

Compensation. Administrative settlements may be made when normal efforts to acquire have failed, and the regional chief ROW agent has determined that a negotiated settlement is reasonable, prudent, and in the best public interest.

Include a written counter offer from the owner in the documentation for an administrative settlement.

Consider the following:

- All available indications of value, including any owner's appraisal
- The review appraiser's Determination of Just Compensation, or the approved waiver valuation
- The written diary (ROC) and supervisor's recommendation
- Recommendation from the Department of Law, including the estimate of trial cost and possible court award, and any recent court awards for similar properties

To be valid, the regional preconstruction engineer must approve the proposed settlement in writing. The regional preconstruction engineer may delegate approval of administrative settlements for an increase of \$25,000 or less to the regional chief ROW agent.

Send an informational copy of all settlement agreements to the chief engineer, Division of Statewide Design & Engineering Services.

6.8.1 Mediation

Mediation may be formal or informal. Informal mediation may simply consist of the regional chief ROW agent assigning a settlement agent to the parcel (such as the acquisition supervisor, the regional chief ROW agent, or a headquarters representative). This technique can bring a fresh approach to the acquisition, especially in the case of a personality conflict between the owner and the acquisition agent. The settlement agent may conceive of a different approach than has been previously tried.

Formal mediation involves the regional chief ROW agent enlisting the services of a professional mediator, whose purpose is to arrive at a mutually agreeable settlement within a specified time. DOT&PF may attempt formal mediation only if the owner is willing. The mediator has no power to enforce settlement, but DOT&PF expects the

mediator to produce a settlement. The mediator should be a properly qualified, unbiased third party and should not be a DOT&PF employee.

6.8.2 Land Exchange

A land exchange is an alternative method of acquiring property for a DOT&PF project. It involves the acquisition of property rights needed by DOT&PF in exchange for a specific parcel of land desired by the property owner, who must initiate the request for a land exchange in writing. No property owner has a right to be compensated through a land exchange; the decision to acquire land by exchange is discretionary, and the method should be used only when it is clearly in the best interest of the state. The regional chief ROW agent will forward the property owner's request to the preconstruction engineer with a recommendation for either approval or denial. If the preconstruction engineer denies the request, the regional chief ROW agent will notify the property owner of the right to appeal that decision to the regional director.

There are two general types of land exchanges.

Type 1 is used for land that is already owned by DOT&PF and that is exchanged as a part of the compensation for an acquisition. This exchange is considered a disposal of excess land. See section 9.9 of this manual for the procedures to be followed in disposing of excess land.

Type 2 is used for land that is not otherwise associated with a project and that is acquired solely for the purpose of exchanging that land with property needed for the project. Type 2 exchanges are used primarily for a property owner whose principal business is holding land for long-term management (such as an ANCSA corporation or a land trust), and an exchange is essential to adhere to trust or corporate policy to maintain its land base. DOT&PF will use the acquisition procedures in this chapter to acquire the exchange property. Condemnation may be used only to clear title or if the condemnation action is non-hostile. The Uniform Act applies to the property needed for the project and to the acquired exchange land. Federal-aid highway funds will only participate in the cost of property incorporated into a highway project; therefore the property needed for the project must be appraised, and the appraised value must be deducted from the cost of acquiring the exchange property. Any excess over the appraised value must be coded

as nonparticipating. If the land proposed for exchange is under the jurisdiction of the Department of Natural Resources or another state agency, the exchange is subject to the procedures in section 6.14.4 of this manual.

For a Type 2 exchange, the commissioner must provide a formal declaration stating that the exchange is in the best public interest. Use the following form:

DECLARATION

The Commissioner of the Department of Transportation and Public Facilities hereby formally declares that the State's best public interest will be served by the Department acquiring Parcel Number _____ for exchange with Parcel Number _____ on Project Number _____, which will be used for transportation purposes.

RECOMMENDED FOR APPROVAL:

Chief Engineer, Division of Statewide Design and Engineering Services [or as delegated under Chapter 1 of this manual, Delegation of Authority]

APPROVED:

Commissioner, Department of Transportation & Public Facilities

Date: _____

6.8.3 Donations

If the property owner elects to donate the property to DOT&PF, the department must inform the owner that under [23 C.F.R. 710.505](#) they are entitled to receive just compensation for the property and that they have the right to an appraisal of the property by a qualified appraiser unless DOT&PF has determined an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than \$10,000 (the waiver limit approved by FHWA).

If DOT&PF has determined that no appraisal is necessary, the owner's signature must be obtained on the following written statement:

“(My/our) donation of (the above-referenced parcel) to DOT&PF is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation. (I/We) also release DOT&PF from the obligation of preparing an appraisal of this donated parcel.”

If an appraisal is necessary, the owner's signature must be obtained on the following written statement:

“(My/our) donation of (the above-referenced parcel) to DOT&PF is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation.

Advise the owner to consult with the Internal Revenue Service for guidance.

If an independent appraisal is required, DOT&PF may charge the cost of the appraisal to the project.

If the owner requests an appraisal, valuation shall be handled in accordance with chapter 4 of this manual.

6.9. Conclusion of Negotiations

6.9.1 Title Clearance

The acquisition agent must carefully analyze every encumbrance given or listed in a current title report or provided by the owner, and make a good faith effort to clear all encumbrances noted in the title report. For instance, the property may be involved in foreclosure, divorce proceedings, or bankruptcy, or there may be a lien on the property (such as a federal tax lien filed by the IRS). If an encumbrance or break in the chain of title cannot be cleared with reasonable effort, request a review by the title examiner through the appropriate supervisor. The title examiner must make a written statement of the problem and an analysis of the potential liability to DOT&PF if the encumbrance or break is not cleared. The examiner may recommend one of the three following actions:

- The agent should continue the process, with recommended instructions for clearance of specific items.
- Condemnation for title purposes
- No further action should be taken due to limited potential liability to DOT&PF.

If the title examiner recommends that no further action be taken, written concurrence must be added to the recommendation by the acquisition supervisor, and the document must be approved by the regional chief ROW agent. The document is to be made a part of the permanent parcel file, and the item is considered to be cleared for title purposes.