

***RIGHT OF WAY
ACQUISITION PROCEDURES
FOR
LOCAL PUBLIC AGENCY
FEDERAL AID PROJECTS***



Prepared by

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INTRODUCTION

This manual, designed by the North Dakota Department of Transportation (NDDOT), is a guide to right of way acquisition procedures which must be observed by Local Public Agency (LPA) representatives in the acquisition of road right of way. Information and procedures discussed in this manual pertain to all North Dakota road projects that involve the participation of federal funding, regardless whether federal monies are used in the actual project right of way costs. If federal funds are involved at any project stage, Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects must be observed to ensure compliance with state and federal regulations.

If you have questions concerning LPA guidelines, you should call the Design Division - Right of Way Section, Local Government Division, or the Planning and Programming Division. If necessary, an NDDOT representative can assist the LPA in explaining appropriate procedures before or during the acquisition process.

Background

Right of way acquisitions must conform with specific federal and state laws. Specific federal laws include the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, January 2, 1971; Sections 301 and 302 (42 U.S.C. §4651 and §4652), as amended by Public Law 100-17, April 2, 1987, Title IV, Uniform Relocation Act Amendments of 1987, and Title 49 C.F.R. Part 24.

Among the federal laws, Public Law 91-646 is intended to ensure that property owners are fully informed of their rights to receive just compensation for the acquisition of their property, that they are treated equitably, and that agreement is reached without coercion of any type. Public Law 91-646 requires the LPA to establish an amount believed to be just compensation and to make a prompt offer to acquire the property for the full amount established if the property owner desires to be compensated.

North Dakota also contains specific state law (N.D.C.C. 54-01.1) concerning the acquisition of real property for right of way purposes. Both the federal and state laws implement the same ideas. Therefore, adherence to Public Law 91-646 should enable compliance with the requirements of North Dakota's state law.

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GENERAL REQUIREMENTS

Right of way acquisitions for road projects involving federal aid must comply with all applicable federal and state laws, and rules and regulations, including Public Law 91-646 and N.D.C.C. 54-01.1. The acquisition of any segment of road acquired after the following dates in a manner inconsistent with public law will be ineligible for federal aid.

BEGINNING COMPLIANCE DATES

1. **County Major Collector (CMC) Routes:** Also referred to as the “farm-to-market” system. The CMC is the system in the collector network typically connecting with state highways. Any right of way acquired for CMC routes after July 24, 1973, must comply with the federal and state laws.
2. **Off-System Routes:** County “off-system” routes that are not CMC routes are typically lower volume county roads, and may even be township roads. Any right of way acquired for off-system routes after April 3, 1975, must comply with the federal and state laws.
3. **City Routes Classified as Collector or Higher:** Any right of way acquired after July 24, 1973, must comply with the federal and state laws.

WHAT MUST BE DONE BEFORE THE ACQUISITION PROCESS?

1. **Public Hearings:** The applicable public hearing requirements must be satisfied before acquisition may begin. If a hearing notice is necessary, the expiration date shown in the Notice of Opportunity for Public Hearing advertisement shall pass, and the Certification of Hearing Satisfaction shall be completed before location and design approval are requested. If a hearing is requested, the hearing procedure must also be completed before location and design approval.
2. **Project concept approval** or a **categorical exclusion** must be received from the NDDOT before right of way is acquired. The county or city engineer or consultant should notify the LPA when approval is received so acquisition of right of way can begin.

TIME REQUIREMENTS

Allowing sufficient time for proper acquisition and documentation of necessary right of way is critical to the success of a project. The LPA's engineer should emphasize the timing of acquisition when project plats are completed. All acquisition procedures should be started early enough so that right of way is acquired and properly documented.

The right of way **documentation and certification** need to be furnished to the NDDOT for review **at least ten weeks** before the scheduled bid opening date. This ten-week requirement period applies to all projects and is *especially important* in the case of urban projects due to the tendency for increased project complexity.

NDDOT's right of way representative must have sufficient time to schedule the review of the LPA's acquisition procedures. NDDOT's project **review** must be completed **at least eight weeks** prior to bid opening. (For information purposes only, a form used for reporting the review is presented as Exhibit G.) Upon completion of its review, the NDDOT shall **certify** to the Federal Highway Administration (FHWA) **six weeks** prior to the bid opening that the right of way has been acquired according to law.

AGENCY REPRESENTATIVES USED IN THE ACQUISITION PROCESS

Three different agency representatives are used in the acquisition of real property. They are the appraiser, review appraiser, and negotiator.

APPRAISER

Qualifications: The LPA bears the responsibility of retaining appraisers who are competent in the areas of (1) knowledge and understanding of the market containing the property to be appraised, and (2) knowledge, understanding, and ability to appraise the property type in question.

While the LPA bears the responsibility of retaining competent appraisers, the appraiser is still responsible for competent development and reporting of the appraisal.

When a detailed appraisal is required, the appraiser must be certified by the North Dakota Real Estate Qualifications and Ethics Board.

Duties: The appraiser estimates (1) the value of the property interest to be acquired, and (2) damages sustained by the remainder parcel, if any. The appraisal is developed and reported in written format according to the current requirements of the Uniform Act and the Uniform Standards of Professional Appraisal Practice (USPAP).

The appraiser may assume the dual role of appraiser and negotiator, but only when compensation due the property owner is \$2,500 or less.

REVIEW APPRAISER

Qualifications: A NDDOT realty officer, certified by the North Dakota Real Estate Appraiser Qualifications and Ethics Board, serves as the review appraiser.

The review appraiser may not assume a dual role by acting as review appraiser and either appraiser or negotiator.

Duties: The review appraiser examines and reviews project appraisals for their analytical content and for consistency with the Uniform Act and the USPAP.

The review appraiser develops an opinion of just compensation. The reviewer's opinion is developed through a review of the appraisal and any other additional information that is deemed pertinent. This opinion becomes the amount offered to the property owner as compensation for the taking.

Completion of the appraisal review is required before negotiations with the property owner may begin.

NEGOTIATOR

Qualifications:

The negotiator is an agent appointed by the LPA and may be a member of the city/county commission/board or other official.

The negotiator should be able to read and understand project plans, plats, and appraisal, and should be able to explain them to the property owner.

Duties:

The negotiator must notify the property owner of the LPA's estimate of just compensation using the Memorandum of Offer (Exhibit D). The Memorandum of Offer is the LPA's formal offer for the taking. This memorandum contains the date on which the property owner was contacted, and a breakdown of the offered amount allocated to land, improvements, etc. A copy of the Memorandum of Offer is presented to the property owner.

The just compensation estimate offered to the property owner is the amount approved by the review appraiser.

A Memorandum Agreement (Exhibit E) is prepared that binds the terms of the transactions. The Memorandum Agreement must be signed by the property owner(s) and the negotiator.

The negotiator secures a deed or easement from the individual owner(s) of the parcel(s) to be acquired.

The negotiator prepares a written report *each* time the property owner is contacted. The report will summarize the details of the contact and includes reference to all verbal and written agreements between the LPA and the property owner(s). (Exhibit F)

The negotiator may assume the dual role of appraiser and negotiator, but only when compensation due the property owner is \$2,500 or less.

The negotiator is independent of the review appraiser. The negotiator may not act as review appraiser.

OWNERSHIP CONTACT AND FILE DOCUMENTATION REQUIREMENTS

Negotiations and acquisitions must be conducted in accordance with Public Law 91-646 to ensure that property owners are fully informed of their rights to receive just compensation, that they are treated equitably, and that agreement is reached without coercion of any type. The following specific requirements for ownership contact and file documentation *must* be observed:

OWNERSHIP CONTACT REQUIREMENTS

1. The LPA must present the brochure, Public Information for Highway and Street Projects (Exhibit H) (prepared by the NDDOT) to the property owner or property owner's designated representative. This publication describes the rights of the property owner and the right of way procedures used in the acquisition process. The LPA may obtain additional copies of the brochure by contacting the NDDOT's Local Governmental Assistance or Design Division - Right of Way Section.
2. The LPA may offer the following three options to the property owner/designated representative concerning the acquisition:
 - a. Donation;
 - b. Waiver of appraisal in exchange for minimum payment; or
 - c. Request appraisal as basis for just compensation.

The above three options are discussed in a following portion of this manual.

3. The property owner or designated representative will select the desired option and complete, sign, and date the Notification and Waiver Form (Exhibit C), indicating which option is desired.
4. If the property owner agrees to donate the parcel or to waive the right to an appraisal in exchange for a minimum payment, the Memorandum Agreement (Exhibit E) shall be completed and signed by the LPA and the property owner. The LPA will retain the original Memorandum Agreement and a copy shall be provided to the property owner.
5. If the property owner requests an appraisal, the LPA will offer the property owner or designated representative the opportunity to accompany the appraiser during an inspection of the real property. The offer to accompany the appraiser should be documented by selecting the third option appearing on the Notification and Waiver Form.
6. If an appraisal is completed, the LPA shall give the property owner a written summary (Memorandum of Offer, Exhibit D) describing the basis for the amount established as just compensation. If the property owner requests an appraisal, the same Memorandum Agreement will also be completed, but only after a final agreement for compensation is reached between the negotiator and the property owner.

OWNERSHIP CONTACT AND FILE DOCUMENTATION REQUIREMENTS, CONT.

FILE DOCUMENTATION REQUIREMENTS

Proper file documentation is necessary to meet federal and state requirements. Right of way acquisition files should contain the following completed documents:

1. Notification and Waiver form (Exhibit C), signed and dated by the property owner, indicating the desired option for donation/compensation. The property owner will also use this form to request an appraisal, if desired, and indicate whether he/she wishes to accompany the appraiser on an inspection of the property.
2. The appraisal (or Valuation Estimate Sheet [Exhibit A]), comparable market data (basic data book, etc.), a Certificate of Appraiser (Exhibit B), and other file memoranda needed to adequately support the value estimate(s) made by the appraiser.
3. Memorandum of Offer (Exhibit D), completed, dated, and signed by the negotiator. A copy is presented to the property owner. The original is retained in the file.
4. Memorandum Agreement (Exhibit E), completed, dated, and signed by property owner and negotiator. A copy is presented to the property owner. The original is retained in the file.
5. Signed easement or deed. **Permanent easement and fee acquisitions must be signed in the presence of a notary and properly notarized.**
6. Completed Negotiator's Work Sheet (Exhibit F), and written negotiator report(s) describing all contacts and discussions with the property owner. Include a statement that the brochure, Public Information for Highway and Street Projects, was presented to the property owner or to their designated representative.

The above-completed documents should be kept in one complete file for retrieval purposes.

RELOCATION

The 1970 Uniform Relocation Act provides relocation benefits to any person whose business, residence, billboard(s) and/or personal property must be relocated because of the project. Under the Act, no one may be forced to move unless provided at least 90 days written notice. The 90-day period begins with the beginning date of negotiations (i.e. the date of the offer). The Act must be followed when relocation assistance is required on federal aid projects.

LPA representatives should review a project in its very early stages to ascertain whether relocation assistance will be needed. The relocation process is time-consuming. Therefore, if any relocation is needed, it is very important that the LPA notify the NDDOT Relocation Officer during a project's very early stages. The Relocation Officer will provide guidance and monitor the project to ensure that federal guidelines are met.

For additional information see Exhibit I - When I Must Move - Relocation Assistance Program

OVERVIEW OF ACQUISITION OPTIONS

VOLUNTARY

Three voluntary options are available to property owners in the acquisition of real property by the LPA. Property owners may:

1. Donate the right of way, in whole or in part;
2. Waive the right to an appraisal in exchange for minimum payment; or
3. Request an appraisal to provide the basis for compensation.

The procedures used and the file documentation required for each option are discussed beginning on page 9.

Property owners may donate their property only after being informed of their right to receive just compensation. (See Notification and Waiver form, Exhibit C). The property owner may donate any portion of the property or its value. However, in many instances, the payment of just compensation to property owners for their property will eliminate problems that could otherwise be encountered during negotiations.

Property owners do not have to surrender possession prior to payment by the LPA for the part taken.

INVOLUNTARY (CONDEMNATION)

Condemnation or involuntary conversion is the taking of real property by the right of eminent domain. **Condemnation should be a last resort. The LPA should immediately consult its city or state's attorney if condemnation is being considered.**

For additional information, refer to Involuntary Right of Way Acquisition (Condemnation).

VOLUNTARY RIGHT OF WAY ACQUISITION

DONATION

Donations are addressed in 49 CFR 24.108 as follows:

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefore, to the Agency. The Agency is responsible for assuring that an appraisal of the real property affected is obtained unless the owner thereof releases the Agency from such obligation.

Donations can be either in total or in part.

TOTAL DONATION

A total donation occurs when the property owner voluntarily elects to donate the property in whole, and waives the rights to (1) an appraisal, and (2) just compensation. *No compensation is paid to the property owner.*

A total donation may be accepted for the following types of acquisitions:

1. Temporary Construction Easements
2. Slope Easements
3. Permanent Construction Easements
4. Permanent Right of Way

No money is exchanged for the property or for damages anticipated to the property.

If the property owner wishes to donate the parcel:

1. The property owner completes, signs, and dates the Notification and Waiver form (Exhibit C). The property owner selects the following option on this form:

We do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plats.

2. The negotiator and property owner both complete, sign, and date the Memorandum Agreement (Exhibit E). The word "DONATION" is written in place of a dollar amount on the form. The property owner retains a copy of the completed and signed Memorandum Agreement.
3. The property owner signs and dates the easement or deed. **Permanent easement and fee acquisitions must be signed in the presence of a notary and properly notarized.**

4. The negotiator completes the Negotiator's Work Sheet (Exhibit F) and prepares written negotiator's report(s) describing all contacts and discussions with the property owner. If a public meeting was held, the minutes or summation of that meeting would suffice for the narrative requirement. The narrative must indicate that the brochure Public Information for Highway and Street Projects (published by the NDDOT) was given to the property owner or property owner's representative.

No coercion may be used during the negotiation.

For additional information, refer to Ownership Contact and File Documentation Requirements.

PARTIAL DONATION

A partial donation occurs when the amount paid to the property owner as compensation for the acquisition is less than the property's full market value or is less than the full amount of anticipated damages.

A partial donation may be accepted in the following types of acquisitions:

1. Temporary Construction Easements
2. Slope Easements
3. Permanent Construction Easements
4. Permanent Right of Way

Property owners must understand at the onset that (1) they have the right to receive just compensation for their property based on its market value, and (2) if a partial donation is made, the compensation offered by the LPA may not necessarily reflect the market value of the property interest acquired. The LPA will be responsible for obtaining an appraisal of the real property affected, unless the property owner(s) releases the LPA from this obligation.

Meetings with property owners should begin by advising the property owners of their right to have the property appraised before negotiations. The property owner or designated representative will be given the opportunity to accompany the appraiser on an inspection of the property. The property owner's right to receive just compensation for the taking should also be explained. The negotiator may find it helpful to have comparable sales and a sales map available prior to any discussion with the property owner. Such information may assist the property owner in making decisions concerning a potential donation and/or whether an appraisal will be necessary.

If the property owner wishes to donate a portion of the property and still requests the completion of an appraisal of the property:

1. The property owner completes, signs, and dates the Notification and Waiver form (Exhibit C). The property owner selects the following two options on this form:
 - a. *We do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plats, and*
 - b. *I do wish to have my property interest appraised...*

In the second statement, the property owner also needs to indicate whether he/she (or a designated representative) wishes to accompany the appraiser on an inspection of the property.

2. The LPA bears the responsibility of retaining appraisers who are competent in the areas of (1) knowledge and understanding of the market containing the property to be appraised, and (2) knowledge, understanding, and ability to appraise the property type in question. The LPA is also responsible for securing the appraisal in a format appropriate to the situation.
3. After completion of the appraisal, the Memorandum of Offer (Exhibit D) is prepared, dated, and signed by the negotiator. The Memorandum of Offer is the LPA's formal offer to the property owner. The negotiator should include sufficient comments on the Memorandum of Offer to distinguish between the part that the property owner wishes to donate and the part that the property owner does not wish to donate. Compensation is disclosed only for the part that is not donated. A copy is presented to the property owner; the original is retained in the project parcel file.
4. Upon reaching an agreement for transfer of the property, a Memorandum Agreement (Exhibit E) is prepared, dated, and signed by the property owner and negotiator. The Memorandum Agreement binds the property owner and the LPA to the terms of the agreement. A copy is presented to the property owner; the original is retained in the project parcel file.
5. The easement or deed for the acquisition is signed and dated by the property owner. **Permanent easement and fee acquisitions must be signed in the presence of a notary and properly notarized.**
6. The negotiator completes the Negotiator's Work Sheet (Exhibit F) and prepares written negotiator's report(s) describing all contacts and discussions with the property owner. If a public meeting was held, the minutes or summation of that meeting would suffice for the narrative requirement. The narrative must indicate that the brochure Public Information for Highway and Street Projects (published by the NDDOT) was given to the property owner or property owner's representative.

No coercion may be used during the negotiation.

For additional information, refer to Ownership Contact and File Documentation Requirements; Trees, Fences, Severance Damage, and Uneconomic Remnant

MINIMUM PAYMENT AND FENCING POLICIES

Property owners have the option of waiving their right to an appraisal of the property in exchange for minimum payment. The amount of the minimum payment is established through LPA policy.

The waiver of an appraisal in exchange for minimum payment applies to the following types of acquisitions:

1. Temporary Construction Easements
2. Slope Easements
3. Permanent Construction Easements
4. Permanent Right of Way

The minimum payment policy is an acquisition tool that allows the LPA to pay the property owner a token amount in lieu of conducting an appraisal. The minimum payment policy is established by the proper LPA officials such as county commissioners, city council, etc. Regardless of the specific policy established, the LPA should ensure that its minimum payment policy is fair and equitable from one property owner to the next. *Federal aid participation in minimum payment policies is limited to \$500 per property owner.*

The LPA should also develop and approve a fencing schedule over and above its minimum payment policy. The fencing schedule will be approved by the proper LPA officials (i.e. county commissioners, city council, etc.) prior to the beginning of the acquisition process. Once again, the LPA should ensure that the fencing payment policy is fair and equitable from one property owner to the next.

The NDDOT should be provided with a copy of any minimum payment policy and/or fencing schedule policy adopted by the LPA. Both policies need to be available to the NDDOT during its review of the right of way process.

If the property owner wishes to waive his or her right to an appraisal of the property in exchange for minimum payment:

1. The property owner completes, signs, and dates the Notification and Waiver form (Exhibit C). The property owner selects the following option on this form:

We wish to waive our rights to an appraisal on our property and receive the minimum payment as per _____ policy.

2. The negotiator and property owner prepare, date, and sign the Memorandum Agreement (Exhibit E). The Memorandum Agreement binds the LPA and the property owner to the terms of the agreement.
 - A notation is made on the Memorandum Agreement that the property owner is waiving the right to an appraisal in exchange for minimum payment.

- The amount of the minimum payment is disclosed on the Memorandum Agreement.
 - A copy is presented to the property owner; the original is retained in the project parcel file.
3. The easement or deed for the acquisition is signed and dated by the property owner. **Permanent easement and fee acquisitions must be signed in the presence of a notary and properly notarized.**
 4. The negotiator completes the Negotiator's Work Sheet (Exhibit F) and prepares written negotiator's report(s) describing all contacts and discussions with the property owner. If a public meeting was held, the minutes or summation of that meeting would suffice for the narrative requirement. The narrative must indicate that the brochure Public Information for Highway and Street Projects (published by the NDDOT) was given to the property owner or property owner's representative.

No coercion may be used during the negotiation.

For additional information, refer to Ownership Contact and File Documentation Requirements; Trees, Fences, Severance Damage, and Uneconomic Remnant

INVOLUNTARY RIGHT OF WAY ACQUISITION (CONDEMNATION)

Condemnation or involuntary conversion is the taking of real property by the right of eminent domain. Condemnation applies to the following types of acquisitions:

1. Temporary Construction Easements
2. Slope Easements
3. Permanent Construction Easements
4. Permanent Right of Way

Condemnation is used to acquire a parcel or interest when the property owner will not agree to accept the amount established by appraisal and negotiations as fair market value for the property or anticipated damages. In North Dakota highway laws, condemnation procedures are explained in Chapter 24-05, Section 09 to 14 and Section 16, Article I of the North Dakota Constitution.

Condemnation should be a last resort.

Condemnation is a sensitive, potentially volatile issue. **The LPA should consult its city or state's attorney when condemnation appears necessary.** Typically, the steps taken in condemnation are:

1. Just compensation is deposited with the clerk of court.
2. The clerk of court sends a notice by certified mail to the property owner, informing the property owner of the deposit with the clerk of court for the condemnation action.
3. The condemning agency takes possession of the property on the date the clerk of court receives the money.
4. The property owner has 30 days to appeal the offer after the condemning agency takes possession. If the property owner does not appeal within 30 days, the property owner will have no other recourse but to accept the deposited funds as just compensation for the taking.

At minimum, the documentation required for each ownership includes all of the following:

1. Appraiser's Valuation Estimate and Certificate of Appraiser
2. Comparable sales
3. Map showing the location of comparable sales
4. Appraisal must be reviewed by a NDDOT realty officer
5. Negotiator's Memorandum of Offer
6. Memorandum Agreement
7. Negotiator's Work Sheet and Negotiator's Reports
8. Recorded receipt of payment

The condemning LPA should be aware that additional documentation may be necessary and appropriate, depending upon the circumstances.

APPRAISAL REQUIREMENTS

An appraisal report is a written document containing sufficient documented information, valuation data, and the appraiser's analyses of that data, to support his or her opinion of value. The appraisal may be either uncomplicated or detailed.

An appraisal is *uncomplicated* when all of the following apply:

1. The parcel's present use is the property's highest and best use.
2. The property's highest and best use is the same before and after the taking.
3. Adequate comparable sales data are available.
4. Damages are measured by cost-to-cure or are nominal.

A *detailed appraisal* is necessary when all of the following apply:

1. A complicated valuation problem is involved.
2. A complex specialty report is needed.
3. The highest and best use of the property is different after the acquisition, compared to before the acquisition.
4. Damages, other than cost-to-cure, are more than nominal.
5. Decreases or increases in market value due to the proposed improvements are involved.
6. Market data for a sales comparison approach is inadequate and consideration must be given to the cost and/or income approaches, as appropriate.
7. The possibility of adversary eminent domain proceedings is high.

The depth of analysis contained in an appraisal report will depend upon the complexity of the appraisal problem. An *uncomplicated appraisal* will contain all necessary information to provide a supported opinion of value, but at considerably less detail than that expected of a *detailed appraisal*.

All appraisals must begin with the appraiser offering the property owner or designated representative the right to accompany the appraiser on an inspection of the property. Both in-state and out-of-state property owners shall be contacted and afforded this right of accompaniment. The appraisal report should contain a discussion of the ownership contact that indicates that the offer of accompaniment was extended to the property owner, whether the property owner/designated representative elected to accompany the appraiser, the date of the inspection, etc. In addition, at a minimum, both *uncomplicated* and *detailed* appraisals should contain the following items:

1. The purpose or function of the appraisal, a definition of the estate being appraised, a statement of the assumptions and limiting conditions affecting the appraisal, and the type of appraisal report.
2. An adequate description of the subject neighborhood; physical characteristics of the property being appraised, acquisition area/parcel, (and, in the case of a partial acquisition, an adequate description of the remaining property); a statement of the known and observed encumbrances, if any; title information; location; zoning; present use; and analysis of highest and best use; and a minimum five-year sales history of the property.

3. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data is available to reliably support the fair-market value given the specific appraisal problem encountered, the LPA, at its discretion, may require only the market approach. If more than one approach is used, there should be an analysis and reconciliation of value that is sufficient to support the appraiser's opinion(s) of value.
4. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
5. Identified photographs of the subject property including all principal above-ground improvements or unusual features affecting the value of the property.
6. An identification or listing of the buildings, structures, and other improvements on the land as well as the fixtures which the appraiser considers to be a part of the real property to be acquired.
7. The estimate(s) of market value. In the case of a partial acquisition, a reasonable allocation of the market value estimate should be contained in the report.
8. The date of the property inspection, the effective date of the value estimate, and the date of the report's preparation. The date of the property inspection is usually the effective date of the value estimate.
9. The appraiser's certification, signature, and date of signature.
10. Other descriptive material (maps, charts, plans, photographs).
11. The federal aid project number and parcel identification.

Appraisals shall be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal Foundation, and, in some cases, the Uniform Appraisal Standards for Federal Land Acquisitions, published by the Interagency Land Acquisition Conference and the Justice Department. Appraisals must also comply with state-approved requirements.

A Basic Data Book containing project data useful to more than one appraisal within a particular project may be developed and used in the appraisal process. Information contained in the Basic Data Book (typically, city and neighborhood analyses, comparable market data, etc.) can be used to supplement each appraisal report, thereby reducing or eliminating repetition. Specific information contained in the Basic Data Book is referenced in the appraisal report where applicable. Any information incorporated into an appraisal through reference to a Basic Data Book must be specific concerning the type of data applicable to the appraisal, and to the data's specific location in the Basic Data Book.

All appraisals must be written in permanent form and should be retained in the project parcel file. *For more information, refer Exhibits G-I.*

SPECIAL APPRAISAL CONSIDERATIONS

Appraisals prepared for eminent domain purposes occasionally encounter problems or special considerations relating to trees, fences, severance damages, and/or uneconomic remnants. The following policies have been established to address these considerations:

Trees

Tree valuation is influenced by many factors including project location, supply and demand, the condition and variety of tree impacted, and other factors that may be pertinent. Trees in one particular location may have little or no contributory value, yet the same tree variety may offer significant contributory value in another location. The appraiser should research various market sources to obtain evidence that supports contributory value estimates of trees, shrubs, or other on-site improvements. Sources may include discussions with area buyers and sellers, contacts with the North Dakota Forest Service, local extension agencies, owners of local greenhouses, etc. Reference materials such as the Guide for Plant Appraisal (published by the International Society of Arboriculture) or other similar publications may be considered. Value estimates for trees, shrubs, plants, etc. should be consistent with market conditions found in the project area and need to be clearly and fully explained.

Fences

The LPA should develop and approve a fencing schedule over and above its minimum payment policy and ensure that the policy is fair and equitable. Fencing costs may be obtained through local fence contractors or fencing suppliers. The LPA may also contact the NDDOT's Right of Way Section regarding fencing costs.

The cost of fence or its relocation can be paid to the property owner without requiring an appraisal of the part taken IF the property owner will donate the acquisition or accept the LPA's minimum payment option. In these situations, the property owner must complete and sign the Notification and Waiver form (Exhibit C), and indicate the donation or the acceptance of minimum payment.

Severance Damage

Severance and cost-to-cure damage payments mitigate damage caused by the taking. The intent of mitigation is to put the property owner in the same position he/she was in before the right of way was acquired. Potential mitigating situations include fences, cattle passes, gates, replacement ponds, etc. Severance or cost-to-cure damages are to be paid if they exist.

Uneconomic Remnant

An uneconomic remnant is, "a remaining part of land, after a partial acquisition, that the agency determines is of little or no use or value to the owner". The LPA will offer to purchase all uneconomic remnants.

ACQUISITION OF STATE-OWNED LAND

For information and procedures relating to the acquisition of state-owned lands, contact Mike Haupt at the North Dakota State Land Department at 328-2800.

EXHIBITS

* APPRAISER'S VALUATION ESTIMATE

Project No. _____ County: _____ Parcel No. _____

Owner: _____

Owner's Address: _____

Property Address or Location: _____

Appraiser's Narrative: (describe the subject property and the basis for valuation) _____

I have examined the larger parcel and have concluded:

1. The taking will will not damage the remainder parcel; and
2. The taking will will not result in a change of highest and best use.

The purpose of this appraisal is to estimate Fair Market Value for property or rights therein to be acquired under the provisions of North Dakota Statutes. The undersigned appraiser hereby certifies that: On _____, _____, I personally inspected this property and on _____, _____, I conferred with _____. I afforded the owner or his representative the right to accompany me on the inspection of the property. Offer was accepted. ____ Offer was declined. ____ My opinion of value as of _____, _____, is as follows:

(1)	Partial takes: Area to be acquired (sq. ft. or acreage)		
	_____	x \$ _____	= \$ _____
	_____	x \$ _____	= \$ _____
	_____	x \$ _____	= \$ _____
	_____	x \$ _____	= \$ _____

(2) Value of improvements acquired
(or cost-to-cure) \$ _____

Total \$ _____

Date of Report _____ Appraiser _____

(For details relating to appraisal review, refer to separate appraisal review report dated)

*Appraisal must contain all items described in "Appraisal Requirements" of Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects

CERTIFICATE OF APPRAISER

Project No. _____ Parcel No. _____

I HEREBY CERTIFY:

That I personally made a field inspection of the property herein appraised and have afforded the owner or a designated representative the opportunity to accompany me on the inspection. I also personally made a field inspection of the comparable sales relied upon in making said appraisal. The property being appraised and the comparable sales relied upon in making this appraisal were as represented in the appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal is to be used in connection with the acquisition of right of way for the above-referenced project with the possibility of assistance of federal aid highway funds, or other federal funds.

That such appraisal has been made in conformity with the appropriate state laws, regulations and policies, and procedures applicable to the appraisal of right of way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said state.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect, present or contemplated, future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials and I will not do so until so authorized, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, has been disregarded in determining the compensation for that property.

That I have not given consideration to, or included in my appraisal, any allowance for relocation assistance benefits.

That my opinion of the just compensation for the acquisition as of the _____ day of _____, is \$_____ based upon my independent appraisal and the exercise my professional judgment.

Date: _____

Signed: _____

NOTIFICATION AND WAIVER

PROJECT: _____ PARCEL(S): _____
OWNER(S): _____ COUNTY: _____
LEGAL DESCRIPTION: Please refer to attached plat(s) for legal description

Section 323, Title 23, United States Code, states that no provision of law shall prevent a person, whose real property is being acquired for a federally-aided highway project, from making a gift or donation of such property, or any part hereof, or of any of the compensation paid therefore, after such person has been fully informed of their right to receive just compensation for the acquisition of their property.

The purpose of this document is to provide you with a written explanation of your right to receive just compensation for the acquisition of your property for the above-named federal-aid highway project.

If you elect to receive just compensation for your property, federal and state law require that your property be appraised and an amount be established which is believed to be just compensation prior to the initiation of negotiations. The law also requires that a prompt offer be made to acquire your property for the full amount so established. In no event will the amount offered be less than the state's approved appraisal of the fair market value of the property appraised.

Should you desire to receive compensation for your property, the _____ will provide you with a written statement of a summary of the basis of the amount established as just compensation.

I/we, the undersigned, understand that we are entitled to receive just compensation for our property being acquired by the _____ to construct the above-named federal-aid project.

9 I/we do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plat(s).

9 I/we wish to waive our rights to an appraisal on our property and receive the minimum payment as per _____ policy.

9 I/we do wish to have my property interest appraised. In compliance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646), the owner or their designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property. I/we _____ do, _____ do not wish to accompany the appraiser during the inspection of the property.

It is understood that any changes in these plans, adverse to our property, will make this agreement null and void.

Signature(s) Date Signature(s) Date

Signature(s) Date Signature(s) Date

MEMORANDUM OF OFFER

Project _____ Parcel _____
Owner _____ County _____
Address _____

The following-described real property and/or related temporary easement areas are being acquired for highway purposes:

I, as agent of the _____, am hereby authorized to offer the approved amount of \$ _____ as full compensation for the fee and/or temporary taking of the above-numbered parcels and all damages incidental thereto. This offer is based on a review and analysis of appraisal of this property made by a qualified appraiser. A breakdown of this offer is as follows:

Land	\$	_____
Easement and Access Control	\$	_____
Improvements on Right of Way*	\$	_____
Damages to Remainder	\$	_____
Total Offer	\$	_____

*Description of improvements on right of way are as follows:

Estimated Salvage Value \$ _____

The following are separately-held interests of the owner or tenant/lessee, which are within the right of way limits of the above-described real property and/or related temporary easement areas that are not covered by this offer:

AGENT (TYPE OR PRINT)

SIGNATURE

DATE

MEMORANDUM AGREEMENT

Federal Aid Highway Project No. _____ Parcel No(s). _____

On this _____ day of _____, _____ did execute a deed, subordination of rights, _____ easement, conveying to _____ the above-identified parcel(s) of property in _____ County, consisting of _____ acres, more or less, as shown on the right of way plats, for a total of \$_____ for land and all damages.

This agreement is now made and entered as a memorandum of all of the terms, and the only terms agreed upon in connection with the above settlement.

- 1. The _____ assumes ownership of all trees within the right of way excepting that the owner may remove or use said trees with the written permission of the _____.
2. _____ feet of _____ fence to be moved by the owner prior to construction of the highway.
3. The owner will be permitted to use any cattle pass or drainage structure installed for a cattle or stock pass at their own risk. The _____ will provide the necessary maintenance for highway purposes. The owner will provide the necessary maintenance for use as a stock pass.
4. _____ will not maintain any service road except those shown on the plat attached hereto and made a part hereof.
5. Access control is being acquired and the abutting owner shall reserve the right of access at _____ temporary points to be designated by the _____ as shown on the right of way plat.
6. The owner(s) agree(s) to joint payment with mortgagee, if requested by the mortgagee.
7. Additionally: _____ Land \$ _____
_____ Easements and Access Control \$ _____
_____ Improvements on Right of Way \$ _____
_____ Damage to Remainder \$ _____
_____ TOTAL: \$ _____

The _____ must approve all settlements. The _____ will notify the owner in writing if this settlement is not approved. Payment by the _____ must await approval of title and processing of a voucher and warrant through the offices of the _____

. Now, therefore, as a memorandum agreement of the parties, the undersigned do hereby execute and deliver this document. This agreement was reached without coercion, or promises other than those shown in the agreement, or threats of any kind whatsoever by, or to, either party. The agent has no direct or indirect present or contemplated future personal interest in the parcels or in any benefit from the acquisition of such property.

LANDOWNER/LESSEE (TYPE OR PRINT)

LANDOWNER/LESSEE (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

LANDOWNER/LESSEE (TYPE OR PRINT)

LANDOWNER/LESSEE (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

AGENT (TYPE OR PRINT)

SIGNATURE

DATE

Negotiator's Work Sheet

Owner: _____ Project: _____
Address: _____ Parcel: _____
County: _____

Land Description: _____

Telephone no. _____

Contract for Deed to: _____ Call Date Time

_____ 1st _____

_____ 2nd _____

_____ 3rd _____

_____ 4th _____

Mortgage: _____ 5th _____

_____ 6th _____

Total Taking: _____ Acres 7th _____

_____ 8th _____

Amount Approved for Negotiations: 9th _____

_____ 10th _____

\$ _____ 11th _____

Comments:

1st Contact: _____

2nd Contact: _____

3rd Contact: _____

Additional Remarks: _____

Appraised By: _____ Date Signed: _____

Negotiator: _____ Settlement to Owner: _____

Amount of Subordination: _____ Total Settlement: _____

- over -

Additional Comments and/or Remarks:

Lined writing area consisting of approximately 20 horizontal lines for entering comments or remarks.

UNIFORM REAL PROPERTY ACQUISITION
TITLE III COMPLIANCE REVIEW

County: _____
Location: _____
Type of Work: _____
Landowners Involved: _____

Project No.: _____
Proposed Bid Opening Date: _____
R/W Acquired: _____
Parcels Involved: _____

Dates Checked: 1st _____ 2nd _____ 3rd _____

Check List:

Were property owner notification forms used? _____

Did all property owners waive their right to an appraisal? _____

How many requested an appraisal? _____

Were appraisals completed? _____ By whom? _____

Were appraisals reviewed? _____ By whom? _____

Were negotiations completed? _____ By whom? _____

Was the property owner or a representative provided the opportunity to accompany the appraiser during his/her inspection of the property? _____

Type of instrument used? _____

Has the acquiring agency made every reasonable effort to acquire expeditiously the subject property by negotiation? _____

Was just compensation established prior to the initiation of negotiations? _____

Did the acquiring agency make a prompt offer to acquire the property for the full amount established? _____

Does the offered amount disregard any decrease or increase in value caused by the project? _____

Was the property owner or the designated representative given a written statement of, and summary of the basis for, the amount established as compensation? _____

Was the approved compensation shown on written statement broken down between:

a. Compensation for the real property acquired? _____

b. Compensation for damages to the remainder? _____

- over -

Did acquiring agency pay agreed purchase price, or deposit at least that amount with court before taking possession of the property? _____

Did occupant have at least 90 days' written notice before he or she was required to move?

Was the owner or tenant of the subject property allowed to occupy the premises on a rental basis after the acquisition? _____

Is the basis for the rental rate acceptable? _____

Did the rental exceed the fair rental value (rate) of the property to a short-term occupier? If so, explain why. _____

Was there any indication of coercion to compel an agreement to settle on the offered price by:

- a. Advancing or deferring condemnation action? _____
- b. Deferring deposit of funds in court? _____
- c. Delaying negotiations? _____

Was there an inverse condemnation brought against the acquiring agency? _____

Was an uneconomic remnant involved? ___ If so, did the acquiring agency offer to purchase? ___

Were tenant-owned improvements acquired? _____ If so, was the offer based on the improvements contribution to the value of the real property acquired? _____

Was there a duplication of payment? _____

Did the landowner disclaim all interest in tenant-owned improvements? _____

Did the tenant assign, transfer, or release all right, title, and interest to the acquiring agency?

Was the owner reimbursed for:

- a. Expenses incidental to conveying property? _____
- b. Mortgage prepayment penalty expenses? _____
- c. Pro rata taxes? _____

Comments:

1st Contact: _____

2nd Contact: _____

Memo to Central Office date: _____

Reviewed by: _____ Date: _____

Above information verified by: _____ Date: _____

Title: _____

STEPS IN HIGHWAY PLANNING, DESIGN, AND CONSTRUCTION

TRAFFIC SURVEYS

Traffic surveys are studies of the traffic flow from which engineers can determine the numbers and types of vehicles using a specific length of highway on any given day or hour.

Surveys are taken by means of mechanical counters and personal interviews. This information, along with maintenance cost records, is the basis for determining the need for a new or improved highway or street.

PROGRAMMING

After highway or street improvement needs are established, they are presented to planning engineers and are included in a long-range highway or street program. Each proposed improvement is then considered, along with others, and is given a priority and placed in the program.

PRELIMINARY ENGINEERING

Preliminary engineering covers all studies and surveys necessary to plan and design a highway or street.

The location engineer, through the use of aerial photographs and on-site inspection, studies the terrain in the area, selects the most feasible routes, and presents them to engineers in other specialized fields for study. The engineer prepares a cost estimate and analyzes the advantages and disadvantages of each routesurveys and may be presented at a public hearing.

The final route is selected after the hearing. Surveys are then completed including laying out a centerline and measuring elevation and drainage. The exact location of all buildings, fences, power poles, dams, wells, corrals, and other improvements is also documented.

PUBLIC HEARINGS

Public hearings are held in the locale of most projects. Notices of scheduled hearings are generally posted in public places and published in local newspapers.

All available facts are gathered and presented at these meetings. You, the public, are invited to present your views. Everyone is urged to attend and take part. You will be given the opportunity to comment and ask questions concerning the proposed route. You may be able to provide useful information that NDDOT or the political subdivision can use as it makes a final decision on the proposed project.



FINAL DESIGN

Final design of the project begins as soon as the exact project location is decided.

Design plans will describe in detail how the highway or street will be built. This includes grades, drainage, slopes, and other details, as well as the limits of the necessary right of way which must be acquired for construction.

RIGHT OF WAY APPRAISAL

The appraisal is the basic process in right of way acquisition. Fair and reasonable prices are established for needed property, or for damages caused by the acquisition of needed property.

“Right of way” can mean either fee acquisition, permanent easements, or temporary easements.

NDDOT and the political subdivisions use basic appraisal approaches accepted nationwide in determining fair market property value.

The appraiser will inspect each property required and will contact each owner or tenant to explain the extent of the proposed acquisition and how the completed project will affect any remaining property. The appraiser will gather all possible information concerning the value of your land, such as recent sales of comparable property, construction costs, rental values, etc.

To determine the value of the property to be purchased, the property is compared to other similar properties which have sold recently. The price paid and conditions of each comparable sale are carefully investigated.

The appraiser will evaluate the effects of the highway or street project on your land and any damages as a result of the acquisition, such as separation into two or more parcels, cost of moving or construction of new fences, and any restrictions on access to and from the highway or street. Special benefits which result in an increase in value of the remainder will also be considered.

Finally, the appraiser prepares a complete written appraisal of each tract of land, describing in detail the basis for the determination of fair market value. The completed appraisal is then submitted to a reviewing appraiser for a final review. The review appraiser may also view your property and recommend additions or corrections to the original appraisal.

It is to your benefit to show the appraiser your property and discuss all features of the property that affect its value. A thorough appraisal is the best assurance of a satisfactory settlement. All parties involved benefit from such an appraisal.

The appraiser or agent may ask the property owner to donate the right of way. Donations are a common practice where the acquisition is small in size and the value is minimal. Property owners wishing to donate, may waive their rights to an appraisal and compensation by signing a Notification and Waiver form.

NEGOTIATIONS FOR RIGHT OF WAY

All real estate transactions are the result of discussions between two parties. These discussions are called negotiations and are essential in reaching an agreement satisfactory to both parties.

An acquisition agent, representing NDDOT or the political subdivision, will meet with you as soon as your property has been appraised. At this time the agent is required to give you a firm offer, in writing, for the necessary right of way.



The agent’s primary duty is to advise and assist you in every possible way as to the process of selling your property to NDDOT or the political subdivision.

It is the agent's obligation to be knowledgeable about the highway or street system and real estate transactions. The agent:

- ◆ Can answer many of the questions you may ask about the effect of the proposed improvement on your property.
- ◆ Can answer most questions about mortgages, liens, taxes, legal documents, and many other topics.
- ◆ Will have all the necessary documents, and will be willing to explain them to you.
- ◆ Can help you to arrange a release of a mortgage or lien if necessary.
- ◆ Must inform you of your rights in eminent domain and, when applicable, your reimbursement rights for moving personal property as well as your possible eligibility for the Relocation Assistance Program.

A voucher copy of the transaction will be provided when you receive payment.

NDDOT and the political subdivision recognize that some property owners do not care to sell, and at times there will be some inconvenience connected with the sale. It is intended, however, that when negotiations are complete, you can say that you have been treated courteously and fairly.

ALTERNATIVE TO SETTLEMENT

When, for some reason, the necessary right of way cannot be acquired by a negotiated settlement, the representatives of NDDOT or the political subdivision have the right to take the needed right of way through the laws of eminent domain. These are laws under which NDDOT and nearly all political subdivisions, as well as certain utilities, have the right to take private property for the benefit of the public. These laws also protect the rights of the property owner by requiring that fair market value be paid for all property acquired.

This action, more commonly known as "condemnation," is undertaken in North Dakota in accordance with pertinent statutes under Article 1, Section 16, of the North Dakota Constitution. It is used only when necessary.

When condemnation becomes necessary, NDDOT or the political subdivision place a monetary deposit with the clerk of court of your county. This deposit must be a reasonable offer for the damages incurred. NDDOT and the political subdivision may have the right to immediate possession of the condemned property, depending on their specific charters, by-laws, etc.

The property owner is notified by the clerk of court of the action and the amount deposited. At this point the property owners may either accept the offer and withdraw the total amount deposited or file an appeal with the district court for determination of damages. This appeal must be filed within 30 days after receiving the notice from the clerk of court. Property owners who withdraw the deposited payment still may appeal, as may others with an interest in the land.

Although it is not legally required as part of eminent domain proceedings, NDDOT or the political subdivision also sends a notice to each party having an interest in the property. This informs the property owner of the action and advises that when condemnation is undertaken, all improvements including buildings, fences, dams, wells, etc. on the condemned right of way become the property of the state, county, or city. The improvements cannot be removed without written approval from NDDOT or the political subdivision.

RELOCATION ASSISTANCE

Under state and federal laws, all persons who are required to move or relocate their family or business as a result of the taking of right of way for highway or street purposes are entitled to certain rights and compensations. These are explained in detail in another brochure given to all persons forced to relocate. In most cases, an agent from NDDOT will help with the relocation assistance process.



CONTRACTS LET (BID)

Nearly all construction projects are let to competitive bids. Public bid lettings, at which different contractors are invited to offer bids, are held periodically. Results of these bids are then considered and contracts are awarded to the lowest bidder capable of handling each project. All right of way must be acquired or condemned before construction contracts are advertised for bids.

MORE QUESTIONS?

When can I expect payment?

Generally, payment for right of way can be expected within 30 days following transfer of title. Titles clouded by mortgages, judgements, liens, etc. will probably take somewhat longer.

What about the mortgage on my property?

Representatives from NDDOT and the political subdivision generally make arrangements with mortgagees for release of mortgaged property. Payment for mortgaged property is usually made to the owner and the mortgagee jointly, and arrangements for division of the payment must be worked out between them.

What about my buildings?

Owners of right of way involving buildings are generally given a choice of plans for consideration in negotiated settlements. First, NDDOT or the political subdivision offers to purchase the buildings outright along with the land, in which case the buildings are later sold at public auction or by sealed bids. Second, the property owner may choose to retain the improvements at a predetermined salvage value. The salvage value will be deducted from the overall purchase price. Third, consideration will be given to payment for the cost of moving the buildings.

NDDOT and the political subdivisions have the responsibility to make sure, in all transactions involving the moving of buildings, that the cost to move the buildings does not exceed the value of the buildings in place. This would be an unwise expenditure of public funds.

How soon will I have to move?

Every effort will be made to give occupants enough time to relocate. Ordinarily at least 90 days from the date of acquisition will be allowed.

Additional comments and answers to relocation questions most often asked are covered in the relocation brochure.

Must I pay income tax on the money received?

The sale of your property for highway or street purposes is considered by the Internal Revenue Department as an "involuntary conversion." It is not necessary to pay income tax or

capital tax if the money you receive is similarly reinvested within a given time. You should, however, check with the IRS or a local tax consultant for answers to your questions.

Where can I get additional information?

The acquisition agent who contacts you to purchase your property can usually provide any information requested, or will find it and report back to you.

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Introduction

This brochure has been prepared to help you move when your home or property is needed for a highway project. Appropriate replacement housing must be provided before anyone is relocated as a result of a federally-funded road improvement project. The staff of the North Dakota Department of Transportation (NDDOT) will assist you in every way possible.

The information provided here outlines your benefits and rights according to the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, and the Code of Federal Regulations, Title 49, part 24. It should be helpful to anyone who must reestablish his or her home, business, farm, nonprofit organization, or rented property because of the acquisition of new highway right of way.

Payments mentioned in this brochure will be in addition to the approved property appraisal. These payments are not automatic; eligibility must be established.

Notice: A person (alien) not lawfully present in the United States, will be subject to meet all federal laws, state laws, and NDDOT policies on illegal aliens prior to being eligible for any relocation payments under this program.

Regulations implementing this relocation assistance program may be obtained from the Design Division of NDDOT, or from one of the eight district offices. Addresses are listed on the last page of this brochure.

Home Owner's Benefits

◆ Moving Costs

If you must move because of a federal aid highway project, you are entitled to reasonable payment for moving expenses.

If you move your self instead of hiring a commercial mover, you may be paid actual moving costs, supported by receipts or other evidence of expenses incurred. These payments may not exceed the estimated cost of moving commercially.

Instead of these payment methods, you may choose to accept a moving expense allowance, as outlined in the schedule on page 7.

When an actual expense basis is used and it's necessary for you to store your personal property, the storage will be paid by the state—not to exceed 12 months.

◆ Replacement Housing Payments

If you have been an owner-occupant for 180 days or more, you may receive additional payments not to exceed \$22,500 to purchase comparable decent, safe, and sanitary housing.

If you have been an owner-occupant for 90 to 179 days, you may be eligible for a replacement housing payment, not to exceed \$5,250, to rent or purchase decent, safe, and sanitary housing.

If you have been an owner-occupant for 90 days or more and desire to rent rather than buy, you may be eligible for a replacement housing payment not to exceed \$5,250.

◆ Incidental Payments

If you have owned the home for 180 days or more, you may be compensated for the loss of favorable financing on your existing mortgage and other costs associated with the purchase of replacement housing.

◆ Eligibility

The owner-occupant is eligible for the previously described payments when:

- a) You move as a result of the acquisition of the property on which you are living.
- b) You are in occupancy at the time a written notice is given by the state, that it is the state's intention to acquire the property.
- c) You are in occupancy at the time of initiation of negotiations, or in occupancy at the time property is purchased by the state.
- d) Subsequent occupants are not eligible for replacement housing payments.
- e) Your occupancy has been for a specified time (either 90 days or 180 days) for maximum benefits.
- f) You purchase and occupy a decent, safe, and sanitary dwelling within one year.
- g) See notice on page 1 in regards to a person (alien) not lawfully present in the United States.

Tenant's or Renter's Benefits

◆ Moving Costs

If you must move because of a federal aid highway project, you are entitled to payment for reasonable moving expenses. These payments must be supported by receipts.

In the case of a self move, the relocated individual or family may be paid actual moving costs, supported by receipts or other evidence of expenses incurred. These payments may not exceed the estimated cost of moving commercially.

Instead of these payment methods, individuals may elect to accept a moving expense allowance, as outlined in the schedule on page 7.

When an actual expense basis is used and it's necessary for the relocated person to store their personal property, the storage will be paid by the state—not to exceed 12 months.

◆ Replacement Housing Payments

Amount of Payment. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. The payment will be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

- a) The monthly rent and estimated average monthly cost of utilities or a comparable replacement dwelling; or
- b) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

A tenant of 90 days or more who elects to buy a replacement dwelling may be eligible for a replacement housing payment not to exceed \$5,250. This is to be used for the down payment plus incidental expenses on a replacement dwelling.

Mobile Home Resident's Benefits

Owners and tenants of mobile homes will receive the same general benefits in regard to moving costs and replacement housing payments as occupants of any other type of dwelling.

When a mobile home is relocated, it may be done on a reasonable cost basis or according to the schedule shown on page 7.

Eligibility requirements would be the same as for occupants of other dwellings.

A displaced individual or family is not required to remain in the same status (owner or tenant), but may elect to rent (if an owner) or purchase (if formerly a tenant).

Business Benefits

◆ Moving Costs

The owner of a business may be paid the actual reasonable cost of a move made by a commercial mover. These expenses must be supported by receipts.

If you move yourself, you may be paid an amount not to exceed the lower of two firm bids from bonded movers obtained by the state.

If the estimated cost of the move would be under \$2,500, a qualified state employee could make the estimate and negotiate this amount with you.

A business owner may be paid the actual direct loss of tangible personal property. The NDDOT relocation officer will discuss that procedure with you.

You may be reimbursed for time and reasonable expenses in searching for a replacement business site.

◆ “In Lieu” Payments

In lieu of all other moving costs, a business may choose to receive a payment equal to the average annual net earnings of the business. The payment may not be less than \$1,000 or more than \$20,000 and the following requirements must be met:

- a) The state determines that the business cannot relocate without a substantial loss of its existing patronage.
- b) The business is not part of a commercial enterprise that has at least three other outlets not being acquired by the state.

Farm Operator’s Benefits

An owner-occupant or tenant displaced from a farm will have the same benefits as any other displaced person from a dwelling, in general.

Business benefits may be paid if the farming operation is forced to move to a new location.

A farm operator may claim the “in lieu” payment of \$1,000 to \$20,000, if the farm operation meets the following requirements:

- a) The entire farm operation would be discontinued.
- b) In the case of partial taking, the remaining portion after acquisition would no longer be an economic unit.
- c) The taking caused the operator to be displaced from the farm operation on the remaining land.
- d) The taking caused such a substantial change in the principle operation or the nature of the existing farm operation that it constitutes a displacement.

Nonprofit Organization’s Benefits

A displaced nonprofit organization is eligible to receive payment for actual reasonable moving expenses, actual direct losses of tangible personal property, and actual reasonable expenses in searching for a replacement site.

Payments other than those described above would be subject to certain criteria which can be explained by the NDDOT relocation officer.

A nonprofit organization may claim the “in lieu” payment of \$1,000 to \$20,000, if it cannot be relocated without a substantial loss of existing patronage.

Reestablishment Expenses

A small business, farm, or nonprofit organization may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing at a replacement site.

Payments described above, as well as other payment options, would be subject to certain criteria which can be explained by the NDDOT relocation officer.

Acquisition Policies

◆ Written Notice and Payments

The state will do everything possible to schedule construction projects so that no person lawfully occupying the property shall be required to move from their home, farm, or business location without at least 90 days written notice from the state or political subdivision responsible for the acquisition.

Payments to the owner for real property can be made prior to the move being completed.

◆ Appeals

Any displaced person disagreeing with the amount of relocation payments allowed may appeal. Notify the NDDOT relocation officer handling the claim and ask for an appeal form. Complete the form and send it to the NDDOT Design Engineer. They will ask the appeal board to review the case and will notify you of the board’s decision. If you are still dissatisfied, you may request that your case be reviewed by the NDDOT Director or their designee for final judgment.

◆ Tax Considerations

Compensation for the actual cost of relocation is not considered taxable income. The IRS, however, requires that all payments exceeding \$600 must be reported on IRS Form 1099-S. It is important that you keep complete relocation cost records for tax purposes.

Standards for Decent, Safe, and Sanitary Housing

NDDOT is required to furnish replacement housing that is decent, safe, sanitary, and meets the minimum requirements listed below.

◆ Minimum Requirements

- a) It conforms with all applicable provisions for existing structures that have been established under state or local building, plumbing, electrical, housing, occupancy codes, and similar ordinances or regulations.
- b) It has a continuing and adequate supply of clean, safe water.
- c) It has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and is connected to hot water, cold water, and an adequate sewage system. A stove and refrigerator in good operating condition must be provided when required by local codes, ordinances, or custom. When these facilities are not required, the kitchen area or an area set aside to serve as a kitchen must have utility service connections and enough space to install such facilities.
- d) It has an adequate heating system in good working order which will maintain a minimum temperature of 70 degrees in the living area under local outdoor temperature conditions. Bedrooms are not included in the "living area" as referred to in this paragraph.
- e) It has a bathroom which is well lighted, ventilated, and it allows privacy to a person within it. It contains a lavatory basin and a bathtub or shower stall, properly connected to an adequate supply of hot water, cold water, and a flush toilet. All facilities must be in good working order and properly connected to a sewage disposal system.
- f) It has an adequate and safe wiring system for lighting and other electrical services. When the utility is not reasonably accessible and is not required by local codes, ordinances, or custom; an exception may be approved by the Regional Federal Highway Administrator.
- g) It is structurally sound, weathertight, in good repair, and adequately maintained.
- h) It has a safe, unobstructed means of exit leading to safe open space at ground level. Each dwelling unit in a multidwelling building must have access either directly or through a common corridor to an exit which opens to ground level. In multi-dwelling buildings of three stories or more, the common corridor on each story must have at least two exits.
- i) It has 150 square feet of livable floor space for the first occupant in a standard living unit, and at least 100 square feet (70 square feet for mobile home) for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family.

◆ Rental of Sleeping Rooms

The standards for decent, safe, and sanitary housing as applied to rental of sleeping rooms will include the minimum requirements contained in paragraphs a), d), f), g), and h) above, as well as the following:

- j) It has at least 100 square feet of livable floor space for the first occupant, and 50 square feet for each additional occupant.
- k) It has lavatory, bath, and toilet facilities that provide privacy including a door that can be locked, if such facilities are separate from the room.

◆ Approval of Local Code

In instances where a local housing code doesn't meet all the standards listed in this paragraph but is reasonably comparable, the agency providing relocation assistance may submit the code to the Regional Federal Highway Administrator for approval or disapproval as acceptable standards for decent, safe, and sanitary housing.

Residential Moving Expense and Dislocation Allowance Payment Schedule October 2001

SCHEDULE A – OCCUPANT OWNS FURNITURE

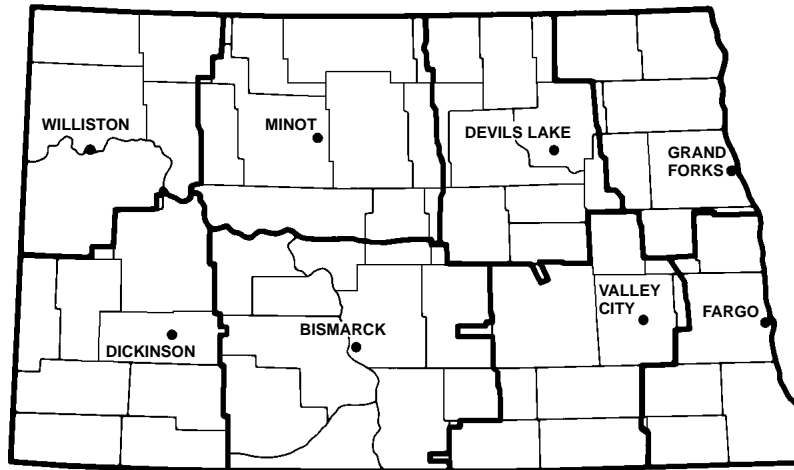
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms	Each Additional Room
\$350	\$500	\$650	\$775	\$900	\$1,025	\$1,100	\$1,225	\$125

SCHEDULE B – OCCUPANT DOES NOT OWN FURNITURE

First Room	Each Additional Room
\$300	\$45

Exceptions:

1. Person whose residential move is performed by NDDOT – \$50.
2. Move of a mobile home from site, actual cost may be added for packing and securing personal property for the move, if reasonable, at NDDOT's discretion.
3. Occupant of dormitory – \$50.



ND Department of Transportation District Offices

Bismarck District

218 Airport Road
Bismarck, ND 58504
Telephone: 328-6950

Devils Lake District

316 Sixth Street South
Devils Lake, ND 58301-3628
Telephone: 665-5101

Dickinson District

1700 Third Ave. West, Ste. 101
Dickinson, ND 58601-3009
Telephone: 227-7400

Fargo District

503 38th Street South
Fargo, ND 58103-1198
Telephone: 239-8900

Grand Forks District

1951 N. Washington, P.O. Box 13077
Grand Forks, ND 58208-3077
Telephone: 787-6500

Minot District

1305 Hwy. 2 Bypass East
Minot, ND 58701-7922
Telephone: 857-7625

Valley City District

1524 Eighth Avenue S.W.
Valley City, ND 58072-4200
Telephone: 845-8800

Williston District

605 Dakota Parkway West, P.O. Box 698
Williston, ND 58802-0698
Telephone: 774-2700

Relocation Officer
Design Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, North Dakota 58505-0700
Telephone: 328-4437 or 1-800-432-1395

FEDERAL HIGHWAY ADMINISTRATION BROCHURE WEBSITES

Acquiring Real Property for Federal and Federal-Aid Programs and Projects:
<http://www.FHWA.DOT.GOV/REALESTATE/AQRPDE.HTM>

Your Rights and Benefits as a Displaced Person Under the Federal Relocation Program:
<http://www.fhwa.dot.gov/REALESTATE/relrght.htm>

The Appraisal Guide:
<http://www.fhwa.dot.gov/REALESTATE/apprgd.htm>

Real Estate Acquisition Guide for Local Public Agencies
A Resource Manual for Use by: Local Public Agencies and State Personnel Involved in the
Acquisition of Real Property for Federally Assisted Public Improvement Projects
Website currently under construction