable to hours and/or days the equipment is used for the move
- c. Wages paid for the labor of persons who physically participate in the move. Labor costs should be computed based on actual hours worked at the hourly rate paid, which should not exceed the rate paid by local commercial movers or contractors.
- d. Amount of wages spent in actual supervision of the move if the displaced business proposes to use a working foreman or group leaders, regularly employed by the business.
- e. The inventory of items actually moved, as certified by the owner/operator of the displaced business in the claim submitted for payment. Items that are not relocated may be claimed under Actual Direct Loss of Personal Property, Purchase of Substitute Property, Low Value/High Bulk or Related Non-Residential Eligible Expenses.

### **C. Personal Property Only Moves -**

Eligible moving expenses for a person who is required to move personal property from real property but is not required to move from their dwelling (including a mobile home), business, farm, or non-profit organization include moving expenses described above. On a personal property only move, the displaced person is not eligible for the other payments.

## **D. Notification & Inspection**

At or promptly after the initiation of negotiations, the sponsor must inform the displaced person, in writing, of payment eligibility requirements for a non-residential move. This information may be included in the notice of relocation eligibility. To be eligible for moving expense payments, the displaced person must satisfy the following requirements:

1. Provide the sponsor advance notice of move dates and inventory of the items to be moved, unless the sponsor waives this requirement and documents the file accordingly.
2. Permit the sponsor to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.
3. Upon request and in accordance with applicable law, the claimant shall transfer to the Department ownership of any personal property that has not been moved, sold, or traded. (Contaminated or hazardous waste material must be excluded).

See [NCDOT ROW Manual 15.23F](#).

## **E. Actual Direct Loss of Tangible Personal Property**

On a non-residential move, an eligible displaced person may decide not to move an item or items of personal property and instead claim payment for the actual direct loss of the item. This payment will consist of the lesser of the following values:

1. The market value of the item in its existing condition for continued use, less the proceeds from its sale
  - a. To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the sponsor decides that is unnecessary.
  - b. When claiming payment for direct loss of goods held for sale, the market value is based on the actual cost of the goods to the business, not potential sale prices.
2. The estimated cost of moving the item, including reconnection cost, based only on the actual installation of the item in its existing condition at the displacement site, and not including any allowance for storage
  - a. The payment amount will not include any cost for reconnecting a piece of equipment that is in storage or not in use at the acquired property at the time of acquisition.

- b. If the business or farm operation is discontinued, the estimated cost of moving the item will be based on a moving distance of 50 miles.
3. The reasonable cost incurred in attempting to sell an item that will not be relocated
4. The payment amount for direct loss of an advertising sign that is personal property, which must be the lower value of the following:
  - a. the depreciated cost to reproduce the sign (as determined by the sponsor), minus the proceeds from its sale
  - b. the estimated cost to move the sign, without allowance for storage

#### **F. Purchase of Substitute Personal Property**

If an item of personal property that is used as part of a business or farm operation (i.e. machinery and equipment) is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of the following values:

1. The cost of the substitute item, including installation costs of the replacement site, less any proceeds from sale or trade of the replaced item
2. The estimated cost of moving and reinstalling the replaced item, without allowance for storage, which may be based on a single bid or estimate for a low-cost or uncomplicated move at the sponsor's discretion
3. The reasonable cost incurred in attempting to sell an item that will not be relocated

#### **G. Low-Value/High Bulk Property**

When the personal property to be moved is of low value and high bulk (e.g., stockpiled sand, gravel, minerals, metals) and the cost of moving the property would be disproportionate to its value in the judgment of the sponsor, the allowable moving cost payment must not exceed the lesser of the following values:

1. The amount that would be received if the property were sold at the site
2. The replacement cost of the product, in a comparable quantity, delivered to the new business location

#### **H. Related Non-Residential Eligible Expenses**

The following expenses, in addition to those provided above for moving personal property, must be provided if the sponsor determines that they are actual, reasonable, and necessary:

1. Connection to available nearby utilities from the right-of-way to improvements at the replacement site
2. Professional services performed prior to the purchase or lease of a replacement site in order to determine its suitability for the displaced person's business operation (including but not limited to soil testing, feasibility and marketing studies), excluding any fees or commissions directly related to the purchase or lease of the site
3. Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the sponsor

### **J. Searching for a Replacement Location**

A business or farm operation is entitled to reimbursement for actual expenses as the sponsor determines to be reasonable, which are incurred in searching for a replacement location, not to exceed \$5,000, including the following:

- 1) transportation
- 2) meals and lodging away from home
- 3) cost of time spent while searching, based on reasonable wages and salary
- 4) fees paid to a real estate agent or broker to locate a replacement site, excluding fees or commissions related to the actual purchase of such sites
- 5) Cost of time spent to obtain permits and attending zoning hearings, based on reasonable wages and salary
- 6) Cost of time spent negotiating the purchase of a replacement site, based on reasonable wages and salary

### **K. Reestablishment Expenses – Non-Residential Moves**

In addition to eligible moving expense payments, a displaced business, farm, or non-profit organization is entitled to receive payment, not to exceed \$33,200, for expenses actually incurred for relocation and reestablishment at a replacement site. Eligible and ineligible expenses are as follows:

- 1) Eligible Expenses

Reestablishment expenses must be reasonable and necessary, as determined by the sponsor, including but not limited to the following:

- a) Repairs or improvements to the replacement real property as required by federal, state or local law, code, or ordinance
- b) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting operations
- c) Construction and installation costs for exterior advertising signs
- d) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting
- e) Publication of advertisements of replacement location (e.g., internet or newspaper classified ads)
- f) Estimated increased costs of operation during the first two (2) years at the replacement site for items such as the following:
  - i. Lease or rental charges
  - ii. Personal or real property taxes
  - iii. Insurance premiums
  - iv. Utility charges (excluding impact fees)
- g) Any other items that the sponsor considers essential to reestablishment of the business

## 2) Ineligible Expenses

The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

- a) Purchase of capital assets (e.g., office furniture, filing cabinets, machinery, trade fixtures)
- b) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of business operations
- c) Interest on money borrowed to make the move or purchase the replacement property
- d) Payment to a part-time, in-home business that does not contribute materially to the household income (see definition in Appendix B)

## **L. Fixed Payment for Moving Expenses – Non-Residential Moves**

1) Business: A displaced business may be eligible to choose a fixed payment in lieu of payments for actual moving and related expenses, and actual reasonable reestablishment expenses.<sup>11</sup> Except for payment to a non-profit organization, this fixed payment must equal the average annual net earnings of the business, as computed below, but not less than \$1,000 nor more than \$53,200. The displaced business is eligible for the payment if the sponsor determines that it meets the following criteria:

- a) The business vacates or relocates from its displacement site but owns or rents personal property that must be relocated due to the displacement, for which the business would incur moving expenses.
- b) The sponsor determines that the business cannot be relocated without a substantial loss of its existing clientele or net earnings, which is assumed as true unless the sponsor demonstrates otherwise.
- c) The business is not part of a commercial enterprise with more than three other entities that are not being acquired by the sponsor, and which are under the same ownership and engaged in the same or similar business activities.
- d) The business is not operated at the displacement site for the sole purpose of renting the site to others.
- e) The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

2) Number of Businesses: In determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, the sponsor must consider all pertinent factors, including the validity of the following conditions:

- a) The entities share the same business premises and equipment.
- b) Business functions are identical or interrelated, and operations and finances are comingled.
- c) The entities are promoted by the business, and perceived by its customary clientele, as a single business.
- d) The same individual(s) or closely relations own, control, or manage the affairs of all entities.

3) Farm Operation: A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses. This fixed payment must equal the average annual net earnings of the farm operation, as computed

below, but not less than \$1,000 nor more than \$53,200. For partial acquisitions of land used as part of a farm operation, the fixed payment will be made only if the sponsor determines the validity one or both of the following conditions:

- a) The partial acquisition caused displacement of the farm operator from operations on the remaining land that is not part of the acquisition.
- b) The partial acquisition caused a substantial change in the nature of the remaining farm operation (e.g., location of critical equipment or facilities on the acquired land that cannot be easily relocated).

4) Average Annual Net Earnings of a Business or Farm Operation: The average annual net earnings of a business or farm operation must be one-half (1/2) of its net earnings before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two (2) taxable years prior to displacement, net earnings must be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different time period when the sponsor determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person must furnish the sponsor proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence determined satisfactory by the sponsor.

5) Non-Profit Organization: A displaced non-profit organization may choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses. This fixed payment must equal the average annual net earnings of the farm operation, but not less than \$1,000 nor more than \$53,200. The displaced organization is eligible for the payment if the sponsor determines that it cannot be relocated without a substantial loss of its existing membership or clientele, which is assumed as true unless the sponsor demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two (2) 12- month periods prior to the acquisition. The payment amount must be the average of two (2) years annual gross revenues, minus administrative expenses.

## VII. REPLACEMENT HOUSING PAYMENTS

### Section 1 – REQUIREMENTS

*AC 5100.17 – CHG 7, Ch. 6, sec. 1*

#### **A. Sponsor Obligation**

No person to be displaced must be required to move from his or her dwelling unless at least one comparable replacement dwelling has been made available to the person. Where possible, three or more comparable replacement dwellings must be made available. A comparable replacement dwelling will be considered to have been made available to a person if all of the following conditions have been met:

1. The person is informed of its location; and
2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
3. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled, in sufficient time to complete the purchase or lease of the property.

#### **B. Comparable Replacement Dwelling**

The term comparable replacement dwelling means a dwelling that is as follows:

1. Decent, safe and sanitary (DSS)
2. Functionally equivalent to the displacement dwelling
  - a. The term “functionally equivalent” means that it performs the same function and provides the same utility. While a comparable replacement dwelling does not need to possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the sponsor may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling.
3. Adequate in size to accommodate the occupants
4. In a location that is not subject to unreasonably adverse environmental conditions

5. In a location that is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and that is reasonably accessible to the person's place of employment
6. On a site that is typical in size for residential development with normal site improvements, including customary landscaping (although it does not need to include special improvements such as outbuildings, swimming pools, or greenhouses)
7. Currently available to the displaced person on the private market (except as provided below)
8. Within the financial means of the displaced person:
  - a. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs, and all incidental expenses plus any additional amount required to be paid under replacement housing of last resort.
  - b. A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance (the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling).
  - c. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if a sponsor pays that portion of the monthly housing costs of a replacement dwelling that exceeds the person's base monthly rent for the displacement dwelling. Such rental assistance must be paid under replacement housing of last resort.
9. For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance, including application of that program's requirements related to the size of the replacement dwelling

### **C. Decent, Safe, and Sanitary Housing Inspection**

The term "Decent, Safe, and Sanitary," or DSS, means that a dwelling meets applicable housing and occupancy codes. However, any of the following standards that are not met by an applicable code must apply unless waived by the FAA for good cause:

1. Must be structurally sound, weather tight, and in good repair
2. Must contain a safe electrical wiring system adequate for lighting and other devices
3. Must contain a heating system capable of sustaining a healthful temperature (of approximately 22 degrees C or 70 degrees F) for a displaced person, except in locations where local climatic conditions do not require such a system
4. Must be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced persons
5. Must have a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and toilet, all in good working order, and properly connected to appropriate sources of water and a sewage drainage system
6. In the case of housekeeping dwellings, must have a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator
7. Must contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.
8. For a displaced person who is handicapped, must be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling. If comparable replacement properties available are not barrier-free, adequate to the needs of the displaced persons, then the sponsor must add amounts necessary to provide a barrier-free dwelling.

#### **D. Occupancy Requirements for Displacement or Replacing Dwelling**

No person must be denied eligibility for a replacement housing payment solely because he or she is unable to meet the regulatory occupancy requirements or a reason beyond his or her control, including the following:

1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or
2. Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined acceptable by the sponsor.

## Section 2 – 90 DAY OWNER-OCCUPANTS

*AC 5100.17 – CHG 7, Ch. 6, sec. 2*

### A. Payment Eligibility

A displaced owner-occupant is eligible for a replacement housing payment if the displaced person satisfies both of the following conditions:

1. Has actually owned and occupied the displacement dwelling for no less than 90 days immediately prior to the initiation of negotiations or the issuance of a written notice of intent to acquire the property; and
2. Purchases and occupies a DSS replacement dwelling within one year after the later of the following dates (unless extended by the sponsor for good cause):
  - a. The date the displaced person receives final payment for the displacement dwelling
  - b. In the case of condemnation, the date the full amount of the estimate of just compensation is deposited in court (filing date)
  - c. The date the sponsor has made available to the displaced person at least one comparable replacement dwelling

### B. Replacement Housing Payment

The replacement housing payment for an eligible 90-day owner-occupant may not exceed \$41,200 except when under housing of last resort procedures. The payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the later of either (1) the date that the displaced owner-occupant is paid for the displacement dwelling, or (2) the date that a comparable replacement dwelling is made available to such person. The payment must be the sum of the following:

1. A price differential payment, if the eligible cost of the replacement dwelling exceeds the acquisition cost of the displacement dwelling; and
2. A mortgage interest differential payment for the increased interest costs and other debt service costs that are incurred in connection with the purchase of the replacement dwelling; and
3. Payment for the reasonable expenses incidental to the purchase of the replacement dwelling.

### C. Price Differential Payment

The price differential payment is the amount, if any, which must be added to the acquisition cost of the displacement dwelling in order to provide a total amount that is equal to the lesser of either (1) the reasonable cost of a comparable replacement dwelling, or (2) the purchase price of a DSS dwelling that is actually purchased and occupied by the displaced person.

1) comparable replacement dwellings: Comparable replacement properties must be selected from current listings of properties available for sale. If available, at least three comparable replacement dwellings must be examined and the payment must be calculated based on which dwelling is most nearly representative of, and equal to or better than, the displacement dwelling. Listed properties sold under a pending sales contract may not be used in determining the price differential. All sources of listing information available should be pursued, including Multiple Listing Services (MLS), local broker exclusive listings, and owner listings. An obviously overpriced listed dwelling should be ignored. To the extent feasible, comparable replacement dwellings must be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible at reasonable cost, in nearby comparable neighborhoods. However, particularly on buy-out acquisitions for Part 150 noise compatibility programs, dwellings chosen as comparable referrals should not be located within the airport's DNL 65 dB noise contour.

2) selected comparable replacement dwelling: Of the comparable listings searched, the property judged the most "comparable" must be used as the "selected" comparable replacement dwelling in order to calculate the replacement housing payment eligibility for the displaced person. The sponsor must fully and systematically search the available replacement properties and select the most comparable dwelling. Table 6-1 provides a format for comparing the features of available replacement property to the comparability requirements of the acquired dwelling to determine the "selected" comparable replacement dwelling.

3) documentation and certification: [Table 6-1 of AC 150/5100-17 CHG 7](#) provides a sample form for determining Replacement Housing Payment (RHP) eligibility for a 90-Day Owner-Occupant. The sponsor should use this form to document the adequacy of the replacement housing payment eligibility determination. To the extent provided in this AC and, in conformance with Uniform Act mandates, the sponsor must consider reasonable costs and program economy in the determination of replacement housing payment eligibility.

#### **D. Special Situations Affecting Calculation of Price Differential Payment Eligibility**

Various situations typically arise that will affect the calculated and actual amount of the price differential that a displaced person is eligible to receive. These situations generally result in a carve-out procedure or an adjustment of some type, as described for the following occurrences.

1) Administrative Settlement: An administrative settlement is any settlement made by the sponsor for acquisition of real property that exceeds an approved amount offered as just compensation. By normal calculation of the price differential, the replacement housing payment eligibility is reduced by the amount of the increase in the acquisition cost incurred by the administrative settlement.

2) Condemnation Award: An advance replacement housing payment may be calculated and paid to a property owner when the final settlement amount will be delayed pending the outcome of condemnation proceedings. Payment of such amount may only be made with the owner-occupant's agreement that, upon final determination of the condemnation proceedings, the replacement housing payment will be recalculated using the acquisition price that is determined by the court and that the displaced person will refund the amount of any excess to the sponsor.

3) Carve-outs: A carve-out procedure must be made when the acquired property has certain attributes, as discussed below, which are not available at reasonable cost on otherwise comparable available dwellings, or the acquired dwelling is part of a mixed-use property.

a) site attributes and improvements:

If the selected comparable replacement property does not contain a site improvement found on the displacement property, the contributory value of the improvement (e.g., garage, out-building, swimming pool) must be deducted (i.e., "carved out") from the cost of the acquired dwelling in calculating the replacement housing price differential eligibility. A carve-out is only necessary if the particular site improvement represents a significant value, as indicated in the appraisal of the acquired property. The appraisal of the acquired property should not arbitrarily assign a contributory value for site improvements that are highly depreciated and/or which the market considers only of nominal value.

Where a site attribute consists of a land or location feature, such as a waterfront location or golf course frontage, which is unavailable with a comparable available dwelling at reasonable cost, the contributing market value of the attribute may also be carved-out from the acquisition cost of the property in determining the replacement housing payment eligibility. A carve-out is only necessary to the extent

of the contributory value that may be derived for the attribute from the approved appraisal of the acquired property.

b) tracts larger than typical residential size

When the acquired tract is significantly larger than the typical residential home site lot available on comparable replacement properties, the sponsor must carve out the value of the dwelling and typical home site lot for the area from the total acquisition price and use this value as the acquisition cost to calculate the price differential eligibility. However, if comparable properties are available at reasonable cost with the larger lot feature, then a carve-out is unnecessary. Furthermore, exact one-to-one proportion between lot sizes is unnecessary due to the likelihood that local housing market values are relatively similar for a range of typical residential lot sizes (e.g., approximately ¼-½ acres, 3-5 acres, 7-15 acres, over 20 acres).

c) dwelling on land with higher and better use

When the acquired dwelling is located on a property where the appraised and/or final settlement value is established on a higher and better use as commercial or industrial development/use, the price differential eligibility is the price of a comparable replacement dwelling minus the greater of the following, not to exceed the actual cost of the property acquired:

- i. The HBU development value of the land for an area of a typical residential lot plus the contributory value of the dwelling; or
- ii. The value of a typical residential lot and the dwelling for continued residential use.

d) residential/businesses or farm operation properties

When a displacement dwelling is part of an acquired “mixed-use” property containing a business or part of a significant farm operation, the value of the residence and typical home site may be carved out from the acquisition payment in calculating the price differential eligibility for purchase of a replacement dwelling. A carve-out is not necessary for small “in-home” businesses where substantial alterations have not been made to accommodate the business (e.g., bookkeeping service, small beauty salon, or small engine repair shop).

4) Partial Acquisition: When the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the sponsor may offer to purchase the entire property. If the owner refuses to sell the remainder to the sponsor, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of calculating the replacement housing payment. A sponsor must only apply this option on a project-wide basis.

5) Owner-occupant of multifamily dwelling: When a comparable multi-family property is not available at reasonable cost, then the portion of the acquisition cost that constitutes the owner's occupied unit is used to calculate the price differential eligibility. In cases where the displaced household is occupying more than one unit of a multi-family unit, single-family replacement housing may be offered as the available replacement dwelling, however it is not necessary to replace or carve-out duplicated residential property components that may occur on the acquired occupied property (e.g., additional kitchens, heating systems).

6) Occupant with partial ownership: When a single family dwelling is owned by two or more persons and occupied by one or more of the owners, the replacement housing payment will be the lesser of the following values:

1. The difference between the owner-occupant's share of the acquisition cost of the displacement dwelling and the actual cost of the replacement dwelling; or
2. The difference between the total acquisition cost of the displacement dwelling and the amount determined by the sponsor as necessary to purchase a comparable dwelling.

7) Owner Retention: If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling must be the sum of the following values:

1. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move
2. The cost of making the unit a DSS replacement dwelling
3. The current market value for residential use of the replacement dwelling site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site
4. The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when calculating the replacement housing payment.

When calculated based on the cost of relocating the retained dwelling, the payment may not exceed the displaced person's calculated eligibility for the purchase of the selected comparable dwelling. Moreover, the dwelling must be relocated to a site not within the airport's DNL 65 dB noise contour.

8) Upgrading of Replacement Dwelling: As feasible, the airport may work with the displaced homeowner's purchase of a replacement dwelling that they intend to rehabilitate or improve. However, given an availability of comparable replacement dwellings at the time of displacement, there is no provision for any additional payments for cost incurred by a displaced homeowner who is undertaking home improvement if occupancy of a DSS dwelling is delayed. To conform to the payment eligibility requirements, the displaced homeowner must include any rehabilitation or home improvement work as part of the sales agreement, and/or in the mortgage financing for the purchase and improvement of the replacement dwelling. The rehabilitation or home improvement work and financing should be adequately structured with adequate building plans and specifications for the work prepared, conforming to local building codes and lender requirements; enforceable contractor guarantees; fire and hazard insurance requirements; bonding to assure satisfactory work and scheduled completion; and other requirements as deemed appropriate by the sponsor. The sponsor's obligation for replacement housing payment is met when the displaced person purchases and occupies the DSS replacement property. Costs for excessive ornamentation, or unusual and atypical features are not eligible for reimbursement on a replacement housing payment claim.

9) Previously Owned Dwelling: When a displaced person relocates to a previously owned DSS dwelling the price differential eligibility is the lesser of either (1) the reasonable cost of a comparable replacement dwelling or (2) the current fair market value of the previously owned dwelling, minus the acquisition cost of the acquired property.

#### **E. Rental Assistance Payment for 90-Day Homeowner**

A 90-day homeowner-occupant, who could be eligible for a replacement housing payment but instead elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of the market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. A rental assistance payment due to increased market rent, if any, is then calculated and disbursed in accordance with VII. Replacement Housing Payments, Section 3 – 90-Day Tenant below except the statutory limit of \$9,570 for a rental assistance payment does not apply. Under no circumstance would the rental assistance payment exceed the amount that could have been received under this section as an eligible displaced 90-day homeowner had the 90-day homeowner elected to purchase and occupy a comparable replacement dwelling.

See [NCDOT ROW Manual 15.27F](#).

## **F. Mortgage Interest Differential (MID Payment)**

An MID is provided to a displaced person to compensate for the increased interest costs the person would otherwise incur when financing a replacement dwelling. The MID is an amount that will reduce or “buy down” the displaced person’s mortgage balance on a new mortgage to an amount that could be amortized with the same monthly payment for principal and interest cost. To calculate the MID, the remaining principal balance, interest rate, and monthly principal and interest payments for the pre-displacement mortgage, as well as an available replacement mortgage, must be obtained and documented. The interest rate on the acquired dwelling must be based on a valid recorded mortgage or other recorded documentation. In addition, the MID payment must (1) include other debt service costs that are normal to the area of the replacement dwelling if not otherwise paid as incidental costs, and (2) be based only on valid mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.

1) MID eligibility calculation: The MID is the amount required to compensate for any additional interest cost necessary to purchase a replacement dwelling, not to exceed the cost of a conventional mortgage available at the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. For acquired properties subject to a fixed rate mortgage, the pre-displacement interest rate is compared to the prevailing fixed interest rate. For acquired properties subject to an adjustable rate mortgage (ARM), the calculation of the MID eligibility is based on the lesser of the interest rate variance between the pre- displacement rate as of the date of acquisition versus the current fixed rate, or the variance between the maximum interest rate or “cap rates” of the pre-displacement and replacement ARM’s with equivalent rate index and adjustment specifications. Under conditions of falling interest rates, it would be expected that the interest rate differential before and after displacement is zero (0) percent or less and a MID payment eligibility would not exist. Under conditions of rising interest rates, a MID eligibility may be necessary given the increased interest cost of an available replacement mortgage. [Figure 6-3 of AC 150/5100-17 CHG 7](#) provides a sample MID eligibility calculation for a fixed rate mortgage using FAA Form 5100- 123; [Figure 6-4 of AC 150/5100-17 CHG 7](#) provides a sample calculation for an ARM, using FAA Form 5100-123-ARM.

2) MID payment calculation: Actual payment of the eligible MID to a displaced person is contingent upon a mortgage being placed on the replacement dwelling. The MID eligibility is based on the unpaid mortgage balance and the shorter of either (1) the remaining term of the mortgage on the displacement dwelling, or (2) the term of the new mortgage. In the event that the person purchases a replacement home that requires a smaller mortgage than the reduced mortgage balance, the calculated payment eligibility is

prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance used to calculate the payment is the lesser of either (1) the balance that existed 180 days prior to the initiation of negotiations, or (2) the balance on the date of acquisition.

3) reimbursable loan points: In addition to the calculated buy-down amount, the MID payment includes purchaser's points and loan origination or assumption fees to the extent that the following conditions apply:

- a). Such points are not being paid as incidental expenses; and
- b). Such points do not exceed rates normal to similar real estate transactions in the area;
- c). The sponsor determines such points to be necessary; and
- d). The calculation of such points and fees is based on the loan balance of displacement dwelling, minus the buy-down amount.

4) lump sum payment of additional points (if cost-effective): Replacement mortgage offerings typically include different interest rates and points. Of the available mortgages, the available mortgage with the lowest Annual Percentage Rate (APR) will typically prove to be the most cost-effective. The airport should base its MID eligibility on the most cost-effective loan available. If a replacement mortgage equal to the pre- displacement mortgage (interest rate and terms) is available with additional points, the airport may calculate the MID eligibility based on the higher prevailing rate at lesser points, or at the equal rate with additional points. The outstanding mortgage balance and remaining amortization term on the acquired home will determine if the payment of

additional points for a lower rate is the most cost effective. The less costly payment eligibility would be the MID payment eligibility offered. FAA Form 5100-123 Fixed/ARM may be used to calculate the MID eligibility based on the regulatory requirements [49 CFR 24.401 (d)] to compare and document if the lump sum payment for additional points is cost-effective.

5) Additional pre displacement mortgage liens: When a displaced person has second or lesser priority mortgage liens, an overall MID eligibility is calculated based on the available conventional mortgage financing of the total outstanding loan balance on the acquired property. Normally it would be expected that a single first lien mortgage would be secured to purchase a replacement property and an MID would be made to the extent that this mortgage interest exceeded the interest rates on the mortgage loan balances of the acquired property, not to exceed the prevailing fixed interest rate cost. When second mortgage financing is required for a displaced

person to secure a replacement dwelling, the MID calculation and actual payment must be based on a comparison of the second mortgage rates.

### **G. Incidental Expenses**

The incidental expenses to be paid are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling. Such costs, customarily paid by the buyer, may include the following items:

1. Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees, the total of which must not to exceed the costs of a normal comparable replacement dwelling. For plats, the only necessary survey information is the legal description of the property, perimeter boundaries, and metes and bounds descriptions.
2. Lender, FHA, or VA application and appraisal fees
3. Loan origination or assumption fees that do not represent prepaid interest up to the amount of the mortgage on the displacement dwelling
4. Certification of structural soundness and termite inspection (as required)
5. Credit report
6. Owner's and mortgage holder's evidence of title, such as title insurance (not to exceed the costs for a comparable replacement dwelling)
7. Escrow agent's fee
8. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling)
9. Such other costs as the sponsor determines to be incidental to the purchase

## **Section 3 – 90-DAY TENANT**

*AC 5100.17 – CHG 7, Ch. 6, sec. 3*

### **A. Payment Eligibility**

A tenant-occupant displaced from a dwelling is entitled to a payment not to exceed \$9,570 for rental assistance or down payment assistance, if the displaced person meets the following conditions:

1. Has actually and lawfully occupied the displacement dwelling for at least 90

days immediately prior to the initiation of negotiations; and Has rented or purchased, and occupied a DSS replacement dwelling within one year after the following (unless extended by the sponsor for good cause):

a) For a tenant, the date the displaced person moves from the displacement dwelling; or

b) For an owner-occupant, the later of the following dates:

- The date the displaced person receives final payment for the displacement dwelling, or in the case of condemnation, date the full amount of the estimate of just compensation is deposited with the court; or
- The date the displaced person moves from the displacement dwelling.

## **B. Rental Assistance Payment**

1) amount of payment: An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$9,570 for rental assistance. Such payment must be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of the following:

a) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

b) The monthly rent and estimated average monthly cost of utilities for the DSS replacement dwelling actually occupied by the displaced person.

2) base monthly rental for displacement dwelling: The base monthly rental for the displacement dwelling is the lesser of the following:

a) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency; or

i) For an owner-occupant, use the fair market rent for the displacement dwelling.

ii) For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances.

b) Thirty (30) percent of the displaced person's average monthly gross household income, if the amount is classified as "low income" by the U.S. Department of

Housing and Urban Development “HUD Program Income Limits” [Section 8, Section 221(d)(3) BMIR, Section 235 and Section 236]12; or

- i. The base monthly rental must be established solely on the criteria in (b)(1) above for persons with income exceeding the survey’s “low income” limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents.
  - ii. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.
- c). The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

3) selected comparable replacement dwelling: Of the comparable listings searched, the property judged the most “comparable” (see Section 6.1.2) must be used as the “selected” comparable replacement dwelling to calculate the replacement housing payment eligibility for the displaced person. The sponsor must fully and systematically search the available replacement properties and select the dwelling that represents the most comparable property. Figure 6-1 (refer to Section 6.2.3) provides a format for comparing the features of available replacement property to the comparability requirements of the acquired dwelling to determine the “selected” comparable replacement dwelling.

4) documentation and certification: The same process as Section 6.2.3 for a 90-day homeowner to select a comparable dwelling is applied to select a comparable replacement rental dwelling. The selected comparable rental would be the available property for rent that best conforms to the definition of comparable dwelling (see Section 6.1.2). The form entitled “Replacement Housing Payment Determination - 90 Day Tenant” (see Appendix A) is recommended for documenting the comparable rental search and calculation of the replacement housing payment eligibility.

5) manner of disbursement: A rental assistance payment may be disbursed either in a lump sum or in installments at the sponsor’s discretion, although installment payments must be made under last resort housing procedures.

### **C. Down Payment Assistance**

1) Amount of Payment: An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount that the person would receive

under Section 4 below if the person rented a comparable replacement dwelling. At the sponsor's discretion, a down payment assistance payment that is less than \$9,570 may be increased to any amount not to exceed \$9,570. However, the payment to a displaced homeowner must not exceed the amount the owner would receive under Section 2 above if the homeowner met the 90-day occupancy requirement. If the Agency elects to provide the maximum payment of \$9,570 as a down payment, the Agency must apply this discretion in a uniform and consistent manner, so that eligible displaced persons in similar circumstances are treated equally. A displaced person who is eligible to receive a payment, as a 90-day owner-occupant is not eligible for this payment.

2) Application of Payment: The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

## **Section 4 – REPLACEMENT HOUSING PAYMENT CLAIMS**

*AC 5100.17 – CHG 7, Ch. 6, sec. 4*

### **A. Claims for Replacement Housing Payments:**

In order to obtain a replacement housing payment, a displaced person must file a written claim with the sponsor on a form provided by the sponsor for that purpose. The claim must be filed within 18 months after the later of either (1) the date the applicant moves from the displacement dwelling, or (2) the date of the final payment for the acquisition. See Appendix A for recommended claim forms that may be used for the sponsor's program.

### **B. Purchase/Lease of Replacement Dwelling:**

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person meets any of the following conditions:

1. Purchases a dwelling;
2. Purchases and rehabilitates a substandard dwelling;
3. Relocates a dwelling which he or she owns or purchases;
4. Constructs a dwelling on a site he or she owns or purchases;
5. Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

6. Currently owns a previously purchased dwelling and site, the valuation of which must be based on current market value.

### **C. Inspection and Sponsor DSS (Decent Safe & Sanitary) Certification of Replacement Dwellings**

Before making a replacement housing payment or releasing the initial payment from escrow, the sponsor (or its designated representative) must inspect the replacement dwelling and determine whether it is a Decent, Safe & Sanitary (DSS) dwelling.

The sponsor must certify that the dwelling to be purchased by the displaced person is DSS. [Figure 6-5 of AC 150/5100-17 CHG 7](#) provides a sample inspection and certification statement form. The DSS certification is made solely for purposes of providing the replacement housing payment, in accordance with the Uniform Act. A displaced person may not be paid any replacement housing payments for a dwelling that does not meet DSS standards. The sponsor must advise displaced persons that the sponsor's DSS certification must be made prior to, or as a condition to be satisfied in, a purchase or sales contract for the purchase of the replacement dwelling.

As applicable, the sponsor should advise the displaced person that the DSS certification is based on a visual inspection and certification that the property condition prior to purchase meets the specified DSS standards. Furthermore, the displaced person should be advised that the contract to purchase a replacement dwelling might be made conditional upon a satisfactory structural inspection of the property. The sponsor should maintain referrals of qualified structural engineers or building inspector to perform these inspections. The cost of an inspection secured by the displaced person is a reimbursable incidental cost.

### **D. Payment After Death**

A replacement housing payment is personal to the displaced person. Upon the death of the displaced person, the undisbursed portion of any such payment must not be paid to the heirs or assigns, with the following exceptions:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing must be paid.
2. Any remaining payment must be disbursed to the remaining family members of the displaced household for any case in which a member of a displaced family dies.

3. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person must be disbursed to the estate.

#### **E. Insurance Proceeds**

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (e.g., fire, flood) must be included in the acquisition cost of the displacement dwelling when calculating the price differential.

#### **F. Deductions from Relocation Payments**

The sponsor must deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The sponsor must not withhold any part of a relocation payment to a displaced person in order to satisfy an obligation to any other creditor.

#### **G. Multiple Occupancy of One Displacement Dwelling**

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to and may claim a reasonable prorated share, as determined by the sponsor, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the sponsor determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

#### **H. Conversion of Payment**

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment, but then purchases and occupies a replacement dwelling within the prescribed one-year period, is eligible to receive a replacement housing payment not to exceed \$41,200 or a down payment not to exceed \$9,570, if the eligibility criteria for such payment is met. However, any portion of the rental assistance payment that has been previously disbursed to the displaced person must be deducted from a subsequent replacement housing payment or down payment.

## Section 5 – REPLACEMENT HOUSING OF LAST RESORT

*AC 5100.17 – CHG 7, Ch. 6, sec. 5*

### **A. Determination to Provide Replacement Housing of Last Resort**

Whenever an AIP-assisted project cannot proceed on a timely basis because comparable replacement dwellings are not, or are not expected to be, available within the statutory limits of \$41,200 for owners or \$9,570 for tenants, the sponsor must provide additional or alternative assistance under the provisions of this section in order to ensure that comparable replacement housing is made available to displaced residential occupants. Any decision to provide last resort housing assistance must be adequately justified and documented in either of the following ways:

1. On a case-by-case basis, for good cause, which means that appropriate consideration has been given to the following:
  - a. The availability of comparable replacement housing in the program or project area
  - b. The resources available to provide comparable replacement housing
  - c. The individual circumstances of the displaced person
2. On a project-wide basis, based on the following determination:
  - a. There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; therefore, last resort housing assistance is necessary for the area as a whole; and
  - b. A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
  - c. The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

In the sponsor's determination and Last Resort Housing plan, the FAA project manager should concur to provide needed comparable housing for the project displacement (See Section 5 above).

### **B. Basic Rights of Persons to be Displaced**

Notwithstanding any provision of this section, no person must be required to move from a displacement dwelling unless comparable replacement housing is available to that person. No person may be deprived of any rights the person has under the Uniform Act or 49 CFR 24. The sponsor must not require any displaced person to accept a dwelling provided by the sponsor under housing of last resort procedures (unless the sponsor and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

### **C. Methods of Providing Comparable Replacement Housing**

Sponsors must have broad latitude in implementing last resort housing procedures but implementation must be for reasonable cost, on a case-by-case basis or as justified for an entire project.

The methods of providing replacement housing of last resort include, but are not limited to, the following criteria:

1. A replacement housing payment in excess of the statutory amounts for replacement housing payments as described in Sections 2 or 3 above (i.e., \$41,200 for displaced 90-day owners and \$9,570 for 90-day residential occupants), which may be provided in installments or in a lump sum, at the Agency's discretion
2. Rehabilitation of and/or additions to an existing replacement dwelling
3. Construction of a new replacement dwelling
4. Provision of a direct loan that requires regular amortization or a deferred repayment, and which may be (a) secured or unsecured and (b) interest-bearing or interest-free
5. Relocation and, if necessary, rehabilitation of a dwelling
6. Purchase of land and/or a replacement dwelling by the displacing Agency, and subsequent sale to, lease to, or exchange with a displaced person
7. Removal of barriers for persons with disabilities
8. Reimbursement of reasonable fees when incurred to secure a loan on a replacement property for a person suffering from credit difficulties or similar situations at the time of displacement
  - a. Generally, such fees should be limited to the normal amount for conventional loans near that location

- b. In some cases, fees in excess of the norm may be reimbursed when considered necessary and reasonable in the context of the financial ability of the person to pay such fees on a purchase of a comparable dwelling.

Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort allow the consideration of space and physical characteristics that are different from those in the displacement dwelling (see 49 CFR 24, Appendix A, § 24.404), including upgraded, but smaller replacement housing that is a DSS dwelling and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. However, in no event, must a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with 49 CFR 24, § 24.2(a)(6)(ii).

#### **D. Subsequent Occupants**

Subsequent occupants are displaced persons who either (1) occupied a dwelling acquired for a FAA-assisted project for less than 90 days before the initiation of negotiations, or (2) entered occupancy after the initiation of negotiations and are in occupancy on the date the property is acquired. If comparable replacement rental housing is not available at rental rates within the displaced person's financial means then the Agency must provide assistance under this subpart to such displaced persons who are not eligible to receive a replacement housing payment due to failure to meet the length of occupancy requirement. Such assistance must cover a period of 42 months.

## **Section 6 – MOBILE HOMES**

*AC 5100.17 – CHG 7, Ch. 6, sec. 6*

#### **A. Applicability**

This section describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic payment eligibility requirements. Eligible moving expenses for owners and displaced occupants of mobile homes are described above.

#### **B. Determination of Displacement from Mobile Home**

The sponsor must determine if the occupants of a mobile home are considered displaced from the mobile home for a project. This determination should be made uniformly in order to

ensure an orderly and equitable relocation of all displaced residents. The sponsor's determination should consider the following factors:

1. If the mobile home is real estate under state law (i.e., bought and sold by deed, taxed as real estate, etc.) and is acquired for the project, then the owner or tenant occupants are considered displaced from the acquired dwelling.
2. If the mobile home is personal property under state law (i.e., not taxed as real estate, bought and sold by transfer of vehicle registration, etc.), and it can be moved to a comparable replacement site, and provide a DSS dwelling to the displaced mobile home residents, then the owner occupants are not considered displaced from their dwelling.
3. If the mobile home is personal property under state law (i.e., not taxed as real estate, bought and sold by transfer of vehicle registration, etc.), but the sponsor determines that either of the following conditions apply, then the owner occupants are considered displaced from the acquired dwelling:
  - a) The mobile home is not, and cannot economically be made into a DSS dwelling; or
  - b) The mobile home cannot be relocated without substantial damage or unreasonable cost; or
  - c) The mobile home cannot be relocated because there is no available comparable replacement site; or
  - d) The mobile home cannot be relocated because it does not meet mobile home park entrance requirements.

4. Whether or not displaced from the mobile home itself, the owner or tenant

occupants of the acquired mobile home site are eligible for a replacement housing payment for the purchase or lease of a comparable replacement home site.

### **C. Replacement Housing Payment for 90-Day Owner Displaced from a Mobile Home or Acquired Mobile Home Site**

An owner occupant that is displaced from a mobile home or acquired mobile home site is entitled to a replacement housing payment not to exceed \$41,200, if each of the following conditions apply:

1. The person occupied the mobile home on the displacement site for at least 90 days immediately before either of the following:
  - a) The initiation of negotiations to acquire the mobile home, if the person owned

the mobile home and the mobile home is real property;

- b) The initiation of negotiations to acquire the mobile home site, if the mobile home is personal property but the person owns the mobile home site; or
- c) The date of the Agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home.

2. The person meets the other basic eligibility requirements for a 90-day owner replacement housing payment.

3. The Agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the sponsor determines that the mobile home cannot be relocated to a comparable site or be made into a DSS dwelling.

#### **D. Amount of Payment – Eligible 90-Day Owner**

The replacement housing payment for an eligible displaced 90-day owner must be calculated as described above, incorporating the following as applicable:

1. If the Agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to calculate the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

2. If the Agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment (based on Section 6 above) the eligible price differential payment for the purchase of a comparable replacement mobile home is the lesser of either (1) the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or (2) the cost of the Agency's selected comparable mobile home, minus the Agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

3. If a comparable replacement mobile home site is not available, the price differential payment must be calculated based on the reasonable cost of a conventional comparable replacement dwelling.

4. If displaced from a leased or rented mobile home site, a 90-day owner- occupant is entitled to a rental assistance payment calculated as described in Section 6 above This rental assistance payment may be used for either of the following purposes: (1) to lease a replacement site; (2) toward the purchase of a replacement site; or (3) toward the purchase of a replacement DSS mobile home and site or a conventional DSS dwelling (in combination with any replacement housing payment attributable to the mobile home.

### **E. Owner-Occupant Not Displaced from Mobile Home**

If the sponsor determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner occupant elects not to do so, then the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the mobile home owner is eligible for moving costs and any replacement housing payment for the purchase or rental of a comparable site if the owner is a 90-day site owner, or if the owner is a site tenant or a less than 90-day owner-occupant of the acquired site.

### **F. Replacement Housing for 90-Day Mobile Home Tenant**

A displaced tenant of a mobile home and/or mobile home site is eligible for a replacement housing payment, not to exceed \$9,570, calculated as described under Section 3 above if each of the following conditions apply:

1. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
2. The person meets the other basic eligibility requirements from Section 3 above and
3. The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described in Determination of Displacement from the Mobile Home.

**IX. SPONSOR CERTIFICATION** (Note – Chapter exists in current aviation manual. Suggest revision or incorporation here.)