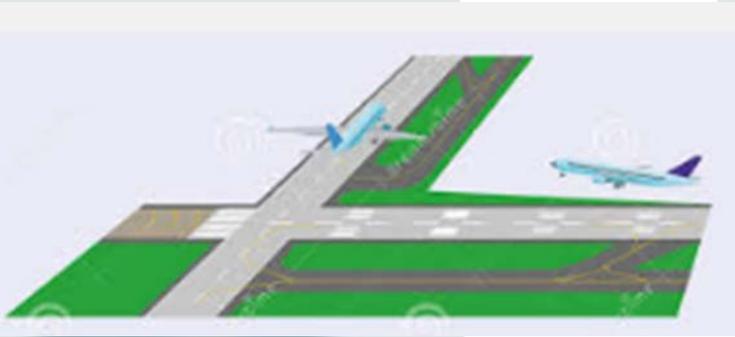




# Real Estate Acquisition and Relocation Assistance for Transportation Projects

*Presented by  
South Dakota Department of Transportation  
Right of Way Office*



# What we will discuss today

## Module

- 1 Introduction
- 2 The Uniform Act
- 3&4 Project Development
- 5 Valuation
- 6 Relocation
- 7 Acquisition
- 8 Property Management



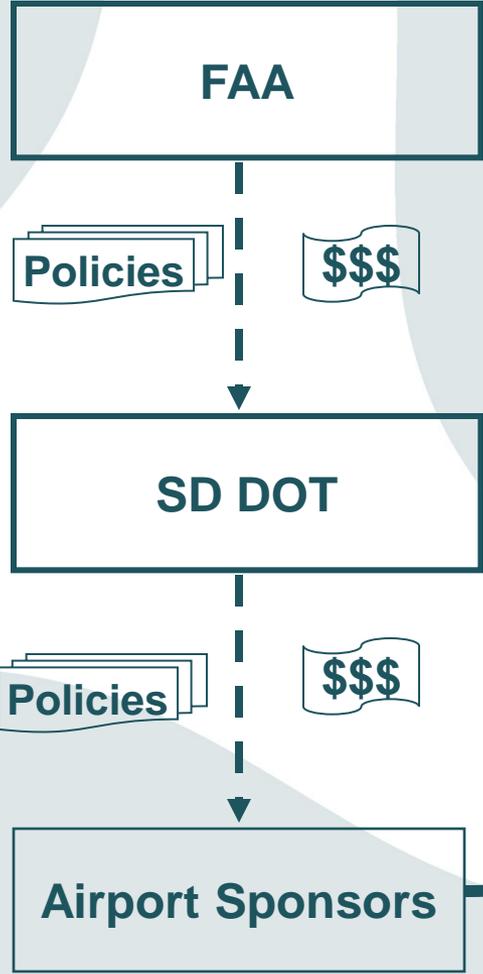
# Introduction

*Real estate acquisition for Federal-Aid projects.*



# Real Estate Acquisition Activities

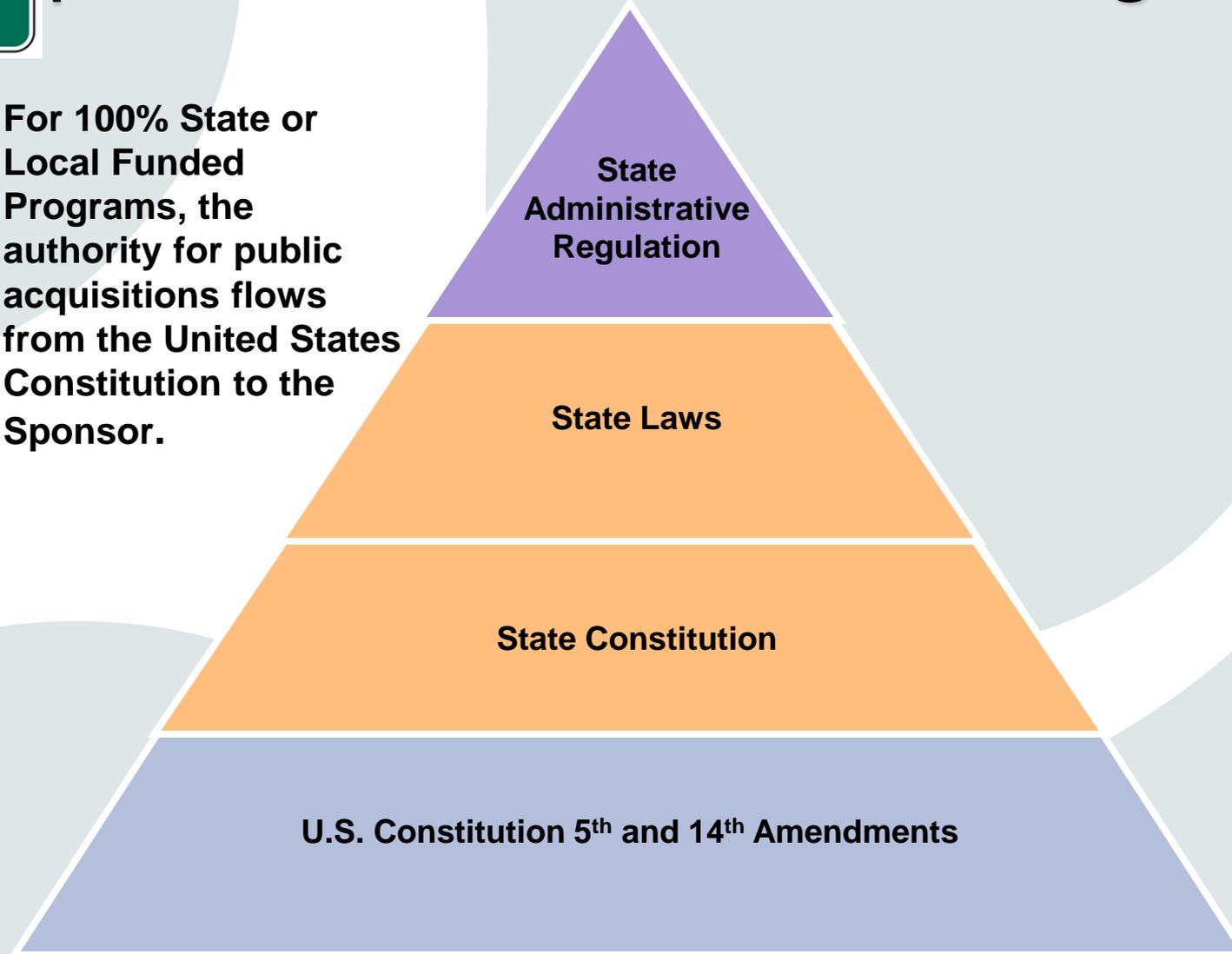
FAA is a policy/program direction setting agency, providing oversight and funds through State Departments of Transportation for Airport Sponsors to develop transportation projects.





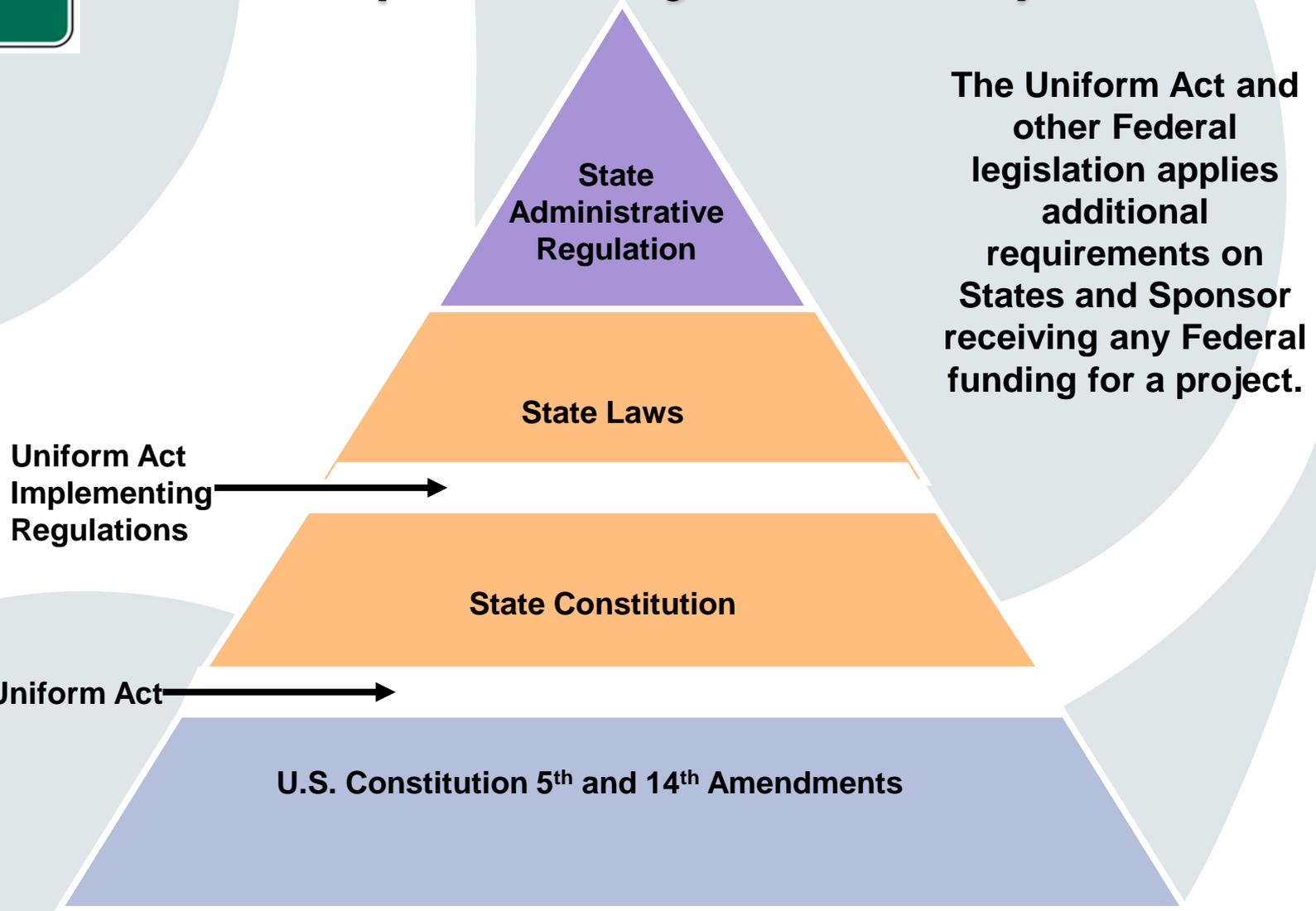
# ***Legal Authority to Acquire Property (100% State/Local Funded Programs)***

**For 100% State or Local Funded Programs, the authority for public acquisitions flows from the United States Constitution to the Sponsor.**





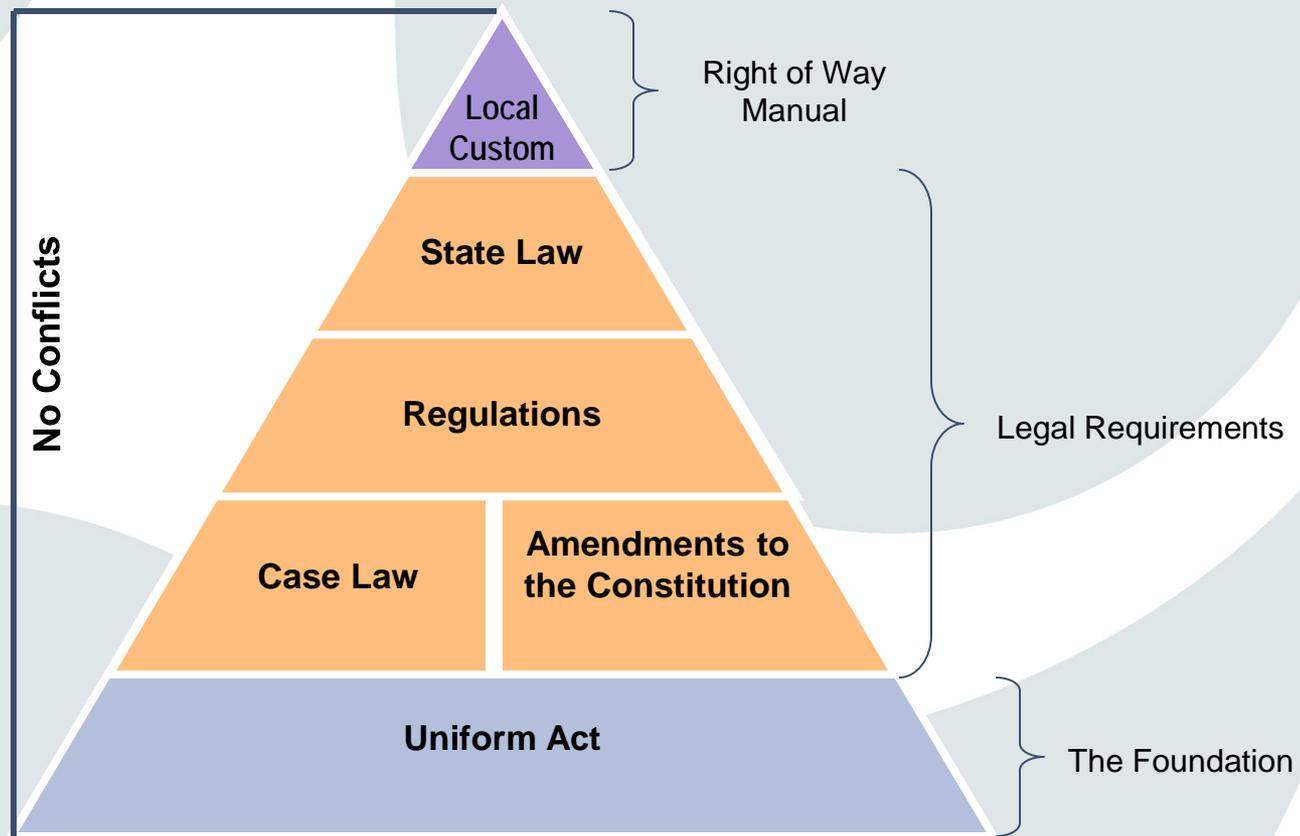
# ***Legal Authority to Acquire Property (Federally Assisted)***





# ***Legal Authority to Acquire Property***

The Uniform Act is the foundation which sets the minimum standards for most land acquisitions by public agencies in the United States.





# Federal Laws and Regulations for Property Acquisition

- Federal Law, passed by U.S. Congress – (42 USC 4601 et seq)
- Code of Federal Regulations: 49 CFR Part 24 – Transportation.
- **Acquiring Land for Airports and Relocation Assistance**  
[http://www.faa.gov/airports/environmental/relocation\\_assistance/](http://www.faa.gov/airports/environmental/relocation_assistance/)
  - ◆ FAA Order 5100.37B.
  - ◆ Forms Used in Federal Relocation Activities
  - ◆ Other applicable advisory circulars, publication & forms, contacts, and other related sites



# State Laws and Regulations for Property Acquisition

Article VI, Section 13, of the South Dakota Constitution, provides that private property shall not be taken for public use or damaged without just compensation.

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=0N-6-13>

- The South Dakota Constitution and state statute require that when property is taken for a highway construction project, the state must provide the landowner with just compensation for the taking. The term just compensation as provided for in the constitution and statute is the full market value of the property at the time of taking. The measure of just compensation in cases involving a partial taking is the difference between the market value of the unit before the taking and the market value of what remains after the taking.
- The policies and procedures are set forth in the SD DOT Right of Way Program Manual.



## The Uniform Act

# **TITLE 49 CODE OF FEDERAL REGULATIONS PART 24, UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

*The Federal law governing relocation assistance and  
real property acquisition.*



# Before the Uniform Act, each Federal Agency could have different property acquisition processes





# When Is the Uniform Act Applied?

1. All transportation projects receiving Federal funding or financial assistance, when:
  - ◆ Real property is acquired.
  - ◆ Property owners and/or tenants are displaced from their acquired home, business, farm, or non-profit real property.
  - ◆ These policies are in effect even when there is no federal assistance in the land acquisition



# How is the Act Applied?

1. Appraise properties unless
  - ◆ The landowner donates his/her property & releases state from this obligation
  - ◆ Agency determines that an appraisal is unnecessary and a Appraisal Waiver is prepared
2. Offer to the property owner to accompany the appraiser.
3. Appraisal Review
4. Determination relocation benefits
5. Establishes just compensation
6. Negotiate and purchase property.
7. Assist landowners and tenants with relocation.



## Uniform Act Compliance

- SD DOT documents that they comply with the Uniform Act.
- Airport Sponsors certify they follow their State's Uniform Act assurances.

*Failure to comply with the Uniform Act will result in denial of Federal-Aid and sharing the financial costs of transportation projects.*



# Project Development and Administrative Matters

*How real property acquisition activities relate to the overall project delivery process.*



# Project Development Timeline



Start

End

Planning

Project Design

Construction

*Real Estate Appraisal and  
Acquisition/Relocation*

*Right-of-Way Certification*

**Right-of-Way activities primarily take place in the Project Design phase, with Right of Way Certification a prerequisite for initiating the Construction phase.**



## **ROW Activity – Planning Phase**

- Surveying and initial property descriptions.
- General right-of-way cost estimates.
- Analysis of impacts and solutions for relocation issues, if any, for landowners or tenants.
- Coordination with utilities – planning, right-of-way/easement acquisition, and relocation.



## **ROW Activity – Design Phase**

- Survey and complete property descriptions.
- Finalize right-of-way requirements.
- Finalize right-of-way cost estimates.
- Address whether project construction features (Special Benefits) will be considered in lieu of payment of appraised damages to remaining property.
- Perform advance acquisition of hardship cases and protective purchases of properties (subject to statute and funding constraints) that could potentially be developed and compromise the project location.



# Right of Way Acquisition Phase

- Appraise, review the appraisals, and negotiate all needed properties when the design is sufficiently complete and environmental assessment is complete.
- Relocate all landowners and/or tenants.
- Manage acquired properties to achieve the greatest net return to the project until construction begins.
- Complete administrative settlements or file eminent domain proceedings to settle through condemnation.

# Steps in Land Acquisition



Identify  
Parcels

Appraisal

Appraisal  
Review

*Determine Relocation  
Benefits*

Offer of Just  
Compensation

Negotiation

Settlement

Administrative  
Settlement

Alternative  
Dispute  
Resolution

Condemnation

Complete  
Acquisition





# ROW Activities Leading to Certification

- Property Description.
- Appraisal problem determination.
- Appraiser and review appraiser selection.
- Selection of qualified acquisition and relocation consultants
- Appraisal
- Appraisal review.
- Determination of relocation benefits
- Just Compensation.
- Negotiation.
- Administrative settlement.
- Mediation or condemnation.
- Lien Release
- Record Deeds & Releases



# Right of Way Certification

Certification of right-of-way acquisition for a project addresses two issues as follows:

- ◆ Certifies that the Sponsor owns or controls all right-of-way necessary to build the project, or ,if not, any exceptions are explained in detail along with the discussion of availability dates of when the right-of-way will be owned or controlled and
- ◆ All right-of-way acquisition and relocation assistance has been carried out in compliance with the Uniform Act and the State's Uniform Act assurances.



# Impediments to Project Delivery

- Compressed project schedules.
- Limited project funds.
- Complicated regulatory environment.
- Extended supplemental studies, EIS.
- Lack of coordination within or/by project team.
- Design behind schedule or late changes.
- Exclusion of ROW coordination/activities early in project planning and design phases.



# Module 5: Valuation

*The analysis and work steps to place a value on an individual land parcel.*



# Appraisal Waivers

An appraisal is not required if:

- a. The owner is donating the property and releases the Sponsor from its obligation to appraise the property, or
- b. The Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the market value is estimated at \$10,000 or less, based on a review of available data. When an appraisal is determined to be unnecessary, the sponsor shall prepare a waiver valuation of the proposed acquisition.
- c. The FAA may approve a Sponsor exceeding the \$10,000 appraisal waiver threshold, up to a maximum of \$25,000. If approving an increase the FAA must ensure that the Sponsor offer the property owner the option of having the Sponsor appraise the property. If the property owner elects to have the Sponsor appraise the property, the Sponsor shall obtain an appraisal meeting all applicable requirements.



# Definitions

An appraisal in the is a written statement independently and impartially prepared by an qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date and supported by the presentation and analysis of relevant market information.. 49CFR24.2 (3)

Market value is the highest price for which property considered at its best and most profitable use can be sold in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment. The market value of property includes every element which affects such value and which would influence a willing and able purchaser at the time of taking. Market value does not mean speculative or remote value, nor one affected by sentimental or adverse elements. The measure of consequential damages to the remainder is the difference between the fair market value of the remainder of the tract immediately prior to the taking and its value thereafter.



# Appraisals

The Sponsor has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice. Some of these requirements are different than those done for lending or insurance purposes

- The owner of the property being appraised must be offered an opportunity to accompany the appraiser during the inspection of the property.
- Value must exclude Items generally held to be non-compensable in eminent domain include the loss of business, payment for goodwill, frustration of development plans, and other limitations described in the Uniform Appraisal Standards for Federal Land Acquisitions, as well as applicable state eminent domain laws, as ineligible for Federal reimbursement.
- The appraiser in developing and reporting the appraisal 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 physical deterioration within the reasonable control of the owner.
- Determination of the larger parcel, which may be greater than the property identified on the property plat.
- Before and after appraisals for partial acquisitions. Note: You can have more than one after appraisal, if needed.
- Additional requirements for verification of sales data and certification of the appraiser
- The statement of the value of real property to be acquired and, for a partial acquisitions, a statement of the value of damages, and benefits, if any, to the remaining real property.



# Appraisal Review

All appraisals used under the Uniform Act are subject to the review and approval (or recommendation) by a review appraiser prior to the commencement of negotiations. The total appraisal process is not complete until the review of the appraisal has been completed and a determination made as to whether the work adequately supports the market value opinion for the property.

An appraisal review is a technical review of an appraisal by an experienced, and qualified review appraiser. Appraisal review is a critical quality control element in the valuation/acquisition process. In some agencies, the review appraiser acts for the agency in estimating the just compensation to be offered for the acquisition. An appraisal review is not only an arithmetic or grammatical review of an appraisal report. It is a comprehensive technical examination of the appraisal, as reported by the appraiser.



# Selecting Appraisers and Review Appraisers

The sponsor shall establish qualification criteria that at a minimum assure the competency of its appraiser and the review appraiser is consistent with the scope of work and level of difficulty of the appraisal assignment. The sponsor shall review the experience, education, training, and other qualifications, and will use only those determined to be qualified. The sponsor may obtain referrals for qualified appraisers and reviewers from other airport sponsors, the local offices of the state highway department, or local housing agencies.

1. Professionalism. – For complex and high dollar appraisals, the fee appraiser must be a State Certified
2. Competency. The selection of the appraiser should be based on individual project or complexity of parcels to be acquired. The appraiser must also have applicable education and training in the requirements of appraising under FAA regulations & the Uniform Act. In addition, the review appraiser should have additional education and training in the review process.
3. Past experience (i.e., eminent domain) and quality of services provided to other clients.

The term review appraiser is used rather than reviewing appraiser to emphasize that review appraiser is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal agencies have long held the perspective that appraisal review is a unique skill, while it certainly builds on appraisal skills, requires more.



# Relocation

*An overview of the relocation process and responsibility Sponsors have in relocating property owners impacted by Federally funded projects.*





# Relocation Notices

- Notices provide information to assist displaced entities in understanding their benefits and comprehending the impact of the project on them. Notices types include:
  - ◆ General Information Notice.
  - ◆ Notice of Relocation Eligibility.
  - ◆ 90 Day notice to vacate.
  - ◆ 30 Day notice to vacate.



# Relocation Notices (cont.)

- **General Information Notice** - a brochure that provides a general description of the agency's relocation program, including benefits, responsibilities, and protections.
- **Notice of Relocation Eligibility** - a letter sent to an individual when it is determined that a person will be displaced. The letter informs the occupant that he or she will be displaced and therefore, will be eligible for relocation benefits.



## Relocation Assistance Brochure

prepared for the

**South Dakota  
Department of Transportation  
by the  
Right of Way Program**



Your Rights and Benefits as a  
Displaced Person Under the  
Federal Relocation Assistance Program

October, 2014

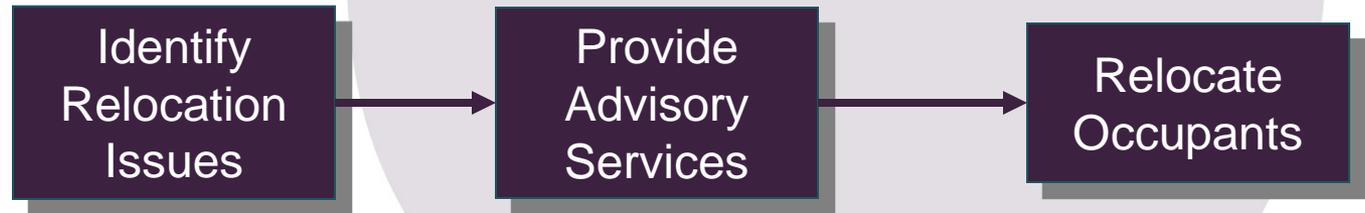


# Relocation Process- Residential Owner/Tenant

## Input

- Interviews with Displacees.
- Offer to acquire property.
- Identify comparable replacement housing (RH) property to buy/rent.
- Schedule move.
- DSS Inspection.
- Contract for Replacement Property Buy/Rent.

## Process



## Who

Relocation Specialist

Relocation Specialist

Relocation Specialist

## Output

- Notice of Relocation Eligibility.
- RH Payment Calculation Buy/Rent.
- Moving Estimates
- Vacate notices.
- Settlement of Replacement Property.
- Document Eligibility.
- Reimbursement of RH Benefits.
- Payment of Move Costs.
- Certify Compliance with Uniform Act.



## **Relocation Process- Residential Owner/Tenant**

Residential occupants, both owners or tenants, cannot be forced to vacate until comparable housing is made available. Relocation benefits Include:

1. Moving Cost Reimbursements
2. Replacement Housing Payments
  - Purchase Supplement
  - Rental Assistance
  - Down payment
3. Incidental Expenses
4. Relocation Advisory Assistance



# What is Comparable Replacement Housing

Housing made available to displaced residential occupants that is:

- At least decent, safe and sanitary (DSS).
- Functionally equivalent to the displacement dwelling.
- Substantially the same as displacement dwelling with regards to location, size, area, etc.
- Currently available on the market.
- Within the financial means of the displaced.



# Business Relocation

All businesses displaced are entitled to advisory services to assist in finding a replacement business site. There is, however, not a requirement that the LPA find a replacement site for the business, as in the case of a residence.

A range of payments and services intended to move the personal property of a business and assist it with reestablishment. Advisory Assistance

## Actual Moving Cost

- Hauling.
- Packing.
- Disconnect/reconnect.
- Storage.
- Insurance.
- License, permit, certification.
- Payment for damaged or lost/stolen property.
- Professional services.
- Relettering signs.
- Direct loss/substitute property.
- Cost of sale.
- Searching.
- Exterior signs.
- Licenses, fees and permits.
- Studies, testing.
- Professional services.
- Impact fees.
- Other.

## Reestablishment Payments

- Code required improvements.
- Modifications.
- Exterior signage.
- Utility Charges.
- Repair/replacement of worn surfaces.
- Advertisement.
- Certain increased costs.
- Other Items.

OR

## Fixed Payments

- Lump sum in lieu of actual cost and reestablishment payments.



# Relocation Payments and Services

## Residential:

- Moving costs (based on fixed amount or actual cost).
- Advisory services.
- Replacement Housing Benefits.

Fixed or  
Actual Moving  
Costs

Advisory  
Services

Replacement  
Housing  
Benefits

## Nonresidential:

- Moving costs (fixed or actual) including searching expenses.
- Business reestablishment costs.
- Advisory services.

Fixed or  
Actual Moving  
Costs

Business  
Reestablishment  
Costs

Advisory  
Services



## Remember

- Provide at least 90 days written notice of the date by which the move is required
- Pay the agreed purchase price before requiring the property owner to surrender possession of the property being acquired.



# Acquisition and Negotiation

*The necessary steps and required activities in land acquisition for public projects; introduces settlement techniques; and explains basic condemnation principles and practices.*

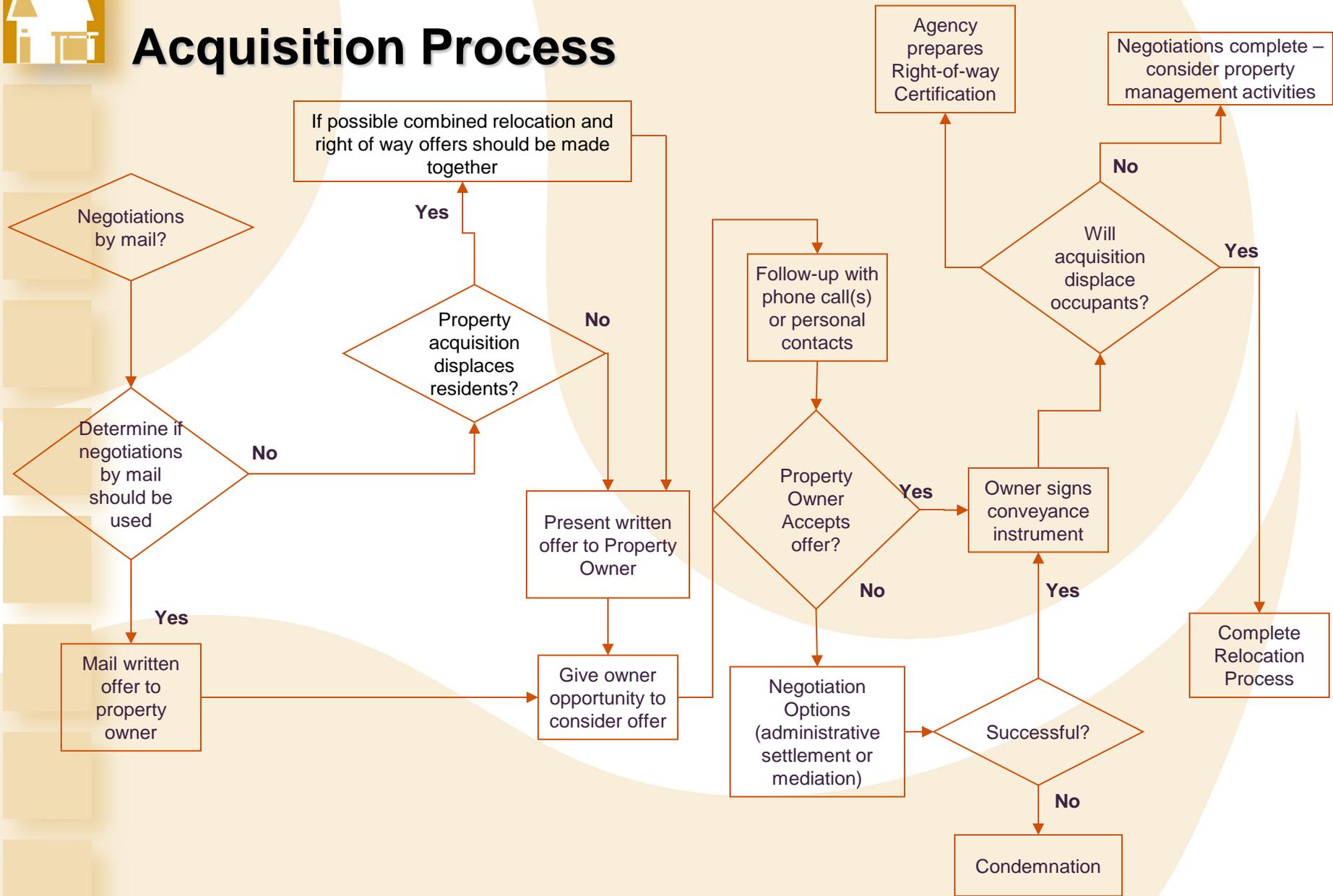


# Real Property Acquisition

- Very sensitive topic to the public – involving direct contact between Sponsor and people affected by transportation projects.
- The Sponsor's primary goal regarding real estate acquisition is to acquire right-of-way through negotiation – avoiding condemnation process whenever possible.



# Acquisition Process





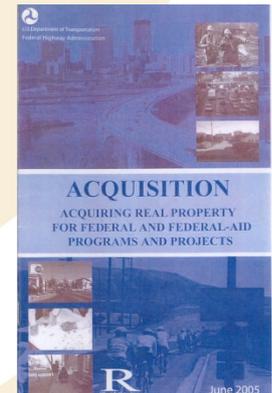
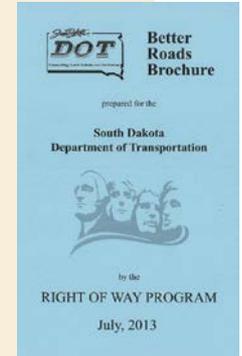
# How the acquisition process works

- Promptly following the appraisal review and the establishment of just compensation, the sponsor must make a written offer to acquire the property for the full amount of just compensation.
- Personal contact is made with the owner / occupant; information is given about the public project, the project's right-of-way requirements, the impact on the owner / occupant; the owner's right to accompany the appraiser during the inspection of the property.
- Allow the property owner time to consider the offer.
- Enter negotiation with the property owner without any attempt to coerce the owner into reaching a settlement.
- *What points might be negotiable?*
  - ◆ *Price.*
  - ◆ *Terms.*
  - ◆ *Closing Date.*
  - ◆ *Possession Date.*
  - ◆ *Project Specifications / Construction Modifications.*



# Personal Contact

- The sponsor's negotiator is to personally contact each owner with the sponsor's written offer of "just compensation". Schedule meetings (both time and place) that are convenient to the property owner. Nonresident owners may be contacted by certified mail.
- Explain property acquisition process, including negotiations, Sponsor responsibilities, and what the property owner is responsible for.
- Provide copies of brochures or pamphlets on property acquisition. Most DOT and FAA have brochures which can be utilized.





# Owner Opportunity to Consider Offer

- Sponsors must provide owners reasonable time to consider offer.
- Eliminates any appearance of coercion.
- Provides owner opportunity to gather and present information that may affect determination of property's value.
- Sponsors must consider any information brought forward by owner that was not considered during the appraisal period.



## **No Coercive Actions**

- Sponsors must conduct negotiations in a non-coercive atmosphere.
- Sponsors or representatives can not make “take it or leave it” proposals.
- Sponsors can not advance the timetable for condemnation, deferring of negotiations, or deposit of funds with the court to coerce an agreement.



# **When Negotiations Fail**

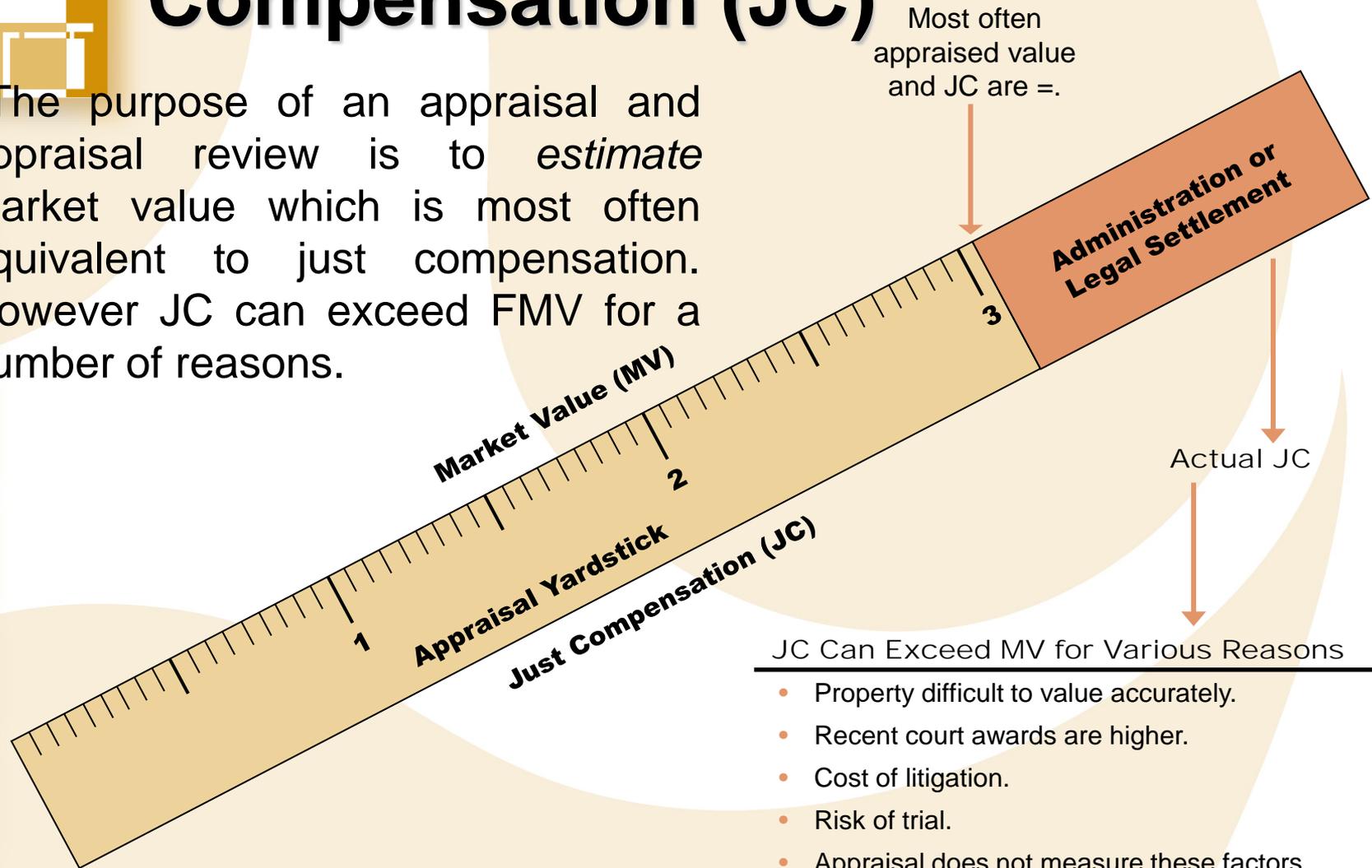
## **Three Alternative Settlement Techniques:**

- Administrative Settlements.
- Alternative Dispute Resolution.
- Eminent Domain and the Condemnation Process.



# Market Value vs. Just Compensation (JC)

• The purpose of an appraisal and appraisal review is to *estimate* market value which is most often equivalent to just compensation. However JC can exceed FMV for a number of reasons.



## JC Can Exceed MV for Various Reasons

- Property difficult to value accurately.
- Recent court awards are higher.
- Cost of litigation.
- Risk of trial.
- Appraisal does not measure these factors.



# Administrative Settlement

- Administrative settlements are made before invoking an agency's condemnation authority.
- Settlement offer is typically more than the approved offer of just compensation.
- Settlement offer can include adjustments to the initial offer (closing date, possession date, etc.).
- Sponsors should consider administrative settlements when reasonable efforts to negotiate an acquisition have failed, but there appears to be a potential for agreement.



# Administrative Settlement or Condemnation?

- Is time an issue?
- Would litigation delay construction?
- How many other parcels remain to be acquired on this project?
- What is the opinion of the agency's counsel?
- Will the property owner be effective in pleading their case?
- What is the quality of the property owner's witnesses?
- Can an administrative settlement be reached?
- Is mediation an alternative?



## Role of Legal Counsel

- Failure of negotiations leaves Sponsor to invoke eminent domain, shifting settlement from administrative venue to the courts.
- Sponsor turns over acquisition process to their legal counsel to institute condemnation proceedings.
- Sponsor need to coordinate acquisition process activities with legal counsel.



# Alternative Means to Acquire Property

- Donations.\*
- Donations in Exchange for Construction Features.\*
- Dedication.
- Incorporation of Sponsor Owned Land in the Project.\*
- Functional Replacement.

**\* May be eligible for total or partial credit toward LPA matching share requirement = reduced project cost for LPA.**



## Record of Calls

- A comprehensive log of conversations and interactions with property owners.
  - ◆ Provides an accurate record of communications.
  - ◆ Documents that the acquisition was done in an appropriate manner.
  - ◆ Provides paper trail of work completed on individual parcels



# Property Management

*Introduce participants to property management activities the LG may conduct after acquiring real property.*



# What is Property Management?

- **Property management is the administration of acquired lands and improvements, including:**
  - ◆ Maintenance and protection, such as the repair of dangerous conditions and preventing illegal occupancy.
  - ◆ Rental and leasing of acquired property; if property is not needed immediately, it can be used to produce income.
  - ◆ Disposal of property no longer needed, such as excess parcels, remnants, old right-of-way and structures for salvage.

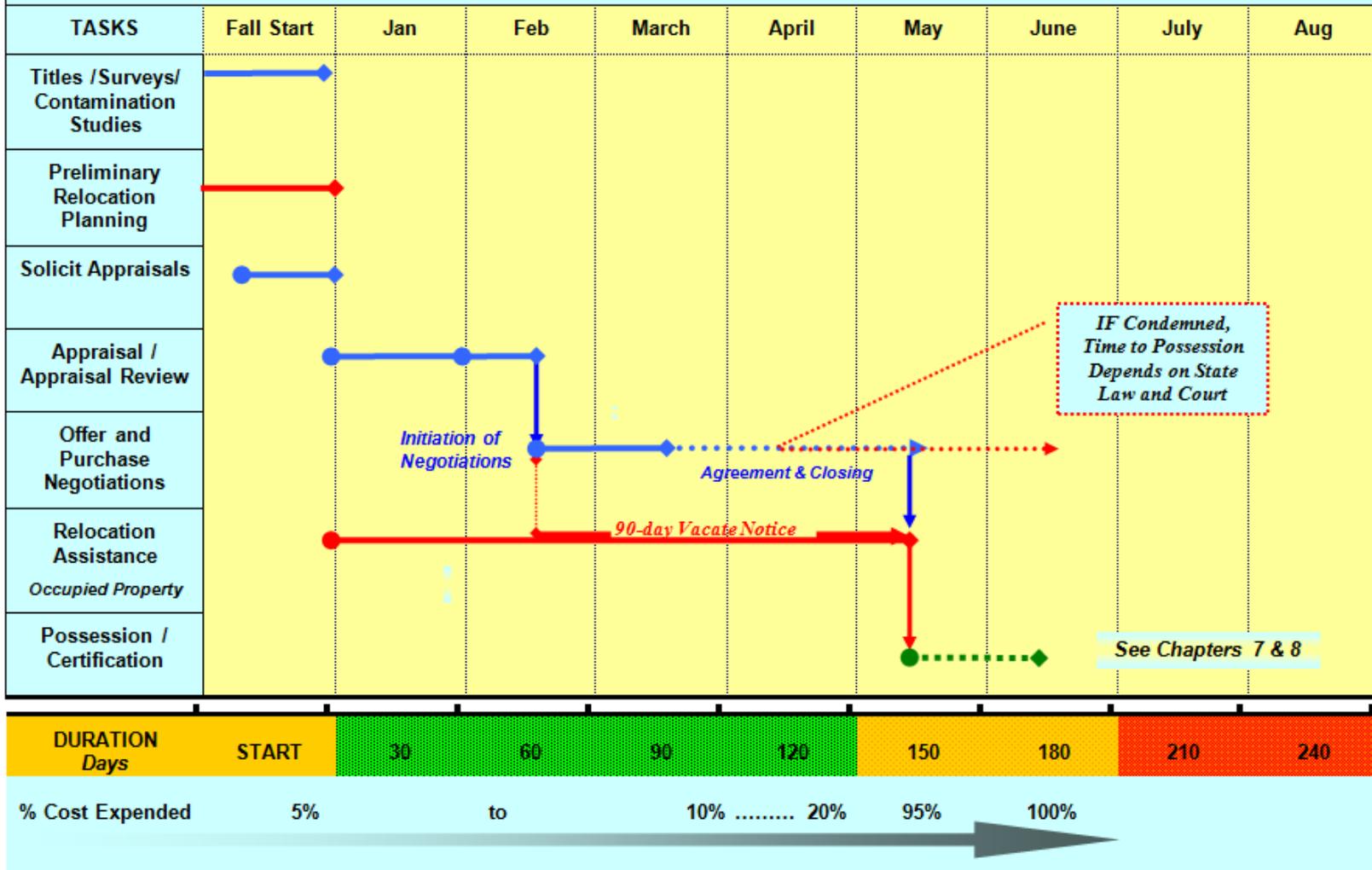


# Closing



**Figure 1-2: Required Tasks under 49 CFR 24 Requirements**

*Lead Time Estimate = (Total Parcels / Parcel Workload per Agent) / Agents X Parcel Task Time + Coordination Buffer*



***A Complex Property and Relocation Require More Time. Good Planning and Preparation Save Time!***



# ROW Consultants during the Acquisition Phase

1. Appraiser
2. Review Appraiser
3. Acquisition Agent
4. Relocation Agent
5. Attorneys

All ROW consultants should have the applicable training and experience in the Uniform Act.

SD DOT ROW program may provide services for items 1 thru 4, depending on the availability of staff.



# Data to be provided during the ROW Consultant Selection

- Standards of Appraisal – Uniform Act , FAA, SD DOT ROW
- Property Plat
- ROW Plan Sheet (aerial)
- Construction Plans
- General description of each property to be appraised (Assessor's card is a possible source)
- Landowner names
- A copy of the easement agreement and/or explanation of rights be acquired



## Once the ROW Consultant has been selected

- A meeting with the design engineer to explain project and any known concerns that the landowner has expressed (Landowner notes)
- Title certificates
- Landowner contact information
- Tenant contact information
- Name of relocation agent, if applicable
- Service Contract



# Impacts of Project Expansion

Most of the potential problems a property owner could encounter due to a project expansion can be addressed by the SD DOT ROW Staff who can help solve any problems encountered using various tools including:

- ◆ U.S. Constitutional guarantees.
- ◆ The Uniform Act.
- ◆ State Constitution and State laws.
- ◆ SD DOT Right-of-Way Manual





# **Right of Way Program**

## **Department of Transportation**

### **605-773-3746**

- ◆ Joel Gengler, Program Manager
- ◆ Andy Jackson, Acquisition & Relocation Supervisor
- ◆ Audrey Nelson, Appraisal Supervisor