FHWA – HEPR
Office of Real Estate Services

Progress Report - Research Studies
Introduction/Background

• MAP-21 amendments allowed the use of option techniques to encumber or acquire properties.

• 23 CFR 710.105 added a definition of option to mean “the purchase of a right to acquire real property within an agreed-to period of time for an agreed-to method by which compensation will be calculated.”
23 CFR 710.105 also included a revision to allow for **reimbursement of costs** associated with acquiring options on properties.
Research Objectives

• Identify *when and how* the use of option contracts can be properly used in federally-funded early acquisition or advance acquisition projects.

• Identify *methods and factors* an agency should use in its decision-making process related to option contracts.

• Produce a *decision matrix, formula or guidance document* that agencies can use to assist in the determination of when to use an option contract in a particular situation.
Literature and Web Research

• 13 articles researched addressing the use of real property acquisition options

• Included information about:
  • Basic application of real property options
  • Structure and elements of option contracts
  • Financial considerations of valuing the option

• Techniques dependent on various current and anticipated interest rates, in conjunction with risk factors over specific period of time

• No articles were found that related to public agency use of option contracts
Using Option Contracts to Accelerate ROW Projects

Strengths:
• Potential forfeit of the option payment is \textit{less expensive} than the payment under the advance acquisition protective purchase that eventually proves to be unnecessary (Because agency disposal costs are also high)
Using Option Contracts to Accelerate ROW Projects

Weaknesses:

• Agency *cannot compel* property owner to enter into option agreement under eminent domain authority
Recommendations

• Recommendation #1 – The *final purchase price* in the option agreement should be established using a *valuation procedure compliant with the Uniform Act*.

• Recommendation #2 – The *option payment* should be *determined* through a *documented methodology* or analysis to support the payment amount used.
Summary and Conclusion

Option contracts:

• Provide an alternative to “early” or “advance” acquisition for property needed for future projects that may be developed or sold

• Can limit agency financial exposure

• Offer another tool for streamlining the right of way process and reducing costs
FHWA - Next Steps

• In order to use option contracts as a part of a Federal-aid highway program, the State DOT’s might want to first *create a procedure in their approved ROW manual* ......

• that outlines the *use of options in a way that complies with the Uniform Act*. 
FHWA - Next Steps

- Care should be taken to **avoid charges of disparate treatment** in the selection of qualifying properties.

- The State’s procedure may be applied on a **project wide** basis or on a **program wide** basis.
FHWA - Next Steps

• The approved procedure for *pricing option contracts* would likely follow one of two tracks;
FHWA - Next Steps

• Track 1    Acquire an option contract to secure the right to purchase the property but include language in the contract that both parties agree that a final estimate of compensation for the acquisition will be based upon an approved appraisal report or waiver valuation *if the option is exercised*.

• One point of acquiring options would be to prevent speculative property development or redevelopment and the customary price escalation that accompanies this activity. The option contract could *stipulate to an effective date of value* as a point of reference for any appraisals that may later be obtained if the option is exercised.
FHWA - Next Steps

• Track 1 cont’d.

Since this tactic assumes the determination of compensation for the real property necessary for any project will occur after the signing of the option contract,

A waiver valuation or other simplified valuation method could be used to produce an estimate of compensation for the option fee (option payment) in compliance with 49 CFR 24.102.

If the agency decides to exercise its option to acquire the property it would be required to obtain an appraisal report or develop a waiver valuation to establish the final estimate of compensation, that report must comply with the uniform act requirements in 49 CFR 24.102, 24.103, and 24.104.
FHWA - Next Steps

• Track 2 Obtain an appraisal of the whole property compliant with 49 CFR 24.102, 24.103 and 24.104, and base the option fee (option payment) on a percentage of the final estimate of value of the whole property.

• This track anticipates that the acquisition will be for the whole property. In the event the option is exercised, the acquisition price may be the value estimated in the approved appraisal. It will be left up to each state whether the final compensation estimate will combine both the payment for the option fee and the payment for the property necessary for the project into one approved compensation estimate.
Since the research revealed little documentation or experience in existence with government use of options, HEPR has decided to form a Working Group for Option Contracts.
Working Group – Options Contracts
Working Group – Options Contracts

Carol Myers, Century Engineering – Cumberland, PA
Jeff Hoge, Tennessee DOT
Mike Dawson, FHWA – North Carolina Division
Chad Crawford, FHWA Resource Center – Atlanta
Mike Jones, FHWA Retired – Annapolis, MD
Doug Maitland, Ohio DOT
Bob Merryman, OR Colan Associates – Missouri
Layne Patton, FHWA – Arizona Division
David Leighow, FHWA – Washington Division
Kevin O’Grady, FHWA - HEPR
• The group will start formal collaboration in late Spring 2017 after the Options Contracts Research Study final report is published.
Appraisal Issues Research Study

• Started in April 2017

• Collaboration between Volpe and HEPR

• Results due November 2017
Identification and Examination of Appraisal Issues in Federal and Federally-assisted Programs
Juggling Act for Appraisers

- USPAP
- Case Law
- Uniform Act
- UASFLA (Yellow Book)
Purpose:

• **identify** areas of **confusion** and perceived **conflict** between three main sources of appraisal requirements:

(1) Federal and state **laws and regulations**,  
(2) the Uniform Standards of Professional Appraisal Practice (**USPAP**), and  
(3) the Uniform Appraisal Standards for Federal Lands Acquisition (**UASFLA**, or “**Yellow Book**”).
Simply...

• *identify confusion* and *conflict* between

• laws and regulations,
• USPAP, and
• “Yellow Book”
Confusion & Conflict

• The relationship and relevance of multiple sets of requirements is often confusing, and in some cases, may be construed as being in conflict with one another.

• This confusion can be manifested among appraisers, government agencies, the public, state appraisal licensing boards, and other users of appraisal services.
Gather a List of Appraisal Issues

• Survey other Federal Agencies with land acquisition programs. (Include DOJ and IRS also)

• Survey State DOT’s (maximum of 9) about interpretation issues with case law, statutes, licensing requirements.
So, Then What?

- The findings and conclusions, as well as potential clarifications and solutions, will be used as the basis for **collaborative discussion** with other partners and stakeholders (Federal Agencies and State DOT’s).
The ultimate goal is to identify and resolve as many confusion and conflict areas, real or perceived, as can reasonably be accomplished.
After Federal and State agencies have had a chance to review the findings and provide some feedback, any *remaining issues* will be brought to *The Appraisal Foundation* for discussion and potential insight for a mutually agreeable resolution.
The results of this research project are expected to benefit **appraisers, government agencies, other users** of appraisal reports, and the **public**.
OK, ......so what other HEPR research program is in the works?
“An Analysis of the Use of Waiver Valuations by Federal, State and Local Public Agencies (LPAs): (Identifying and Measuring Outcomes That Could Further Streamline Project Delivery)”
§24.102 Basic acquisition policies.

- **Appraisal, waiver thereof, and invitation to owner.**
  - (1) Before the initiation of negotiations . . .
  - (2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation,

- or the Agency determines that an appraisal is unnecessary because the valuation problem is *uncomplicated* and the fair market *value* is estimated at $2,500 or less, based on a review of available data.
§24.102 Basic acquisition policies.

(c) Appraisal, waiver thereof, and invitation to owner.

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at $10,000 or less, based on a review of available data.
§24.102 Basic acquisition policies.

(c) Appraisal, waiver thereof, and invitation to owner.

(C) The Federal Agency funding the project may approve exceeding the $10,000 threshold, up to a maximum of $25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (See appendix A, § 24.102(c)(2).)
Starting in `12 - FHWA allowed limited number of $50K Pilots
Starting in `02 – FHWA allowed up to $25K upon request
Starting in `05 – Final Rule established 10K/25K limits
Starting in `95 – FHWA allowed up to $10K upon request

Waiver Valuation Thresholds


$20,000
$10,000
$5,000
$2,500

$50,000
$25,000
$10,000
$2,500

2017 ROWUOAC Conference
Four State DOTs requested raising the waiver valuation and the conflict of interest thresholds from $25,000 to $50,000 in pilot projects (only).

Permission was granted in 2013 and the pilots commenced in 2015.

To date, there has been insufficient data on which to draw any conclusions.
It’s been a decade since the 2007 research project was completed.

The dynamics of the Federal-aid Highway Realty Program have changed significantly in that time—and they continue to do so.
Our State DOT partners continue to be tasked with identifying greater efficiencies that will help streamline project delivery (but are constrained to the extent that such activities must not compromise the rights and benefits of affected property owners and displacees).
The proposed research project is expected to include the following partial list of activities:

- document the extent to which all the State DOT’s currently use Appraisal Waivers, and at what threshold levels;
document the extent to which LPA’s currently use Appraisal Waivers, and at what threshold levels:

$2,500  $10,000  $25,000
• Document the extent to which the other Federal Uniform Act Agencies currently use waiver valuations, and at what threshold levels;

$2,500  $10,000  $25,000
Q: Remember why waiver valuations were invented?

A: To save the cost of the appraisals on low valuations!
• Document what percent of an State DOT’s acquisition program is
  • below $10,000;
  • below $25,000;
  • below $50,000;
  • below $75,000;
  • below $100,000.

Where is the **low hanging fruit?**
Before anyone can design a program and training, we need to figure out where we are currently.

- Document the State DOT’s current staffing levels for agency staff qualified to perform waiver valuations; and for agency staff currently licensed or certified as appraisers.
describe how agencies assure that only knowledgeable and qualified individuals are authorized to make the determination to use Appraisal Waivers when used by State DOT’s and LPA’s;
Identify the processes that agencies use to assure that only knowledgeable and qualified individuals develop Appraisal Waivers;
If Waiver Valuations are reviewed by the Agency, what are the minimum qualifications for the reviewer?
• identify problems that have occurred as a result of the ineffective or inappropriate use of Appraisal Waivers;
• identify processes or methods that were implemented to correct identified problems (or that could be put in place going forward)
One of the most significant issues to be addressed is the use of licensed or certified appraisers to prepare waiver valuations.

This practice was not initially intended but is becoming more widespread as State DOT’s continue to reduce staff levels.

The uncertainty surrounding this specific issue is a major obstacle to expanding the use of waiver valuations on a programmatic basis.
What are the positive/negative issues with respect to having licensed/certified appraisers preparing waiver valuations?
Identify those agencies (Federal or state) that have elected to use licensed or certified appraisers in their waiver valuation program, and find out “what was the motivation for that decision”?
Identify successful/innovative practices associated with the use of waiver valuations
To what extent are State DOTs conducting effective **stewardship and oversight** of the LPA valuation process?
QUALITY

is never an accident!
It is the result of
High intentions
Sincere effort, and
Skillful execution.
Questions?

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