

2008 FHWA Incentive Payments Peer Exchange Report Portland, Oregon

On August 13 and 14, 2008, the Federal Highway Administration (FHWA) Office of Real Estate Services facilitated a peer exchange to share information on use of relocation and acquisition incentive payments. Guidance issued April 26, 2006, on use of incentives can be found at <http://www.fhwa.dot.gov/realestate/acqincentguid.htm>.

Several State Departments of Transportation (DOTs) have made use of incentive payments and shared their insights and lessons learned. Each DOT set up a process and received approval by the FHWA Division office. It is important to note, as you read through the following summary of presentations and discussions, that each agency developed a unique procedure that reflects its needs. The FHWA does not recommend one procedure over another, and use of incentive payments by an agency is voluntary. The participant list at the end of the report contains contact information.

Wednesday, August 13

► Welcome and Introductions

Virginia Tsu, FHWA Oregon Division Realty Specialist

Gerald Solomon, FHWA Director Office of Real Estate Services

Deolinda Jones, Oregon DOT Right of Way Manager

- How the incentive payment initiative came about: use of incentive payments is a result arising from two of the pilots FHWA undertook after the 2000 International Scan Tour to Europe. There is a second International Scan Tour to Australia and Canada in September 2008.
- FHWA is looking at how programs are financed and how they can be developed and managed. One area that generates interest is commercialization of highway rest areas.
- Surface Transportation Environment and Planning Cooperative Research Program (STEP) funds pay for programs such as peer exchanges.
- Recruitment: Professional Development Program/Intern program is FHWA's recruitment effort to bring people into the real estate field.
- See attached list of participants and the agenda.

► Overview and Background of the FHWA Policy

Kathleen Facer, FHWA HQ Realty Specialist

- 2000 European Scan Tour for ROW and Utilities Best Practices.
- 13 pilots from CA, FL, MI, MS, NC, S. FL, VA, WA, and WI resulted from the 2000 Scan.

- At the peer exchange Kathy said FHWA uses Special Experimental Project 15 to test a procedure that differs from Title 23 regulations. The actual authority is 23 United States Code (U.S.C.) Section 502.
- Authority to deviate from 49 Code of Federal Regulations (CFR) Part 24 is found in the waiver provision, 49 CFR 24.7.
- Requests for approval of new pilots should go through the Division to the Office of Real Estate Services.
- Pilots have to clearly define the alternative procedures; show how data will be captured and show what will be the control, so we can evaluate if the new process works; and document the results.
- The 2000 incentive pilots: FL acquisition, VA relocation, and South Florida Water Management District, a U.S. Army Corps of Engineer (USACE) project.
- Show reduction in time to acquire and clear right-of-way (ROW) with no reduction in property owner benefits.
- It is hard to measure ROW administrative, acquisition, legal and court costs, but this is a goal.
- Document savings in project construction costs by keeping the project on or ahead of schedule.
- Show that staff cost is reduced or staff hours can be redirected to other efforts.
- Show savings or benefits to the public that can be realized.
- Compared the history of incentives to the history of administrative settlements, which came about in the 1970s, and are not specified in law.
- Why would you want to change a procedure? When you try a new procedure, it takes time before it becomes routine and the process works well. You need leadership support to implement change. Look for streamlining opportunities and efficiencies with a new procedure.
- ROW incentive payments are compared to construction incentive payments.
- ROW incentive payments are a bonus in addition to just compensation and are not included when computing the relocation benefits
- Use of an incentive does not preclude an administrative settlement.
- Current National Cooperative Highway Research Program studies: geographic information systems (GIS) and ROW; outdoor advertising control (driving distraction); and cost estimating.

► **Florida DOT Acquisition Incentive Program**

Kenneth Grimes, Florida DOT Deputy Manager Acquisition

Thomas Shields, Florida DOT Manager Appraisal and Appraisal Review

FDOT Pilot Procedures

- Florida eminent domain statutes pay attorney and expert fees.
- In 2007, FDOT paid \$28M for attorney fees. They want to take the money that would otherwise go to attorney and expert fees and use it as justification for an incentive payment that would directly benefit owners.
- Their pilot began in 2003 with three projects with different demographic characteristics and philosophical approaches.

- Incentive based on the amount of the parcel.
- Uneconomic remnants do not receive incentives.
- Multiple takings from the same parent taking: if there are multiple takings from the same parent tract – i.e., temporary easement, permanent acquisition – they use separate incentives for the separate takings.
- If design changes results in a second offer, they do not use incentives for the second offer due to the attorney/expert fees being calculated on the first offer.
- Pre-suit negotiations originally caused concern at the FHWA Florida Division.
- They do not change the negotiation process when they use incentives, and the incentives are not used as a substitute for the relocation supplemental payment.
- Only one 1099 is issued.
- The offer stands until they file for condemnation.
- The incentive is treated as a pre-approved administrative settlement
- It does not affect relocation entitlements
- When they condemn, they use only the approved appraisal estimate and defend it vigorously.

FDOT Pilot Results

- Payout of fees and costs were reduced. The pilot resulted in the payout, compared to the initial appraisal, being reduced by 10 to 24%. Fees and costs reduced 11 to 19%.
- Project delivery time reduced 10 to 62% in two districts; and 0% reduction in the third district due to design changes during the right-of-way phase.
- Again, the offer is available up to the date suit is filed.
- Reduced 47% from their statewide average of total payout compared to initial appraisal.
- Reduced 63% from statewide average of time from initial offer to title transfer
- Negotiation settlement rate increased to 79% from 70% statewide average

FDOT Full Implementation

- FDOT has 16 projects that are currently approved for incentive payments. Project selection for use of incentive payment is approved by the Director with an expectation to save time and costs. Not all projects use the process.
- The timeframe to settle varies, but cannot be less than 30 days, as required by Florida statutes.
- They will either use incentives on an entire corridor or not use them. Equity to the property owners is a key part of the process.
- They treat incentives as though they are pre-approved administrative settlements with no additional documentation required.
- FDOT studied the payment schedule and set the incentive payment ranges based on the cost of doing business.
- They have not used a relocation incentive program because relocations have not affected their ability to deliver projects. This is the 2008 FDOT acquisition incentive payment schedule:

Approved Compensation is			
Over	But Not Over	Incentive	of Amount Over
\$0	\$1,000	\$1,000	
\$1,000	\$2,500	\$1,000 + 83.3%	\$1,000
\$2,500	\$5,000	\$2,250 + 70%	\$2,500
\$5,000	\$7,500	\$4,000 + 50%	\$5,000
\$7,500	\$10,000	\$5,250 + 45%	\$7,500
\$10,000	\$20,000	\$6,375 + 40%	\$10,000
\$20,000	\$30,000	\$10,375 + 35%	\$20,000
\$30,000	\$100,000	\$13,875 + 32.5%	\$30,000
\$100,000	\$300,000	\$36,625 + 30%	\$100,000
\$300,000	\$513,500	\$96,625 + 25%	\$300,000
\$513,500		\$150,000	

► **Virginia DOT Relocation Incentive Project**

Joy Layne, Assistant Program Manager

In Virginia, the Woodrow Wilson Bridge Project was the largest bridge project in the U.S. It was 7.5 miles long and a major I-95 link on the east coast. Relocation included 333 tenants in apartment towers. The original 18 month relocation schedule was reduced to 8 months, therefore VDOT decided to offer a relocation incentive. VDOT already owned the property before the tenants moved. Replacement housing was identified prior making to the relocation supplement (RHP) and incentive offers. If the relocation was conducted within 30 days of the RHP offer, then tenants received \$4000 (283 tenants qualified). If the move took place 31-60 days after the RHP offer, the tenant received \$2000 (15 tenants qualified). There were no exceptions. It was voluntary and the payment was in addition to the RHP amount to which the tenants were entitled. The dates the RHP offers were made were staggered in order to provide for orderly relocation. The RHP offers were high (ranging from \$11,000 to \$42,000), based on low income levels and rental rates that were low on the displacement units while comparable rental rates in the Northern Virginia area were much higher.

VDOT located 25 comparable rental units in the area and used protective rent to hold these open and make them available to tenants if they chose to relocate to them. Few of the protective rental units for which VDOT arranged to be held open were used. VDOT hired a right-of-way consultant firm who used 19 relocation agents to prepare the relocation housing supplement offers and assist the tenants. A second right-of-way consultant firm was hired to review the RHP offers. Many displacees moved to temporary quarters with relatives in order to qualify for the incentive payment and moved into their final replacement housing later. VDOT paid for one move only. Almost half of the displacees (169 tenants) purchased homes using the downpayment option.

While incentive payments of \$1,162,000 were paid, the total estimated project cost savings was \$4,839,278 and this was considered a total success. There were increased ROW costs but these were offset by project savings.

VDOT has used relocation incentives on another project that affects 44 businesses. On this project VDOT offered \$100,000 to businesses that completed the move by day 30 after the relocation was approved; and \$50,000 to businesses that completed the move by day 60. 18 or 19 businesses qualified for the \$100,000 incentive payment.

► **Indiana DOT Incentive**

Steven Penturf, Indiana DOT Acquisition Administrator

Indiana Acquisition and Relocation Incentive Program

Potential time savings is the main criteria to qualify a project to use the incentive payments. The property owner needs to accept and qualify for both the acquisition and relocation incentive payments or they are not eligible to receive either of the incentive payments. The incentive offer does not affect their entitlements. For relocation, the incentive plan is based upon the cost of the move estimate; and it is based on a scale depending on how long it takes to move.

Fee simple acquisitions are offered an additional 10% of the acquisition amount, or a minimum \$3,000; maximum \$100,000.

Temporary easements are offered an additional 10% with a \$1,000 minimum and \$10,000 maximum amount.

Relocation incentives are 10% of the approved actual moving cost estimate or scheduled moving cost, or combination of both; \$5,000 minimum / \$100,000 maximum.

- 100% if moved within 30 days
- 60% 31-60 days
- 20% 61-80 days
- 0% beyond 80 days

Personal property only moves are 10% of the approved actual moving cost or scheduled moving cost, or combination of both; \$1,000 minimum / \$100,000 maximum

- 100% if moved within 30 days
- 60% 31-60 days
- 20% 61-80 days
- 0% beyond 80 days

The administrative settlement rate is probably down. Mr. Penturf did not know of any administrative settlements used when the incentive payment was used. A separate 1099 is provided for the incentive payment.

► **Florida Consultant Projects**

Richard Moeller, O.R. Colan Associates

- This was used by the South Florida Water Management District “Fish Camps” project. The USACE was the Federal funding agency. The use of incentive payments was an attempt to increase the rate of settlements, reduce overall

project cost and to advance the scheduled completion date. A presentation was given describing the Kissimmee River restoration project that restored the natural water flow (meander) of the river between Lake Kissimmee and Lake Okeechobee.

- Acquisition of land for water flowage, due to the possible raising of the water level of Lake Kissimmee required the acquisition of 330 tenant owned improvements (mobile homes).
- For the two mobile home parks involved, there was one fee owner of the land, 99 domiciled tenant owner occupants and 231 non-domiciled tenant structure owners. Acquisition incentives were offered to all structure owners; however, relocation incentives were not offered, but occupants had to vacate within 30 days of closing to get the acquisition incentive payment.
- Structure values ranged from \$5,000 to about \$80,000.
- Incentives cost about \$1.4M or about 15% of total real estate acquisition cost.
- To achieve the maximum incentive, the tenant owner had to accept the offer within 30 days, and then move within 30 days of closing, while being afforded a minimum of 90 days notice before vacating the property.
- The acquisition incentive was paid upon vacation of the property.
- The maximum incentive was 25% of the offer of just compensation, not to exceed \$5,000.
- As an outcome, 311 parcels actually acquired while contracted to project.
- 316 owners qualified for 100% of the incentive.
- Percentage of settlement was 96% (overall).
- Project accomplished in 6 months with 3 full-time agents and project manager, thus resulting in savings of project overhead costs.

Lessons Learned

- Good communication with owners very important.
- Information sharing with tenant owners to make sure incentive program is understood is very important.
- Project newsletter and public meetings used as a communications tool.
- Reminder notifications about incentive program were sent to property owners.
- Project office was located on site.
- Flexible staffing levels based on project need saved agency costs.

► Lambert Field – St. Louis International Airport, St Louis Missouri

Richard Moeller, O.R. Colan Associates

A relocation move incentive payment was used for this airport for an area that was needed for early construction access. If tenants moved 60 days ahead of schedule (after the replacement housing supplement offer was made), they received \$2000; this was reduced to \$1000 if they moved 30 days ahead of schedule. Both temporary and final moves were paid for by the agency. All occupants (16 displacees) participated in this successful incentive program.

► **Texas DOT Continued Occupancy Relocation Incentive**

John Zimmerman, Texas DOT Acquisition Director

John Reed, Texas DOT Relocation Director

Texas DOT is using a Continued Occupancy Incentive. The idea is to keep people in occupancy of the property until TxDOT is ready to take possession of the property. It does not affect other benefits. They need to make sure that replacement housing is still available, as calculated for the original RHP. They have to stay until TxDOT takes possession, or they forfeit the incentive payment. This can address the property owner concerns that the project will cause the tenants to relocate long before the property is acquired, so the owners would not give TxDOT a list of tenants. TxDOT is able to show the owner that they are trying to keep tenants in place.

It's been used on two projects, and it is an approved procedure in the TxDOT right-of-way manual. If this incentive is going to be used, it needs to be used project-wide. This incentive is used instead of protective rent, which is not allowable under TX law.

► **Wisconsin DOT Incentive**

Norman Pawelczyk, Wisconsin DOT NE Region ROW Program Manager

The Wisconsin pilot had one project with acquisition and relocation incentive payments along side a control project. Both projects had a similar scope (widening from 2 to 4 lanes), bypasses of smaller communities, and a similar number of relocations. Both purchase and relocation incentives were offered. They met with property owners one year in advance of the project to explain the incentive program and overall project. Agents and engineers attended the meeting.

There was a clear benefit as all transactions were completed more quickly than usual. The DOT felt that the relocation agents did a good job of explaining the benefits and the owners and tenants made decisions in a timely fashion. This saved agents' time which could then be directed to other projects. Set \$ amounts were provided for residential incentives. Business-owner purchase incentives were based on a percentage of the offer. Relocation is based on rent or minimum amount, on different schedules based on time it takes a business to move. They require the property owners to initial on three statements.

WI Acquisition Incentive Offers

- Less than \$1,000; the incentive offer is \$500.
- \$1,000 to \$1,000,000; the incentive offer is \$500, plus 20 % over \$1,000.
- Over \$1,000,000; the maximum incentive is \$200,300.

WI Residential Owner Relocation Incentive Offers

- \$10,000; property is conveyed and vacated within 45 calendar days.
- \$5,000; property is conveyed and vacated within 60 calendar days.
- \$2,500; property is conveyed and vacated within 90 calendar days.
- \$0; when property is vacated after more than 90 calendar days.

WI Residential Tenant Relocation Incentive Offers

- \$5,000; property vacated within 45 calendar days after the Relocation Payment Summary (RPS) is provided.

- \$2,500; property is vacated within 60 calendar days of RPS.
- \$1,250; property is vacated within 90 calendar days of RPS.
- \$0; property is vacated more than 90 calendar days after RPS.

WI Business Relocation Incentive Offers

- 5.0% of initial offer; property conveyed and vacated within 60 calendar days. The relocation incentive is 5%, or \$10,000.00, whichever is greater.
- 2.5% of initial offer; property is conveyed and vacated within 90 calendar days. The relocation incentive is 2.5%, or \$5,000.00, whichever is greater.
- 0% of initial offer; property is vacated after more than 90 calendar days.

WI Business Tenants

- Six times monthly rent if vacated within 60 calendar days.
- Three times monthly rent if vacated within 90 calendar days.
- \$0 when property is vacated after more than 90 calendar days.

Thursday, August 14

► FHWA Oregon Division Administrator

Phillip Ditzler, FHWA Oregon Division Administrator

Phil thanked Gerry Solomon for sponsoring the peer exchange and Dee Jones and the Oregon DOT for organizing the logistics and hosting. His hope is to find ways to deliver highway projects faster, and meetings, such as this, offer opportunities to share how different States are working.

► Roundtable: Questions/ Answers/Ideas

Kathleen Facer, FHWA HQ Realty Specialist

Florida DOT

FDOT does not have a law that specifically addresses use of incentives, however, it does not have a law that prohibits using incentives. Relocation is not typically on the critical path and that is why they have not used relocation incentives yet. There are no State statutes that differ from Federal statutes – so they have to pay at least as much as the Uniform Act requires. Under State law, they have to pay move costs for non-federal-aid projects.

The FDOT management has asked the right-of-way managers to develop procedures for use on non-federal-aid projects. For instance, properties under \$100,000 would not be appraised. For relocation, they would offer an incentive or schedule amount in lieu of actual moving costs. For instance, they would offer \$40,000 if the property owner can move in 30 days. These procedures have not been implemented because they need Federal concurrence to retain federal-aid eligibility. They do not have a State law that requires the FDOT to conduct an appraisal if the owner requests one when they are using an appraisal waiver. They do bi-annual quality reviews of appraisals. They store all appraisals electronically, and use them to create case studies where they have district, local public agency, and consultant appraisal staff meet to discuss appraisal problems.

Virginia DOT

The Virginia statutes mirror the Federal statute, except the in lieu of actual moving cost payment has a \$75,000 limit and reestablishment cost is \$25,000.

Indiana DOT

Indiana does not have a statute that prohibits incentives. They have a 10 year business plan to spend \$4B. They use acquisition and relocation incentives on projects where the total project cost is over \$25M. Incentives are used for both residential and businesses. They have not used incentives on businesses very often to date.

Wisconsin DOT

They did not break any rules to use incentives; they just had to define their process as required by the FHWA Division office. Using incentives provides a way to manage risk and to allow for the expeditious acquisition of property needed for transportation projects.

TxDOT

Texas state law does not require an appraisal. They find that districts want to keep pushing to be able to approve administrative settlements at higher and higher levels. Once the word gets out to owners that TxDOT will provide administrative settlements for each transaction, the ROW costs will rise. Is the time savings worth the increased ROW cost? How does one determine overall project savings?

Dave Leighow, FHWA

How about considering an incentive to address business down time when they are preparing for and completing the move. This incentive would have to be worded such that it would not be characterized or considered lost income. It needs to be structured specifically to the needs of the DOT.

TxDOT

Consistency of use by consultants is not always there. This may become more of a problem as they use more consultants. Whenever State DOTs ask to increase the Uniform Act dollar limits, other non-transportation Federal agencies are successful in stopping change. Since State DOTs seem to be the major agencies performing relocations (especially nonresidential), TxDOT thinks transportation agencies should have more influence on making changes to the Uniform Act. This is especially true when many non-transportation agencies make liberal use of the voluntary transaction provisions and, therefore, do not make many relocation payments at all.

Utah DOT

Utah is using design-build on most projects. The ROW office is very active in developing the request for proposal (RFP), but they need to closely track what the engineers are doing to make sure the engineers are not making unilateral changes to the ROW portion of the RFP. Local agencies have to follow the Utah DOT written procedures unless they write their own. So far, this has not been done, but they are expecting this to change. There is something coming that may require State funded projects to use different procedures.

WA DOT

They want to take another look at incentives after hearing other State experiences. The Washington State DOT Southwest Region is considering a possible incentive project. Previously, they were not sure of the benefit but they will reconsider.

STEP Research

Two potential peer exchange ideas are visualization tools to use with property owners (MN) and design-build (UT and TX).

► Peer Exchange Key Points and Wrap-Up

Mary Jane Daluge, FHWA HQ Realty Specialist

David Leighow, FHWA HQ Realty Specialist

Lessons Learned

- One size does not fit; incentive payment process must be tailored to meet State needs.
- One State said to not allow exceptions.
- States can have alternative procedures.
- There is a need for data and analysis to make sure the process works
- Having on-site offices is beneficial.
- Use of incentive payments may not work on all projects.
- Meet early on in the process with the property owners. Keep them informed.
- Be well prepared.
- States have different laws and needs. How can processes be consistent? Peer exchanges provide a forum and platform for this to occur.

Incentive Payments Peer Exchange Agenda

Wednesday, August 13

- 7:00-8:00am **Continental Breakfast Available in Salon A & B**
The wonderful Oregon DOT is providing for your breakfasts and breaks.
- 8:00am **Meet in the Marriott Conference Room Salon A & B**
Casual attire is acceptable, please be comfortable.
- 8:00 – 8:30 **Welcome and Introductions**
Virginia Tsu, FHWA Oregon Division Realty Specialist
Gerald Solomon, FHWA Director Office of Real Estate Services
Deolinda Jones, Oregon DOT Right of Way Manager
- 8:30 – 9:00 **Overview and Background of the FHWA Policy**
Kathleen Facer, FHWA HQ Realty Specialist
- 9:00 – 10:00 **Florida DOT Acquisition Incentive Program**
Kenneth Grimes, Florida DOT Deputy Manager Acquisition
Thomas Shields, Florida DOT Manager Appraisal and Appraisal Review
- 10:00 – 10:30 **Break**

- 10:30 – 11:30 **Virginia DOT Relocation Incentive Project**
Joy Layne, Assistant Program Manager
- 11:30 – 1:00 **Lunch On Your Own**
- 1:00 – 1:30 **Indiana DOT**
Steven Penturf, Indiana DOT Acquisition Administrator
- 1:30 – 2:30 **Florida Consultant Projects**
Richard Moeller, OR Colan Associates
- 2:30 – 3:00 **Break**
- 3:00 – 4:00 **Wisconsin DOT**
Norman Pawelczyk, Wisconsin DOT NE Region ROW Program Manager
- 4:00- 5:00 **Texas DOT Continued Occupancy Relocation Incentive**
John Zimmerman, Texas DOT Acquisition Director
John Reed, Texas DOT Relocation Director
- 5:30 **Hospitality Suite – Informal**
Oregon DOT is providing snacks and an opportunity to network. Dee Jones will announce where the hospitality room is located.

Thursday, August 14

- 7:00-8:00am **Continental Breakfast Available in Salon A & B**
- 8:00am **FHWA Oregon Division Administrator**
Phillip Ditzler, FHWA Oregon Division Administrator
- 8:10- 8:20 **Where We Are and Next Steps**
Kathleen Facer, FHWA HQ Realty Specialist
- 8:20 – 10:00 **Roundtable: Questions/ Answers and New Ideas**
Everyone will have an opportunity to be heard.
- 10:00 – 10:30 **Break**
- 10:30 – 11:00 **Conclude Roundtable**
- 11:00 – 11:30 **Peer Exchange Key Points and Wrap-Up**

Mary Jane Daluge, FHWA HQ Realty Specialist
David Leighow, FHWA HQ Realty Specialist

Power point presentations are available from Kathy Facer. Reminder: peer exchanges and domestic scans are funded with FHWA STEP research money. Your input is needed for future research ideas, including future peer exchanges. Input can be entered by going to the Outdoor Advertising Control / Realty Program Management section of this website by September 22, 2008: <http://knowledge.fhwa.dot.gov/cops/step/nsf/home/#Topics>

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FHWA Incentive Payment Peer Exchange, Portland, Oregon

August 13-14, 2008

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