
Lesson's Learned

Solutions to Common Problems and Needs

Land Acquisition and Relocation Assistance for Airport Projects



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U.S. Department of Transportation
Federal Aviation Administration

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Real Property Acquisition for Airport Projects

Category	Problem / Need	Cost and Quality Issues	Preferred Solution and FAA Requirements
<i>ACQUISITION</i> <i>Voluntary Transaction</i>	Can the “Voluntary Transaction Exception” to the Uniform Act, as defined at 49 CFR 24.101(b) be applied to any airport project where the sponsor will not resort to eminent domain to acquire needed real property?	The voluntary transaction exception to the Uniform Act does not apply to airport expansion or noise buy-out projects.	<p>Airport expansion projects need specific parcels of land to meet sound design and airport operation requirements. Therefore, by definition at 49 CFR 24.101(b) acquisitions for airport expansion are not voluntary transactions.</p> <p>Noise compatibility projects that intend to change land use although often negotiated without threat of condemnation, require possession of most property within a defined project area. Therefore these acquisitions also are not voluntary transactions.</p> <p>Purchase or Sales Assurance is a noise compatibility measure that does not change land use or require any particular property. A participating property owners sale is a voluntary transaction.</p>

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<p><i>ACQUISITION</i></p> <p><i>Voluntary Transaction, Noise Buy-Out</i></p>	<p>The airport has decided not to use eminent domain authority to force possession for its noise buy-out program. Should property owners therefore be advised that the sale of their property is voluntary?</p>	<p>The acquisition of property for a noise buy-out project (purchase and conversion of residential property to compatible land use) is not a voluntary transaction. Voluntary transactions are narrowly defined at 49 CFR 24.101(b) and the defining criteria exclude noise buy-out programs because "all or substantially all property within a geographic area is to be acquired".</p>	<p>Typically, an airport will solicit "voluntary" property owner participation in an airport noise buy-out project. The airport must negotiate the property purchase in good faith with its offer of just compensation conforming to FAA requirements (49 CFR 24.102). However, should a participating owner decline the offer the airport may decide to terminate the current negotiations and not condemn the property.</p> <p>With a buy-out offer, the airport must give the property owner a general information notice describing the acquisition procedure and advising that if they sell to the airport, the owner is a displaced person eligible for relocation assistance and payments. The FAA brochure entitled "Land Acquisition for Public Airports" provides this notice. All purchase offers (first and any following offers) must provide full payment of just compensation not less than the approved appraised fair market value of the property disregarding any value influence of the airport buy-out project.</p> <p>Assembly of property for redevelopment to compatible land use may extend over several years or possibly will not fully develop. Should the lack of a particular property frustrate redevelopment the airport may reinitiate negotiations. If these negotiations fail, the Uniform Act does not preclude the airport or local public agency use of its legal eminent domain authority to condemn needed property.</p>

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<i>ACQUISITION</i> <i>Negotiations, Update of Offer</i>	In "Good Faith" negotiations what is considered "credible" valuation information or material that a property owner may provide for consideration as just compensation?	"Creditable" valuation information is a verifiable fact or valuation opinion that would reasonably lead to an increased fair market value conclusion consistent with appraisal standards and professional practices.	<p>As provided under the governing regulation (49 CFR 24.102(f)&(g)), in its purchase negotiations the airport is to respond to the property owner's presentation of valuation information pertinent to the purchase price of the property. Such owner's information should be provided the review appraiser and as warranted, the offer of just compensation adjusted. The airport may proceed directly to contract / option a property at the confirmed appraised market value.</p> <p>Equally, the review appraiser shall not accept a value or value opinion that is not supported or would be contradicted by acceptable appraisal analysis and support. The reviewer is to assure an acceptable appraisal process and product, and is expected to reject unacceptable value opinions.</p>

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<p><i>ACQUISITION</i></p> <p><i>Administrative Settlement</i></p>	<p>How is an administrative settlement different from an adjusted offer of just compensation made during negotiations?</p>	<p>Administrative settlements are simply that – settlements in excess of the appraised value justified as being in the public interest for a timely and cost effective acquisition of the real property for the airport project.</p>	<p>The use of administrative settlement may be considered an option to condemnation or termination of a stalemated acquisition. Sound project management requires that any proposed or accepted settlement, at a cost above the airport approved and confirmed appraised value, be adequately documented to show the settlement reflects the public interest and is cost effective.</p> <p>Under the Uniform Act reasonable attempts to expedite acquisitions by agreements with owners to avoid litigation and relieve congestion in the courts are encouraged. Administrative settlements may be accepted given the following justification, as applicable:</p> <ul style="list-style-type: none"> ✓ The probable range of testimony in litigation. ✓ The type of property involved and damages, if any. ✓ Recent court awards in the vicinity (particularly involving similar property). ✓ A summary of the negotiation effort and the recommendation of the negotiator to conclude the purchase with a settlement. ✓ The estimate of trial cost, including preparations. ✓ The advice and opinion of legal counsel. <p>The appropriate airport official, with management responsibility for the acquisition project, shall approve an accepted settlement. Adequately supported settlements are an eligible property acquisition cost.</p>

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<p><i>ACQUISITION</i></p> <p><i>Just Compensation, Auction Sale</i></p>	<p>May an airport sponsor purchase a property offered at auction for a FAA assisted project?</p>	<p>Yes, if the property acquisition conforms to the requirements of 49 CFR 24. However, as is practical, when the airport becomes aware of an auction the airport should first attempt to appraise and negotiate the purchase directly with the property owner prior to auction.</p>	<p>The airport may purchase the property at auction consistent with 49 CFR 24 and FAA requirements by documenting the following.</p> <p>The airport provides the owner with a general information brochure (e.g. "Land Acquisition for Public Airports or comparable notice*") and advised the owner of the right to have the property appraised and receive just compensation. The owner may waive this right.</p> <p>If the owner does not waive the right to just compensation, the airport will have the property appraised and the appraiser will provide the owner the opportunity to accompany the appraiser on an inspection of the property. The appraisal shall be reviewed and the review appraiser shall recommend the amount of just compensation for the acquisition.</p> <p>If the auction price is significantly less than the approved appraised fair market value the sponsor shall provide the owner the additional payment required to provide just compensation. If the auction price is greater than the approved fair market value, then the just compensation requirement has been met.</p> <p>Whether the owner waives just compensation or not, displaced persons shall be provided relocation assistance and payments.</p> <p>At the time of FAA funding, the airport may be reimbursed the eligible land cost incurred (i.e. fair market value of the property as of the date of purchase, justified settlement amount, eligible incidental expense).</p>

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<i>APPRAISAL</i> <i>Historic Appraisal</i>	I need a Historic or Retrospective Appraisal. What is it?	A historic or retrospective appraisal is an estimate of market value that is likely to have applied as of a date of value in the past. Historic or retrospective value estimates are typical for condemnation purposes and as well can be made to evaluate a past purchase price as reasonable or not for FAA acceptance (per FAA Order 5100.38A, paragraph 722 Reimbursement for Land Previously Acquired).	<p>The value estimate of a retrospective appraisal is more reliable the more recent the date of value and typically under \$100,000 in appraised market value. At higher values and time frames greater than 5 years, the appraisal assignment becomes more complex and subjective and requires appraisers experienced and competent to perform reliable retrospective appraisals meeting professional and legal appraisal standards. State eminent domain law and procedures will govern court admissibility of data and analysis supporting a retrospective value for condemnation of property.</p> <p>For purposes of AIP reimbursement of past land purchases, FAA acceptance of value estimates, in whole or in part, should depend and cite verified data and documentation that clearly support a reliable value conclusion that would have been eligible for Federal funding as of the date of the purchase. Among other requirements, sponsor certification of Uniform Act conformance is also required for Federal reimbursement of eligible project cost.</p>

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<p><i>APPRAISAL</i></p> <p><i>Report Forms</i></p>	<p>Private appraisers tell me they want to use their standard summary appraisal report forms. Are these acceptable to FAA?</p>	<p>Private appraisers will prefer to use standard forms used widely in the appraisal industry. Appraisal fees may be expected to increase for non-standard report forms.</p>	<p>A summary or short-form appraisal report is acceptable for low value and simple acquisitions. A Self-Contained (or detailed) appraisal report should be prepared for all other acquisitions.</p> <p>Examples of an uncomplicated acquisition are a single-family residence; unimproved residential or small commercial lot or a strip taking from a large parcel not involving significant benefits or damages to the remaining property. The Federal National Mortgage Association (FannieMae) or Federal National Home Loan Bank (FreddieMac) appraisal forms or comparable appraisal report forms in common use are acceptable summary report forms. FAA Form 5100-112URAR provides a cover sheet for summary appraisal reports citing the applicable FAA requirements to include with the form report (i.e. 5 year sales history of subject, disregard of project influence, etc.)</p> <p>It would be expected that the use of form appraisal reports would facilitate appraiser use of appraisal software and reduce appraisal costs on airport projects.</p>

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<p><i>APPRAISAL</i></p> <p><i>Project Influence RPZ Acquisition</i></p>	<p>To appraise property within an existing RPZ, is airport proximity a project influence that must be disregarded.</p>	<p>Project influence is defined at 49 CFR 24.103(b), and provides that on an acquisition of real property for a Federally assisted project 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..."</p> <p>This requirement is applicable to the effects of the specific project for which a property is to be acquired. The influence of any particular airport project does not include the pre-existing condition that a property may have as being located proximate to the airport and to airport operations.</p>	<p>On an AIP assisted acquisition of property located in a RPZ, (acquired to preclude continued land use and/or development incompatible with the airport operations), the current restricted use and effects of airport proximity are considered to appraise the fair market value of the property. The appraiser must evaluate the current property owner's vertical area of effective possession, subject to FAR Part 77 and local land use controls, as it relates to the highest and best use of the property, and also account for any market effects airport proximity has on the fair market value of the property. Comparable property sales for the appraisal are properly selected from sales of property similarly located proximate to the airport, and subject to same or comparable legal restrictions as the subject property.</p>

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<p><i>APPRAISAL REVIEW</i></p> <p><i>Reviewer Determination of Value</i></p>	<p>May the review appraiser approve an appraisal but recommend a different value to secure unit value consistency on a project?</p>	<p>The review appraiser's first task is to secure an acceptable appraisal and prior to acceptance the review appraiser shall "seek necessary corrections or revisions". However, the review appraiser must also ensure consistent and reliable appraised values are applied on a project wide basis.</p>	<p>On larger projects it may be necessary to assign similar acquisition parcels to several appraisers who may report their appraised value based on different unit values for comparable property (e.g. variance in \$/sq ft for commercial lots, variance in \$/acre for agricultural land, etc.) From this range of accepted and documented appraised values the review appraiser may select or determine a single appraised unit value on which to recommend the amount of just compensation for comparable property project wide.</p>

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<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Payment Eligibility, Purchase Requirement</i></p>	<p>Is a "Contract for Deed" sufficient to satisfy the purchase requirement for a displaced person to claim a replacement housing payment?</p>	<p>To claim a replacement housing payment the displaced homeowner must actually purchase and occupy a replacement dwelling.</p> <p>A "Contract for Deed", also known as an installment "Land Contract", is a real estate conveyance and financing instrument. A contract for deed provides for installment payments with title to be transferred upon making final payment.</p>	<p>When accepting a contract for purchase the airport needs to determine that an actual purchase has occurred and that the terms of the conveyance are reasonable and adequate to allow the homeowner to maintain occupancy. The following generally list the provisions and terms a displaced homeowner or tenant should be advised to require on a contract for deed purchase of a replacement dwelling. The contract for deed must be written in recordable form, and must be recorded.</p> <p>The contract for deed must contain a "Certificate" provision that requires the deed to be executed at closing and held in escrow pending final payment.</p> <p>At closing require title insurance with the purchaser insured for "Equitable Title".</p> <p>The contract for deed must exclude a "Forfeiture" clause. Exclusion of the forfeiture clause protects the purchaser from an unreasonable seizure of the property for a contended default on contract terms or missed payments, without due process of law. In states where judicial foreclosure is not required, a contract for deed may not qualify as a reimbursable purchase if it includes a forfeiture clause.</p> <p>Document preparation and owners title insurance costs, (not to exceed costs for a comparable replacement dwelling), are reimbursable incidental expenses.</p>

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<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Payment Eligibility, Seasonal residences</i></p>	<p>The airport at a resort location is acquiring some vacation cottages. Are the owners of these seasonal residences entitled to replacement housing payments?</p>	<p>An owner of a seasonal residence (e.g. vacation home) is not eligible for a replacement housing payment. A seasonal residence, by definition, is not a person's permanent or customary and usual place of residence, or the person's dwelling as defined at 49 CFR Part 24.2(h).</p>	<p>A person displaced from their dwelling is eligible for a replacement housing payment needed to purchase or lease and occupy a comparable replacement dwelling as their permanent residence. However, there is no obligation to assure a replacement seasonal residence. Although not entitled to a replacement housing payment, a person required to move from a seasonal residence is a displaced person and is entitled to moving costs.</p> <p>A seasonal residence may be distinguished from a person's permanent residence or domicile in that a domicile is the place of a person's fixed permanent home and principle establishment and to which place the person when absent has full intention of returning. Normally, a person's permanent residence or home is apparent and there is no need to verify that an acquired residence is the occupant's permanent home. However when questionable, the airport sponsor would need to verify that an acquired property is in fact a person's permanent residence prior to establishing replacement housing payment eligibility. Primary proof of a person's permanent residence is the residence reported for purposes of paying income taxes, both Federal and state. Additional proof of permanent residence may be the place of voter registration, driver's license, or other documentation of legal domicile.</p>

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<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Payment Eligibility, Noise Project</i></p>	<p>A homeowner would like to relocate from the noise buyout project to a replacement home located within the airport's noise contours.</p> <p>Would they be eligible for mitigation measures offered at the replacement housing location?</p>	<p>Clearly, a person displaced from a buy-out project would not be eligible for any assistance to move to another area that is proposed for buy-out. However, a person displaced from a buyout program may have good reason to remain in the immediate area (e.g. proximity to employment, availability of affordable housing), and a sound replacement housing choice may be to move into a noise-impacted area where soundproofing assistance is offered.</p>	<p>It is FAA policy that comparable replacement housing used to compute the replacement housing payment (RHP) eligibility is not selected from within the airport's 65 dB DNL noise contour. FAA policy also provides that a RHP is only payable to a displaced person who elects to purchase a noise impacted replacement dwelling, if the dwelling is already soundproof or is adequately soundproofed prior to purchase.</p> <p>If an eligible homeowner chooses to relocate to a soundproofing area, the RHP eligibility may be applied to the cost of soundproofing. The soundproofing cost must be included the sales contract and the work completed prior to or committed at settlement. With adherence to the referenced FAA policies on computation and payment of the RHP, there is no additional cost to the government or duplicative benefits should a displaced person elect to move from a buyout area into a soundproofing area.</p>

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<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Payment Eligibility, Home ReHab</i></p>	<p>A homeowner wants to include the cost of rehabilitation or home improvement in the purchase price of a replacement dwelling and claim their replacement housing payment (RHP) eligibility.</p>	<p>As is feasible the airport may work with the displaced homeowner's purchase of a replacement dwelling they intend to improve.</p> <p>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 undertaking home improvement if occupancy of a DSS dwelling is delayed.</p>	<p>To conform to the payment eligibility requirements the displaced homeowner is required to 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 financing should be adequately structured with among other requirements; 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, and bonding to assure satisfactory work and scheduled completion.</p> <p>Cost to add luxury items, ornamentation, or unusual or atypical features also not eligible for reimbursement on a replacement housing payment claim.</p> <p>There is a significant source of home improvement mortgage financing via the HUD/FHA 203k loans that may be available for displaced homeowners to improve a replacement dwelling consistent with replacement housing payment eligibility requirements and limitations. Typically under acceptable purchase and home improvement mortgage financing the home improvement work must be completed and accepted no more than 6 months following closing on the purchase.</p>

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<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Purchase Price Differential, Conversion of Payment, Elderly or Disabled Displaced Persons</i></p>	<p>May aged or disabled displaced homeowners apply their replacement housing payments for lease payments at an assisted/independent living facility versus purchase of a replacement dwelling?</p>	<p>For persons with failing abilities to carryout the "Activities of Daily Living"[§] needed for home ownership, the relocation choice best offered at displacement for an airport project may be an assisted/independent living facility with the capacity to provide services for lost or failing abilities.</p> <p>The airport is obligated to provide relocation assistance to minimize hardships to persons adjusting to relocation. This assistance does not require an airport to provide additional payments, but in response to the needs of displaced aged or disabled person, the help provided may be to apply the 180-day owner payment (purchase price differential) eligibility to assisted care cost.</p>	<p>An airport may allow the displaced owner's computed purchase price differential to be applied to the rental cost of the assisted or independent living facility, subject to the following conditions.</p> <p>The payment amount is computed as a rental assistance payment to reflect the increased actual cost of the care facility versus the economic rent of the acquired dwelling. The total rental assistance payments made shall not exceed the computed price differential eligibility for the purchase of a comparable dwelling.</p> <p>The replacement housing payment eligibility, less the amounts paid for assisted care facility, remains available to be applied to a purchase of a DSS dwelling during or at the end of the one year eligibility period following displacement from the acquired home.</p> <p>An airport should develop procedures and qualification criteria for the application of payment eligibility to assisted/independent living costs. A qualified displaced homeowner and their family should also seek counseling services on long term care options, estate planning and tax considerations, Medicare, and private insurance benefits in order to weigh their replacement housing options of either purchase of a home or assisted living care.</p>

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<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Purchase Price Differential Recompute Eligibility</i></p>	<p>Is the Purchase Price Differential (PPD) amount recomputed if the just compensation offer is increased due to a settlement following the PPD offer and the airport's issuance of 90-day notice to vacate to the displaced homeowner?</p>	<p>Conforming to 49 CFR 24.203(c)(3), a displaced homeowner shall not be required to vacate their dwelling until at least 90 days following the date which a comparable dwelling is made available. The airport PPD offer provided the displaced homeowner satisfies this prerequisite that a comparable dwelling be "made available" (49 CFR 24.204(a)), and allows negotiations to proceed to the airports purchase and possession of the property.</p>	<p>If the just compensation amount is increased during the course of timely purchase negotiations the PPD amount that may be claimed is reduced for the increased acquisition payment to the displaced homeowner (per the computation specified at 49 CFR 24.401(c)).</p>

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<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Purchase Price Differential Applied at Purchase</i></p>	<p>To receive their purchase price differential (PPD) is a displaced 180-day homeowner required to apply the PPD as a downpayment for the purchase of their replacement dwelling?</p>	<p>A homeowner usually needs the full eligible PPD amount to purchase their replacement home. The full PPD amount must be available to the displaced homeowner at settlement. However, the homeowner may opt for mortgage financing that allows a lesser downpayment at settlement.</p>	<p>It is required that a displaced homeowner actually purchase and occupy a DSS replacement dwelling within one year of displacement to be able to claim their PPD as part of their replacement housing payment eligibility.</p> <p>With adequate supporting documentation of the actual purchase and purchase price paid for the DSS replacement dwelling (certified settlement sheet, deed, etc.) the homeowner may (among other requirements) claim reimbursement for the entire eligible PPD although not apply the amount as downpayment for the purchase.</p>

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<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Mortgage Interest Differential Payment</i></p>	<p>Interest rates have risen slightly over the past year. Replacement mortgages are available at the same rate and terms as displaced owners had on the acquired home, but with payment of additional points.</p>	<p>A 180-day homeowner is entitled to a mortgage differential payment for the increased cost of mortgage interest incurred due to displacement. The airport may provide this payment in the most cost effective manner.</p>	<p>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.</p> <p>FAA form 5100-123 computes the Mortgage Interest Differential (MID) payment eligibility based on the regulatory requirements (49 CFR 24.401 (d)). If an equal replacement mortgage rate is available with additional points, the airport may compute the MID eligibility based on the 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.</p>
<p><i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i></p> <p><i>Mortgage Interest Differential Payment</i></p>	<p>May the mortgage interest differential payment (MID) eligibility be computed for a pre-displacement Adjustable Rate Mortgage (ARM) based on an available replacement ARM if more cost effective than the available fixed interest mortgage?</p>	<p>Under conditions of increasing mortgage rates it may be expected that replacement ARM mortgages are the more cost effective replacement mortgage financing for a pre-displacement ARM.</p>	<p>FAA form 5100-123ARM compares interest cost differentials between available ARM or fixed rate mortgages to compute the MID payment eligibility for a pre-displacement ARM as of the date of acquisition. As required by 49 CFR 24.401(d), a MID eligibility shall be based only on bona fide mortgages that were valid liens on the acquired property at least 180 days prior to the initiation of negotiations; and payment of the computed MID eligibility is contingent upon a mortgage being placed on the replacement dwelling.</p> <p>If a replacement ARM with equivalent rate adjustment specifications and terms as the pre-displacement ARM is available at a less interest cost differential than the fixed rate mortgage, the available ARM should be used to compute the MID eligibility.</p>

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<i>REPLACEMENT HOUSING PAYMENTS 180-DAY OWNERS</i> <i>Incidental Expenses</i>	The homeowners want to use a "Buyer's Agent". Are the fees eligible as an incidental expense for displaced homeowner's purchase of a replacement dwelling?	A buyer's agent's commission is typically paid by the home seller at closing and is divided between the listing broker and buyer's agent broker.	The buyer's agent contract may state that the commission is paid "on behalf of the buyer", but as the fee comes from the home seller's proceeds the cost is not an incidental expense of the displaced homeowner.

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<p><i>REPLACEMENT HOUSING PAYMENTS 90-DAY TENANT OCCUPANTS</i></p> <p><i>Tenant Occupants, Noise Buyout Projects</i></p>	<p>A tenant in occupancy of a house being acquired for a noise buy-out project may move after the initiation of negotiations. However, the property owner may decline the airport's offer to purchase the property. Will the airport have to pay the tenant's relocation costs if the property is not acquired for the project?</p>	<p>A tenant who moves after the initiation of negotiation and notice of relocation eligibility may be eligible for relocation payments.</p> <p>For projects where acquisitions are not being made under threat of condemnation (e.g., some noise buyout projects), tenants and owner occupants should be advised that they are not displaced if the airport does not acquire the property.</p>	<p>A person occupying real property that is acquired for an AIP assisted project is eligible for applicable relocation payments as of the initiation of negotiations or if in occupancy on the property when required to move due to the acquisition of the property. For any proposed acquisition of occupied property, the airport is obligated to advise occupants of their relocation eligibility as soon as possible after the initiation of negotiations. However, where eminent domain is not to be employed, the airport should further advise occupants that relocation payments will only be made should the property be acquired for the project.</p> <p>To preclude misunderstandings on payment eligibility, it is recommended that the relocation eligibility letter to a tenant occupant include a notice similar to the following:</p> <p><i>“Please note that prior to the Airport Authority’s acquisition of your leased property you remain obligated to your present lease for payment of rent and other terms and conditions of your lease. Also, should an agreement for the airport’s purchase of the property not be secured with the property owner, you will not be required to vacate the property by the airport, and this notice of relocation eligibility is withdrawn.”</i></p> <p>Attachment A provides a sample relocation eligibility letter that includes this notice. It is also recommended to assure equity on these projects that, as practical, a property be negotiated for purchase within the lease term of tenants in occupancy at the initiation of negotiations.</p>

LESSON'S LEARNED: SOLUTIONS TO COMMON PROBLEMS AND NEEDS

Residential Relocation Assistance for Airport Projects

Category	Problem / Need	Cost and Quality Issues	Preferred Solution and FAA Requirements
<p><i>REPLACEMENT HOUSING PAYMENTS GENERAL</i></p> <p><i>Appeals</i></p>	<p>May the displaced homeowner appeal replacement housing payment offered and computed based on FAA guidance?</p>	<p>If dissatisfied with an offer of relocation eligibility the displaced person has the right to make an appeal with the airport sponsor.</p> <p>The sponsor's relocation agent should first make all reasonable efforts to fully explain the basis of the relocation offers. A qualified relocation agent has sufficient discretion within the relocation assistance program guidelines to respond to the displaced person's preferences and needs to assure comparable housing is made available.</p>	<p>Should a homeowner appeal the sponsor's selection of a comparable dwelling, the sponsor must fully and objectively consider the owner's request against all the defined comparable dwelling criteria (defined at 49 CFR 24.2(a)). Where the homeowner's request is reasonable under the criteria the sponsor may adjust the replacement housing payment eligibility. The sponsor may also accept part of the appeal and adjust its offers, and reject the ineligible portion of the appeal request.</p> <p>If the appeal is denied the sponsor must fully document why based on applicable regulatory requirements. An appeal determination may not result in a reduction in relocation assistance services or in the amount of the existing payment eligibility offers presented to the displaced occupants by the sponsor, (barring significant error in the initial computations).</p> <p>If the appeal is denied, the Sponsor shall provide the displaced person its appeal finding in writing. The Sponsor shall also advise the displaced person of their right to judicial review of the Sponsor's appeal decision.</p>

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Residential Relocation Assistance for Airport Projects

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<p><i>REPLACEMENT HOUSING PAYMENTS GENERAL</i></p> <p><i>Appeals, FAA Role</i></p>	<p>What is the FAA role in a disputed relocation appeal determination?</p>	<p>The FAA assists airport sponsors to conform to program and Federal requirements, FAA Order 5100.37 and the FAA AC 150.5100-17 may be cited in sponsors acceptance or rejection of an appeal claim.</p> <p>Generally on AIP land projects less than 2% of relocation cases go to formal appeal.</p>	<p>The FAA may provide technical assistance in evaluating the sponsor's appeal decisions, but the FAA is not a party to the dispute and may not be directly involved in the appeal. In the event that a case is accepted for review in Federal court the sponsor should advise FAA of the pending suit to allow FAA review of the issues that may have precedent or involve Federal policy or regulatory issues.</p> <p>The sponsor must assure that its relocation payment eligibility and assistance documentation provide a sufficient administrative record for judicial review. Lacking sufficient documentation to fully support its determinations the sponsor may be found to be "arbitrary and capricious" and its appeal determinations reversed and/or remanded for reconsideration consistent with the governing regulations and any findings of the court. Where the public interest is served the sponsor may pursue reasonable settlement of a disputed claim in lieu of trial and any extended and expensive litigation.</p>

LESSON'S LEARNED: SOLUTIONS TO COMMON PROBLEMS AND NEEDS

Residential Relocation Assistance for Airport Projects

Category	Problem / Need	Cost and Quality Issues	Preferred Solution and FAA Requirements
<p><i>RESIDENTIAL MOVING COST</i></p> <p><i>Actual Cost Self Move</i></p>	<p>A homeowner wants to move his “collection” of vintage cars and parts in the backyard as a self-move. Commercial mover bids to move the collection are exorbitant. May the airport enter a self-move agreement (i.e. a negotiated amount based on actual move cost) with the displaced homeowner for this move?</p>	<p>The fixed schedule or commercial move may not be feasible for non-household personalty; such as numerous automobiles, large lots of automotive parts, extensive machinery and equipment, or an extensive collection (antiques, memorabilia, etc.) that requires special handling to move.</p> <p>For such cases commercial move cost may even exceed the value of the items to be moved.</p>	<p>Normally, the expense of a residential household move may be accomplished by fixed cost schedule or at actual cost of a commercial move. However, where significant non-household personal property must be moved some discretion, within the prescribed eligible limits, is available for a self-move agreement with the displaced homeowner. The owner may also opt for a commercial actual cost move.</p> <p>The self-move agreement amount would reflect the hard moving costs anticipated and require actual cost receipts for reimbursement of the needed truck and equipment rental and packing material purchases. The amount of reimbursable labor cost provided in the agreement would be based on the typical commercial mover labor wage rates in the project area (exclusive of any overhead, insurance, or profit) as required for the proposed work. The self move 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. Also, the agreement should provide that property not moved is abandoned and may be sold or scrapped. To the extent commensurate with the cost exposure, monitoring should be performed to verify actual work and cost incurred. 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.</p>

LESSON'S LEARNED: SOLUTIONS TO COMMON PROBLEMS AND NEEDS

Non-Residential Relocation Assistance for Airport Projects

Category	Problem / Need	Cost and Quality Issues	Preferred Solution and FAA Requirements
<p><i>NON-RESIDENTIAL MOVING COST</i></p> <p><i>Reconnect and Reinstallation</i></p>	<p>To move machinery and equipment and put in working order at a replacement site may require significant cost to install and connect to power and other utility requirements. What is the limit for this cost under eligible moving expenses?</p>	<p>The cost to connect to utilities available at the replacement site is eligible. This includes adapting and running utilities to machinery within the building at the replacement site.</p> <p>Some minor changes to the replacement real property may be necessary for installation. Typically these would include construction of pits, pads, and foundations to install moved machinery.</p> <p>For example, vibrations from running machinery may require a concrete pad at the machine site to prevent damage to the floor or the machinery. The replacement property floor must support commercial or industrial use, but individual pieces of machinery may require extra bracing or support.</p>	<p>Sponsor relocation staff must correctly advise the displaced business on the eligibility of proposed moving expenses. Installation of moved or replaced machinery and equipment is eligible as moving costs. The reasonable costs necessary to set up the machinery, connect it to necessary utilities (available on the replacement property) and put it in working order at the replacement property are eligible. Eligible moving expense to install moved machinery should not involve significant construction or reengineering at the replacement property.</p> <p>The cost required to modify the replacement real property to accommodate the displaced business itself are ineligible as moving expense. However, under the reestablishment expense provisions (49 CFR 24.304) some cost to modify or adapt the real property for a displaced small business may be eligible, not to exceed \$10,000 for all eligible items incurred.</p>

LESSON'S LEARNED: SOLUTIONS TO COMMON PROBLEMS AND NEEDS

Non-Residential Relocation Assistance for Airport Projects

Category	Problem / Need	Cost and Quality Issues	Preferred Solution and FAA Requirements
<p><i>NON-RESIDENTIAL MOVING COST</i></p> <p><i>Direct Loss of Tangible Personal Property</i></p>	<p>The Direct Loss of Tangible Personal Property (DLTPP) claim option needs clarification. What costs and values are included and what is excluded?</p>	<p>An eligible displaced business may choose a DLTPP claim when the displaced business is discontinued or will not move or replace an item at its replacement site. Under 24.301(g)(14), a displaced business may claim the lesser of the value-in-place of an item "As Is" for continued use (less sales proceeds); or the estimated moving cost for the item as installed at the displacement site.</p> <p>An eligible displaced business also has the option to replace personal property items under the substitute property provisions.</p>	<p>The allowable in-place value estimate must reflect only the "as is" condition and installation of the item at the displacement site.</p> <p>This in-place value may not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.</p> <p>The allowable moving cost estimate may only include reconnect cost that would be necessary to install the item as it is installed at the displacement site. The moving cost estimate may not include any reconnect costs for an item that is not operable or installed at the displacement site.</p> <p>A sample eligible direct loss payment claim is shown in Attachment B.</p>

LESSON'S LEARNED: SOLUTIONS TO COMMON PROBLEMS AND NEEDS

Non-Residential Relocation Assistance for Airport Projects

Category	Problem / Need	Cost and Quality Issues	Preferred Solution and FAA Requirements
<p><i>REESTABLISH- MENT EXPENSE</i></p> <p><i>Rental of Single Family Home</i></p>	<p>Is the non-occupant owner (landlord) of an acquired single-family house entitled to a business reestablishment payment?</p>	<p>The rental of real property is a business. A landlord owner of acquired single-family homes may be considered a displaced small business and claim eligible expenses to reestablish their business.</p>	<p>Eligible expenses include the reasonable cost to paint, replace worn carpets, and perform other “fix-up” work necessary to offer the purchased rental property at its market rent. It is FAA policy that costs to improve a substandard house to allow occupancy and rental are capital improvements and are not eligible reestablishment expense.</p>
<p><i>REESTABLISH- MENT EXPENSE</i></p> <p><i>Rental of Single Family Home</i></p>	<p>Several rental homes will be acquired from one property owner for an airport project. Is the property owner entitled to multiple reestablishment claims?</p>	<p>The acquisition of more than one rental house for a project from a single owner does not mean that more than one business had been displaced for the project.</p>	<p>The rental of real property is a business, and the owner of the acquired rental property may claim eligible reestablishment expense. As a displaced small business, the property owner is entitled to one payment for their actual, reasonable, and necessary reestablishment expenses, not to exceed \$10,000.</p>

LESSON'S LEARNED: SOLUTIONS TO COMMON PROBLEMS AND NEEDS

Non-Residential Relocation Assistance for Airport Projects

Category	Problem / Need	Cost and Quality Issues	Preferred Solution and FAA Requirements
<p><i>FIXED MOVING EXPENSE PAYMENT (IN LIEU)</i></p>	<p>Are “non-cash” expenses (e.g. depreciation, depletion, loan interest amortization, etc.) claimed on a displaced business’s tax returns, considered in determining the annual net income used to compute the non-residential fixed moving payment?</p>	<p>The displaced business may choose a fixed moving payment in lieu of moving and reestablishment expense claims. The fixed move payment described at 49 CFR 24.305, is the average annual net earnings to the business owner prior to displacement based on the two tax years prior to project displacement.</p>	<p>The only allowable adjustment to the reported net income is to add back salaries and wages paid to the displaced owner operator and immediate family members employed by the business. Depreciation and other amortized expenses, that are deducted to arrive at the business pre-tax net income reported on the displaced business’s tax return are considered.</p> <p>With allowable tax deductions, a displaced business may report only a small net income or annual net loss. It is FAA policy that for a displaced business reporting a pre-tax net loss, a zero income amount may be used as the net annual earnings. Also, under the regulation, if the two years immediately prior to displacement do accurately represent net earnings, earlier tax returns more representative of normal earnings may be used to compute the fixed payment.</p>

§ **Activities of Daily Living (ADLs)** and **Instrumental Activities of Daily Living (IADLs)**, are the daily tasks required to function or function well independent of assistance. The **ADLs** are simply basic self-care activities (e.g. dressing, eating, bathing, etc.) which the loss of any one may require assistance. The **IADLs** are the more refined tasks required to function well (e.g. shopping, cooking, light housework, using transportation, etc.). A person’s **ADLs** and **IADLs** may be evaluated when considering admittance to a long term care facility, in-home care, or need for other assistive care.

Attachment A: SAMPLE Tenant Relocation Eligibility Letter - Noise Buyout Project

Dear Mr. Tenant:

As you may be aware, the Airport Authority is buying property within the "buyout" area of the airport's approved noise compatibility program and has started negotiations to buy the property you currently are renting. Should the airport acquire the property, you may be eligible for certain relocation assistance payments to assist your relocation to a replacement decent, safe, and sanitary (DSS) dwelling located outside of the airport's designated buyout project area. The Airport Authority's has determined the following eligible payments in accordance with requirements for Federal Aviation Administration aided projects. Please refer to the enclosed brochure entitled, "Land Acquisition for Public Airports", for details on how the airport computes your eligible payment amount.

- 1. Moving expenses.** These are the actual reasonable and necessary expenses to move your personal property. You may choose a commercial move supported by receipted bills, or a fixed payment of \$___, based on the number of rooms of personal property you move.
- 2. Replacement Housing Payment.** You are eligible for a maximum replacement housing payment of \$___, provided you lease and occupy a DSS dwelling with monthly rent and utilities of \$___, or more. This replacement housing payment eligibility is based on a property located (*Note: The comparable replacement dwelling must be located outside of the project limits and not within the noise contours of the airport*) at (address) which is available for rent at \$___, and estimated monthly utility cost of \$___. The amount of the replacement housing payment is the additional cost of a comparable replacement dwelling for a period of 42 months following your displacement from the acquired property.
- 3. Downpayment Option.** You may, at your option, apply your replacement housing payment eligibility as a downpayment for the purchase of a replacement dwelling. The full amount of the downpayment must be applied to the purchase price of the dwelling and related incidental expenses.

Ms. Karen Wilson is the Airport Authority's representative to assist your relocation. Ms. Wilson will further explain the relocation process and answer your questions concerning your relocation payments. In order for you to maintain eligibility for subsequent relocation payments, please advise and consult with Ms. Wilson before committing or taking any action regarding leasing a replacement property or moving your personal property.

At this time it is necessary to advise you that you will have at least 90 days to remain on your property. At a later date, and after the Airport Authority has acquired the property, you will be provided another notice advising of the date to vacate the acquired property. **However, please note that prior to the Airport Authority's acquisition of your leased property you remain obligated to your present lease for payment of rent and other terms and conditions of your lease. Also, should an agreement for the airport's purchase of the property not be secured with the property owner, you will not be required to vacate the property by the airport, and this notice of relocation eligibility is withdrawn.** Ms. Wilson's phone number is given below, and please do not hesitate to contact her should you have any questions or concerns regarding your potential relocation.

Sincerely

Airport Manager

Attachment B: SAMPLE Direct Loss Payment Claim

HYPOTHETICAL FACTS AND ASSUMED VALUES

**Displaced Business: U.S. Widgets, Inc.
Acquisition Date: June 1, 2005**

U.S. Widgets is claiming payment for the following 3 items under Actual Direct Loss of Personal Property.

- ✓ **Item 1. Widget Magician II (1989 model, capacity 1500 widgets / hr)**
 - A. **Estimated Value in Place on June 2004: \$3,000**
 - B. **Sales Proceeds: \$1,000**
 - C. **Net Loss: \$2,000 (A Minus B)**
 - D. **Estimated Moving Cost: \$4,000**

- ✓ **Item 2. Widget Magician Elite (1999 model, capacity 2000 widgets / hr)**
 - A. **Estimated Value in Place on June 2004: \$13,500**
 - B. **Sales Proceeds: \$6,000**
 - C. **Net Loss: \$7,500 (A Minus B)**
 - D. **Moving Cost: \$7,000**

- ✓ **Item 3. Widget Magician I (1982 model, taken out of service 2002)**
 - A. **Estimated Value in Place on June 2004: \$300**
 - B. **Sales Proceeds: \$0**
 - C. **Net Loss: \$300 (A Minus B)**
 - D. **Moving Cost: \$250**

Table 1: Sample Claim for Direct Loss of Personal Property

(Items not Moved or Replaced)

LESSER of Direct Loss (i.e. Value-in-Place “As Is” for Continued Use less Sales Proceeds) or Agency's Accepted Estimated Moving Cost to Relocate Item(s)

Items	A. Value In Place “As Is” for Continued Use (See Table 2)	B. Proceeds from Sale of Item (As Is Sold On-site for Removal)	C. Direct Loss (Value-in-Place less Sales Proceeds)	D. Estimated Moving Cost (See Table 3)	E. Amount Claimed (Lesser of Direct Loss or Estimated Moving Cost)
1. Widget Magician 2	\$3,000	\$1,000	\$2,000	\$4,000	\$2,000
2. Widget Magician Elite	\$13,500	\$6,000	\$7,500	\$7,000	\$7,000
3. Widget Magician I	\$300	\$0	\$300	\$250	\$250
Subtotal Claimed					\$9,250
4. Cost of Sale (advertising, display, etc.) Per 24.301(g)(15)					\$750
Total Claimed					\$10,000

Table 2: Details of Estimate of Value in Place “As Is” for Continued Use

(Cost New, plus Installation Cost, less Depreciation)

Items	Description “As Is” Installed	Estimated Current Item Cost	Plus Estimated “As Is” Installation Cost	Less Accrued Depreciation	Equals “In Place” Value
1. Widget Magician 2	1989 model installed new in 1989.	Manufacturers Catalog and Recent Sales Data (Value as of 6/1/2004) \$10,000	Electrical & Plumbing Connect \$2,000	Age/Life Method 75% depreciated. Estimated 5 year remaining use of original 20 year life. \$9,000	\$3,000
2. Widget Magician Elite	1999 model installed new in 2000. Holding tank for plumbing connection to public sewer, per 1999 code for new installations.	Manufacturers Catalog and Recent Sales Data (Value on 6/1/2004) \$13,000	Electrical & Plumbing Connect, plus holding tank. \$5,000	Age/Life Method 25% depreciated. Estimated 15 year remaining use of original 20 year life \$4,500	\$13,500
3. Widget Magician I	Taken out of Service 2002. Not operable	Salvage Value \$300	N/A	N/A	\$300

Table 3: Estimated Moving Cost Computation

(Cost to Move, "As Is" Installed at Displacement Site)

Items	Description "As Is" Installed	Estimated Disconnect and Move Item Cost	Plus Estimated "As Is" Reconnection Cost	Total Estimated Moving Cost
1. Widget Magician 2	1989 model installed new in 1989.	\$2,000	Electrical & Plumbing Connect \$2,000	\$4,000
2. Widget Magician Elite	1999 model installed new in 2000. Holding tank for plumbing connection to public sewer, per 1999 code for new installations.	\$2,000	Electrical & Plumbing Connect, plus holding tank. \$5,000	\$7,000
3. Widget Magician I	Taken out of Service 2002. Not operable	Move / Dispose \$250	N/A Not Operable	\$250