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## CHAPTER 3 NEGOTIATION POLICIES AND PROCEDURES

### 3.01 NEGOTIATION POLICIES

The following policies govern the acquisition of real property for state and local public agency highway improvement projects. Uniformity of application will assist field review, central office guidance, insure federal reimbursement and maintain a high standard of integrity and professionalism in the acquisition of private property for public use.

#### 3.01-1 GENERAL

Negotiations shall be conducted by qualified staff employees of the state and its political subdivisions or by qualified fee negotiators employed under the conditions described in this section as well as in [Section 3.03-1](#).

Counties, municipalities or other local governmental agencies may be used to acquire right of way on the state highway system provided such acquisition conforms to the state's land acquisition policies and procedures and the process has prior approval of the department.

In all cases, it is the responsibility of the district engineers and their staff to ensure that right of way acquisition is in conformity with the state procedures.

The negotiator shall maintain adequate records of property owner negotiations by recording in writing ([Section 3.06](#)), on a parcel basis, immediately after each contact with the property owner, the date and place of contact, persons present, offers made, counter offers, reasons settlement could not be reached, and any other pertinent data. Upon termination of negotiations, the record shall become a part of the project parcel file. A Negotiator's Report Form is attached as [Exhibit 3.01-1A](#).

Prior to the first contact with a property owner the negotiators shall sign a statement (1) that they understand that the parcel is to be secured for use in connection with a federal-aid or state highway project; and (2) that they have no direct or indirect present or contemplated future personal interest in the parcel or will in any way benefit from the acquisition of such property. When negotiations are successful, the negotiators shall sign a statement that (1) the written agreement secured embodies all of the considerations agreed upon between the negotiator and the property owner; and (2) the agreement was reached without coercion, promises other than those shown in the agreement, or threats of any kind whatsoever by or to either party. Both certifications are included as a part of the Negotiator's Report ([Exhibit 3.01-1A](#)).

When right of way is acquired by negotiation, the complete agreement between the department's Division of Highways and the property owner shall be embodied in written instruments appropriately executed.

Negotiations for the acquisition of right of way parcels acquired for state or local public agency highway projects will not be carried on by the same person making the appraisal or the person who reviewed the appraisal on the property being acquired, except under the following circumstances:

- In cases of minor acquisitions involving compensation of \$10,000 or less, the estimator of a parcel may also act as the negotiator on that same parcel under the appraisal waiver procedure set out in [Section 2.02-1](#); or

- In cases of acquisition by and for local public agency highway improvement projects, the estimator of a parcel may also act as the negotiator on the same parcel where the compensation for such parcel is \$10,000 or less. (Also, see [Section 8.03-2](#).)

On projects with federal participation in the right-of-way cost, the person who negotiates the parcel is restricted from delivering the payment to the landowner.

The employment of private individuals or firms to negotiate for the acquisition of right of way for state highway improvement projects or local agency federal-aid projects shall be by written contract in the form provided in the department's land acquisition contract generator. These contracts must be approved in advance by the district engineer.

Approvals are limited only to those exceptional cases where it is clearly shown that such procedure is in the public interest; that the individuals or firms to be employed are qualified to perform the services, and (1) the acquiring agency does not maintain an organization adequate for acquiring such right of way as part of its normal operating staff, or where the acquiring agency's workload significantly exceeds its normal workload; (2) the amount of the fee is not determined on a percentage basis; and (3) the fee is just and reasonable for the work to be performed.

### 3.01-2 ADMINISTRATIVE SETTLEMENTS

If an agreement is not reached through the state's normal negotiation procedures, prior to the filing of condemnation proceedings, the district engineer may review the parcel file, giving full consideration to all pertinent information. This information should include the appraiser's and reviewing appraiser's estimate of fair market value, recent awards by condemnation juries for similar property in the same area, and the amount of the state's probable testimony should the case be litigated. The district engineer or the district engineer's designee should then determine whether a settlement should be attempted at an amount other than that previously offered the property owner. However, such settlements shall not be used solely as a mechanism to avoid condemnation proceedings.

Where a settlement is made on the basis of an administrative determination and such settlement varies from the state review appraiser's estimate of fair market value, the parcel file shall contain a statement approved by the district engineer that sets forth the reasons for such settlement. A copy of the administrative settlement must be submitted with the warrant request on all parcels, except for minimum payment or appraisal waiver parcels.

Where a settlement is made on the basis of an administrative determination and the parcel was appraised under the minimum payment procedure ([Sec. 2.01.1](#)) the settlement can be made for an amount greater than \$10,000 with proper justification and documentation.

### 3.01-3 ACQUISITION PROCESS AND PAYMENT TO OWNERS

Every reasonable effort shall be made to expeditiously acquire the real property by negotiation. It is desirable that each property owner residing within the state or their representative be personally contacted by a negotiator representing the acquiring agency to discuss its offer and explain the full effect of the taking.

On the initial contact, whether in person or by letter, the negotiator will provide the property owner with a copy of the offer/introductory letter shown as [Exhibits 3.05-1A](#) and [3.05-1B](#). Whether the person providing this letter is a fee or staff negotiator will dictate which form of these letters will be used. When utilizing the minimum payment procedure, [Exhibit 3.05-1C](#) or [3.05-1D](#) is to be used. Except under the minimum payment procedure, the property owner must also be provided with a written statement ([Exhibit 3.01-3A](#)) and summary of the basis for the amount that was established as fair market value. In the event the fair market value is revised

by the reviewing appraiser, the revised offer and written summary statement will again be presented to the appropriate party. The negotiator must record the dollar amount of all offers in the negotiator's record that is part of the parcel file. In no event shall negotiations be deferred or any other coercive action taken to compel an agreement on the price to be paid for the property. At some point during negotiations, if it appears likely that the power of eminent domain will be needed, the negotiator should explain the provisions of 735 ILCS 5/7-102.1 and the requirement to provide them with a 60-day ([Exhibit 3.05-16B](#)) notice by certified mail prior to the filing of a condemnation proceeding. Although the 60-day notice is the only statutory requirement that exists before the department can file an eminent domain action, it is the department's policy to provide the land owner with a Final Offer Letter ([Exhibit 3.05-16A](#)) prior to the time the complaint is actually filed.

Not later than at the time of the written offer, each owner is to be supplied with a written explanation of (1) their right to receive full payment, prior to vacating the property, both in the event settlement is reached through negotiation and in the event settlement is through condemnation proceedings; and (2) the steps available if the state's offer is rejected. These written explanations must be furnished in a brochure, letter or other written form or document ([Section 3.02-3](#)). There is no authority in Illinois to obtain possession of property by a partial payment. Possession can only be obtained by full payment of the agreed consideration, full payment of a judgment of the court, or deposit of the preliminary amount for a just compensation set by the court.

As an alternative, the district engineer may authorize sending a letter of offer by U.S. Mail in which case all the information and material required at the time a personal contact is made must be included in or attached to the letter of offer. This material should always be sent by certified mail, return receipt requested, for proof of delivery. This initial phase of negotiations will require; (1) an offer letter containing details of the acquisition, the effect of the acquisition on the property, and the name, address and telephone number of the representative of the district to be contacted concerning the acquisition; (2) copy of completed "Basis for Computing Approved Compensation and Offer to Purchase" ([Exhibit 3.01-3A](#)); (3) instruments of conveyance and other supportive or title curative documents; (4) plat of property showing the area to be acquired and (5) other materials such as pamphlets, brochures, title information, maps and plans that the property owner may require including the brochures "Illinois Highways and Your Property" and "Eminent Domain . . . Your Rights Under the Law." If the property owner has not contacted the district within seven (7) working days after the offer letter is mailed, the negotiator shall make a follow-up contact (telephone or personal) and then continue with the usual negotiation procedures. This method (letter of offer) may not be used on parcels where relocation is involved.

Settlements below or above the estimate of fair market value must be supported. A bona fide offer by an informed person to sell for less than fair market value (including an offer to donate property) could comprise such support. To be an informed person, the owner will be provided with all the facts concerning the acquisition, including the right to receive full compensation, in money, for land and damages, if any, in accordance with the law of this state. [Exhibit 3.01-3B](#), once signed by the landowner will constitute a waiver of the landowner's rights to just compensation and is used when property is donated to the state. No donation letter is required in those cases when a developer donates property in conjunction with an entrance or other improvement they request.

The statutes of Illinois (30 ILCS 545/2) require title running to the People of the State of Illinois be approved by the Attorney General when the consideration for the purchase of right of way exceeds \$10,000 prior to authorizing a public work to commence. When the consideration for purchase of right of way is less than \$10,000, a title approval shall be made by a representative of the department. A right of entry, temporary use permit or license cannot qualify as a sufficient title under this statute to enable authorization of the work.

When the negotiator presents information to a property owner who may be eligible to receive benefits under the department's Relocation Assistance and Payments Program, it will be noted in the Negotiator's Report, [Exhibit 3.01-1A](#), and Relocation Assistance Unit Record, BRW 333.

The Internal Revenue Service requires the department to report real estate transactions acquired by fee simple title, dedication, or permanent easement of \$600 or more. This will require that the negotiator obtain the tax identification number and addresses of all those parties in interest other than corporations and government agencies. If there are multiple owners, the negotiator should also request an allocation of the payment so the 1099-S forms will reflect the actual payment going to each payee. The department is not required to report real estate transactions involving corporations and government agencies.

The Taxpayers Relief Act of 1997 has now excluded the seller of a principal residence from the requirement of filing a 1099-S form after the sale. For the sale of a principal residence to be exempt, a written certification must be signed by each owner ([Exhibit 3.01-3C](#)).

The Chief Counsel has determined that the provisions of Administrative Order No. 1 apply to negotiated acquisitions in the amount of \$250,000 or more. Use Basis for Computing Approved Compensation and Offer to Purchase ([Exhibit 3.01-3D](#)). Any offer of \$250,000 or more must be made contingent on final department approval. Use Receipt for Warranty Deed/Closing Statement Receipt for Deed and Designation of Funds ([Exhibit 4.09-2A](#) and [4.09-3A](#)).

When a property owner agrees to sell property for \$250,000 or more, the district shall submit a brief approval request to the Central Bureau of Land Acquisition ([Exhibit 3.01-3E](#)). It is recommended that it be faxed. The Central Office will be responsible for obtaining the four approval signatures. An approved copy will be returned to the district for inclusion in the parcel file.

#### 3.01-4 ACQUISITION OF TENANT OWNED IMPROVEMENTS

The acquisition of tenant-owned improvements from a tenant owner can be accomplished under certain circumstances. It is important that acquisitions involving tenant-owned improvements are closely coordinated with the department's appraiser to avoid any possible violation of the "unit rule." The "unit rule" was established in Illinois case law. It requires the value of improved property be considered as a whole, without assignment of separate costs for the land and individual improvements. (The Department of Transportation, Plaintiff-Appellee, v. First Bank of Schaumburg, as Trustee, Defendant-Appellant, First District [4th Division] No. 1-91-2497)

In these cases, the offer of just compensation to the record owner must be made based on an appraisal that considers the existence of any tenant-owned improvements but does not violate the "unit rule" by valuing those improvements separately.

When the offer is made to the record owner, the specifics regarding any tenant-owned improvements can be determined. At this time, the negotiator will inform the record owner that it is possible, for negotiation purposes, to request that the department make an allocation of values between the land and the tenant-owned improvements, if the record owner is willing to sign an affidavit disclaiming all interest ([Exhibit 3.01-4B](#)) in the improvements to be acquired. If the record owner executes the disclaimer, the negotiator will go back to the appraisal unit/section and ask for a reasonable allocation of values between the land owner's interest and the tenant-owned improvements. The negotiator will then make new offers to each party based on this allocation. The amount offered for the tenant-owned improvements will be made utilizing the "Tenant-Owned Improvement - Basis for Computing Approved Compensation and Offer to Purchase" ([Exhibit 3.01-4A](#)). If the record owner refuses to disclaim all interest in the

improvements, negotiations will be conducted solely with the record owner. The tenant's interest will still have to be released before title approval is given.

If all parties agree with the values allocated, they execute the instruments necessary to convey their respective interests to the department.

If the fee owner executes the disclaimer and either the record owner or the tenant owner cannot agree to the amounts allocated and offered for their respective interests, both parties will be informed that the department will initiate condemnation proceedings to acquire the needed property, and that the court, in said proceedings, shall have exclusive authority to hear and determine all rights in and to the just compensation deposited in such proceedings. Separate 60-day notices will be sent to both the record owner and the tenant owner. The 60-day notice for the tenant owner should be by [Exhibit 3.05-16C](#). If the department is aware of tenant-owned improvements and the record owner has refused to sign the required disclaimer and condemnation is necessary, the tenant owner will be given a copy of the 60-day notice, by certified mail, that is provided to the record owner.

The compensation allocated for the tenant-owned improvements will be offered to the tenant owners by providing them with an offer letter ([Exhibits 3.05-1E](#) and [3.05-1F](#)) and a Tenant-Owned Improvement - Basis for Computing Approved Compensation and Offer to Purchase ([Exhibit 3.01-4A](#)) that contains the allocation of values proposed. The tenant's interest in the improvements will be acquired by obtaining a quitclaim deed from the tenant owner for the full amount allocated for the improvements. If the tenant owner is a corporation, partnership, church, school, trust, etc., the same acquisition procedures in Chapter 4 addressing those entities for fee acquisitions will also apply to the tenant owner.

Separate warrants may be drawn in favor of the record owner and the tenant owner.

## **3.02 THE NEGOTIATOR**

Negotiators should be ever mindful of the great trust that has been placed in them. Normally, they are the first, and sometimes sole, representative of the Department of Transportation that most property owners meet face to face. The department, its personnel, its functions, organization and operations are usually judged by property owners on the basis of their judgment of the negotiator's method of operation and conduct. Therefore, negotiators must be polite and congenial and have the traits of honesty, integrity, competence, good judgment and fairness.

### **3.02-1 GENERAL**

The ultimate duty of the negotiators is to acquire right of way. It is their presentation of the work of the engineers and technicians, the appraisers and the policy makers of the department that determines whether or not the needed right of way is to be acquired and the proposed highway improvement made on schedule without recourse to condemnation.

### **3.02-2 PUBLIC RELATIONS**

The general public relations policy of the department calls for the promotion of understanding, acceptance and support of the overall highway program.

Highways serve the nation and the state in the movement of people, machines, and goods. The citizens who pay for these highway facilities through special taxes have expectations in terms of cost, safety, convenience and service which have a direct relationship to their home, business, community, state and nation.

If the public understands the need for a safe, efficient, maximum service - potential highway system, acceptance would seem assured. However, the negotiator as a member of the staff, as the representative of the department, and as a public servant, must assume the responsibility for the full process of communication in addition to the role of interpreter and persuader. The negotiator's work then must be directed toward public service.

### 3.02-3 PRINTED INFORMATION

Two pieces of printed information must be presented to the property owner of land to be acquired, as well as any owners of tenant-owned improvements, no later than the time the written offer to purchase is presented: 1) The booklet "Illinois Highways and Your Property," prepared by the Illinois Department of Transportation and, 2) "Eminent Domain ... Your Rights Under the Law," prepared by the Illinois Attorney General.

### 3.02-4 GROUP MEETINGS

A negotiator will not normally be called upon to make a presentation by way of an official appearance at a hearing, before a neighborhood group, civic group or governmental body, or before any assemblage of interested parties. If the occasion should arise, the appearance should be governed according to the following guidelines:

- Demeanor and conduct should be above reproach and a credit to the department.
- Statements made on behalf of the department must be based on fact.
- Statements must be conditioned by the negotiator's specific responsibility and authority. Organizational limitations can only be learned by careful study and by analysis of the rules, regulations and policies of the department and/or through counseling with superiors.

Every statement made by a right of way negotiator is "on the record" so that the negotiator cannot avoid responsibility for acts and words during the negotiations regardless of whether before a group or in the privacy of the owner's home. Public presentations often involve a great deal more pressure, and public attention is more directly focused when there is an appearance before a public group. Any statements in public should reflect the desire of the negotiator to be of service, and such statements should be factual, impartial, and objective. Argumentative presentations should be avoided.

### 3.02-5 ASSIGNMENTS

A negotiator who has worked on a project from its inception will be best prepared to give complete and accurate answers and explanations to affected property owners and acquire the needed right of way most expeditiously. A working familiarity with the locale and its people offers a decided advantage to any negotiator. If workloads and scheduling will permit, it would seem prudent to allow a negotiator to concentrate on a particular project from its initial stages through completion. When this is not possible, assignment should be to a particular segment and failing this, to as many parcels as possible.

## 3.03 QUALIFICATIONS OF STAFF NEGOTIATORS

Staff negotiators of the department are classified as one of the grades of Realty Specialists I through V. Requirements for each grade are shown in [Exhibit 3.03](#).

Fee negotiators must be approved by the Division of Highways prior to receiving assignments to negotiate. A list of approved fee negotiators will be maintained for the division's use in selecting negotiators who can meet our negotiation needs. It is not intended to be used as a general reference to show proof of qualification for any other purpose. This list should be reviewed continually. Anytime a fee negotiator does not perform satisfactorily, or if the Division of Highways does not intend to make additional assignments to a negotiator, his/her name should be deleted from the list.

Fee negotiators, who are not on the approved negotiator list, but whom the district wishes to use for negotiation purposes, must be interviewed by the district engineer, or his or her authorized representative. At the interview, the fee negotiator's qualifications and the requirements of the Division of Highways will be fully explained. Copies of the negotiator forms with instructions for their use will also be reviewed with the fee negotiator.

Prospective fee negotiators must complete the standard "Application for Assignment" ([Exhibit 3.03-1](#)) and furnish proof that they meet the requirements.

After the interview, the district engineer, or someone representing the district engineer, will review the application and the proof furnished, and submit a copy of each to the Central Bureau Land Acquisition Engineer only if the district engineer wishes to make assignments to the negotiators and feels that they are qualified and willing to do acceptable work. After a review in the central office, the Central Bureau Land Acquisition Engineer will notify the district engineer whether or not assignments may be made. When the negotiators are approved, the Central Bureau Land Acquisition Engineer will also send a letter informing them that they have been approved to negotiate for the division. Once approved for assignments in one district, the Central Bureau Land Acquisition Engineer may authorize their use in other districts.

When negotiators are approved, their first assignment should include only a few parcels. If, after a review their work appears to meet the minimum requirements, additional assignments may be made to the negotiator. When minimum department requirements are not met, the district will inform the negotiator. If satisfactory work cannot be obtained, the district engineer should initiate action to have the negotiator's name removed from the approved list.

Fee negotiators must have the necessary background and experience, ability and enterprise to acquire real estate based on appraisals obtained and approved by the Division of Highways. The negotiators must have the ability to interpret highway plans and be capable of explaining the effect of the proposed highway improvement to the landowners of the properties being acquired. When called upon to testify in condemnation proceedings, they must be capable of presenting in a forthright and thorough manner all of the facts regarding each acquisition.

In order to be considered for negotiation assignments a negotiator must have the following qualifications:

- Must have at least two (2) years of verified responsible experience in negotiating for all types of less complex rural and urban property or comparable experience. A background of one of the following is preferred:
  - Title search and clearance work
  - Handling real estate transactions
  - Handling real estate loans

- Property management (including farm management)
- Training in a field related to real estate
- Must furnish the following:

Proof of satisfactory completion of three recognized negotiation courses equivalent to those sponsored by the International Right-of-Way Association or three recognized appraisal courses equivalent to those given by the Appraisal Institute or any combination of the same for a total of three such courses. Other comparable real estate courses, at the discretion of the employing agency, may be substituted instead of or in combination with the above.

- Possess a Bachelor's Degree from an accredited college or university in business administration, law, economics, engineering, agriculture, sociology, or related fields; or high school graduate with experience; or must have a combination of such college training and experience.

### 3.03-2 RATING OF NEGOTIATORS

Fee negotiators must be rated no less than annually. Interim ratings should be prepared when circumstances, such as poor initial work, indicate a need to formally inform the negotiator. Ratings are prepared by utilizing [Exhibit 3.03-2](#) of this manual. Copies of all ratings must be provided to the negotiator being rated as well as the Central Bureau of Land Acquisition by July 15 of each year.

Staff negotiators are rated annually on the "Performance Appraisal Form," which is made a part of the individual's confidential personnel record.

## 3.04 PREPARING FOR NEGOTIATION

Success in negotiating will often be in direct ratio to the degree of preparation. With this thought in mind, the following guidelines may prove helpful.

### 3.04-1 ANALYSIS OF THE PROJECT AND PARCEL

The first step is to study all of the available project data to learn the origin of, the destination of, the route of, the necessity for, and the benefits to be derived from the construction of the proposed highway improvement. This includes an office study of all maps, drawings, and other information which has been compiled on the project and a visual field inspection on site along the route of the proposed improvement to obtain a working familiarity with the topography and present use of the land to be traversed. This can best be accomplished by a joint effort between the project engineer and the negotiator.

When making a field review, the negotiator should attempt to learn as much as possible about the ethnic, cultural, ecological and socio-economic make-up of the neighborhood in which the project is located.

The negotiator must have certain knowledge of each parcel. In addition to having a working familiarity with the right of way plans and the approved appraisal, it is essential that the negotiator be familiar with the land itself; the neighborhood, the number, extent and ownership of improvements (including special land improvements); property boundaries; barriers, both natural and man made i.e., fences, rivers, creeks, ditches, etc.; the take; the remainder, if any; the existing road system and its relation to the parcel in question; the location of comparable

sales with reference to the subject parcel and the general effect of the acquisition on the property including specific benefits, if any.

### 3.04-2 DESIGN AND CONSTRUCTION FEATURES

In order for the negotiator to study the project in the office and on the site, it will be necessary to become thoroughly familiar with the plans and profiles and consult with the District Studies and Plans Section to obtain an explanation of unusual design features. With this information, the negotiator will then be able to provide the owner with a proper description of the proposed highway improvement, its necessity and its advantages.

The negotiator should be prepared to discuss intelligently and understandably certain highway construction and design features that may effect the valuation and/or usage of the property. The following list is suggested:

- Access limitations and control to be imposed
- Existing and proposed means of ingress and egress
- Frontage roads to be provided, if any
- Elevations of the facility in relation to the existing terrain
- Cut and fill, if any
- Driveways - existing and proposed
- Fencing - owner or State responsibility for erection and maintenance – type
- Easements required for construction or channel change or for other uses
- Changes in drainage patterns, if any
- Other features.

Complete knowledge, truthfulness, full disclosure and discussion of all facts relative to construction and design features are necessary and will do much to instill in the owner a justifiable feeling of confidence and trust in the negotiator.

### 3.04-3 APPRAISALS

It is necessary that the negotiator have knowledge of the appraisal process. Appraisal reports, but primarily the approved appraisal, must be studied in conjunction with the layout of the project so that the negotiator understands the taking, damages and/or enhancements involved and be better prepared to answer questions regarding the appraisal. The appraisal is not to be shown or surrendered by the negotiator during negotiations unless specifically authorized by the district engineer. The appraisal portion of this manual, found in [Chapter 2](#), should be read thoroughly and will be of assistance to the negotiator.

### 3.04-4 RIGHT OF WAY PLANS

Right of way plans are developed, along with detailed construction plans, to define areas necessary to construct and maintain the highway improvement. The preparation and composition of right of way plans are discussed in [Chapter 1](#) and negotiators should read and familiarize themselves with the provisions. The negotiator will then be able to speak

authoritatively and knowledgeably with the property owner when reviewing plans, individual plats, and how the proposed highway improvement affects the property.

### 3.04-5 TITLES, DEEDS, CLOSING AND CONDEMNATION

The negotiator must be thoroughly familiar with the Acquisition Policies and Procedures that can be found in [Chapter 4](#). They set forth, in detail, matters relating to titles, closings, deeds and other conveyance documents, and condemnation.

### 3.04-6 NEGOTIATOR'S PORTFOLIO

Success in negotiation is usually directly related to the degree of preparation. In addition to making a thorough study of the project and the particular acquisition involved, the negotiator will make a determination of the instruments of conveyance required to effect a proper and complete transfer of the real property interest sought. In order to accomplish this task in the most efficient and expeditious manner, it will be necessary to prepare a negotiator's portfolio, which contains all of the necessary instruments for conveyance and any other materials such as pamphlets, brochures, title information, maps and plans to be used.

## 3.05 NEGOTIATING

Negotiation officially commences when the negotiator approaches the property owner by personal contact or by letter to formally discuss the details of the proposed transaction and the price to be paid therefore. The normal end of negotiation is that time when the consideration has been paid and the state has obtained possession of the property sought. There is no clear-cut method of forecasting the proper method to be utilized in negotiating; however, the following guidelines may be useful.

### 3.05-1 ESTABLISHING CONTACT

By the mere fact that the transaction involves the selling of real property interests, the property owner is entitled to be approached with respect and in a businesslike manner. It is only natural that an owner may resent being first contacted when totally unprepared or, perhaps, not in a proper frame of mind to discuss the proposed acquisition.

The negotiator may save valuable time and perhaps embarrassment by arranging the time and place of the first contact. The owner should be contacted by telephone as a means of introduction to the negotiator and to establish a time and place for the first face-to-face meeting, at which time this important transaction can be formally and thoroughly presented to the property owner.

The establishment of a time and place for a discussion of the actual transaction should take into account the wishes and desires of the property owner and should be at his or her convenience, within a reasonable time, and at a reasonably convenient location.

Owners should not be contacted at their place of business unless it is the business property that is proposed to be purchased or unless requested by the owner. The meeting will ordinarily be held at the owner's residence; if, however, it is desirable to meet at the state land acquisition office, a private office should be made available.

It is mandatory that all appointments be promptly kept. An arrival at the correct time will assist the negotiator in becoming established as efficient and trustworthy and create a better atmosphere for business relations.

In the interest of good public relations, an introductory letter ([Exhibits 3.05-1A](#), [3.05-1B](#), [3.05-1C](#), or [3.05-1D](#)) should be mailed no earlier than five days before the first meeting with the property owner, or delivered when the negotiator first meets with the property owner.

If it is determined that a letter of offer should be made in lieu of a personal face-to-face contact, then care should be taken to include all the pertinent data and information in the communication in order that the property owner is fully informed of the proposed improvement, its effect on the property, and compensation to be paid.

### 3.05-2 KNOWLEDGE OF THE OWNER

It is always easier to discuss matters with someone who has a common interest, occupation, or hobby or with one who has the same acquaintances or is a member of the same social organization. It is therefore desirable to open your discussion with conversation, which may ascertain as much information as possible about the person.

### 3.05-3 PERSONS IN ATTENDANCE

The first conference should include, if at all possible, all persons who have an interest in the fee title to the property. This first meeting is usually the only time that full details of the proposed construction, appraisal and payment procedures and responsibilities of each party are discussed. Subsequent contacts may be confined to more specific details of particular concern to the owners. If the district presents separate offers to the fee owner and tenant owner, contact with the tenant owner should be made as soon as possible after the first conference with the fee owner.

It is not appropriate or desirable for disinterested parties to be in attendance at the first meeting as there may be discussions regarding valuation, marital status, liens or other items that may tend to be embarrassing before a third party. The exception to the above would normally be in the case of elderly people who may desire to have a relative or advisor present to assist them in their decisions.

### 3.05-4 PRESENTATION

It is improbable that any two negotiation sessions will follow exactly the same pattern even when presented by the same negotiator. The complexity or simplicity of the acquisition, the owner's education and experience level, even the time and place, are factors which will shape the form and style of presentation. The usual and desired pattern, however, calls for a simple, uncomplicated, businesslike presentation by the negotiator of all the facts surrounding the transaction with appropriate questions or comments from the property owner, and this usually after some preliminary discussion of mutual acquaintances, hobbies, occupation, etc., whereby the negotiator attempts to establish rapport.

It is desirable to outline the sequence of events that have brought about the meeting, the necessity for a better highway facility, the reasons for the various survey activities and the qualifications of the appraisers. The right of way map, the conveyance instruments, and pertinent details of construction should all be presented at opportune and appropriate moments.

### 3.05-5 TITLE INFORMATION

It is advisable to confirm information regarding title matters as soon as possible during the first meeting. This can usually be accomplished at some appropriate time before the value is discussed. The discussion regarding ownership might occur during the preliminary period to help establish a businesslike atmosphere. Other title questions could then be inserted when the occasion presents itself.

There will be instances, however, when it will be advisable to hold title questions concerning marital status or heirship when the negotiator receives some indication of friction or resentment because of such questions. It may also prove embarrassing to probe into judgments or liens against the property in the presence of a third person.

### 3.05-6 USE OF RIGHT OF WAY PLANS

The right of way plan is an important aid to negotiation and should be shown to the property owner early in the first meeting. From the study of the right of way plan and from your explanatory reference to recognizable landmarks, the property owner can be more readily oriented to the property required for right of way. It generally helps to place the map with the top facing north since most people can more easily orient themselves in this position. The areas within the right of way have been carefully computed using accepted methods of land survey computation; however, the negotiator should be familiar with approximate checking methods of computing areas in the owner's presence, if necessary. It is also important that the negotiator be prepared to explain a conversion to metrics and a use of the dual system on some right of way plans and transfer documents.

If the negotiator has colored, or in some other manner coded, the parcels to be acquired, and outlined the subject property, the owner can readily see:

- The breadth and extent of the properties required for this project and the numbers of friends and neighbors who are being affected by the right of way acquisition
- The parcels already acquired. Knowledge that other properties have been acquired may make a favorable impression on the owner and assist in negotiating the acquisition of the property.
- That the property is outlined for ready reference and is not considered as being only one among many
- It is important to note that each property owner is entitled to know exactly what type of right of way plans are being discussed. Preliminary plans must be clearly labeled PRELIMINARY to alert the property owner to possible future changes. This would also apply to preliminary construction plans if presented to the landowner for review.

### 3.05-7 CONSTRUCTION FEATURES

The construction plans may be advantageously employed to show the relationship between the highway and the remaining land, the means of ingress and egress, proximity to the improvements, drainage patterns, relative elevation of the highway to the existing terrain, general details, etc.

There will be instances in which the appraisers have recognized damages because of the acquisition and design of the highway and the negotiator should point out the cause of damage and that it has been taken into consideration. The negotiator should do this before it occurs to the owner, if at all possible. If not, the owner may form an impression that vital information is being withheld.

### 3.05-8 CONVEYANCE INSTRUMENTS

The instruments of conveyance can be shown while discussing the right of way map, or immediately following. It may be advisable to read the calls in the description and to trace the same on the right of way map when a partial acquisition is involved. The negotiator can supplement the description by relating them to known physical landmarks so the owner can graphically recognize the land to be acquired and the land remaining, if any. It will seldom be

necessary to explain all the printed matter in the instrument unless the owner expresses an interest, in which event the negotiator should be prepared to do so.

### 3.05-9 METHOD OF NEGOTIATIONS

Department policy provides that the first time an offer is made to the owners it must be for no less than the approved fair market value of the property as determined by the reviewing appraiser.

Under this method, the department's negotiator does not offer the landowner anything more or less than the figure that has been ascertained through independent appraisal and appraisal review by the District Land Acquisition Bureau/Section.

The negotiator must show, through expert support and without the advantage of increasing the offer, the fairness of the department's offer. This can be accomplished by reaffirming the appraisal process and by explaining to the owners the need for the proposed highway improvement.

The department's offer to purchase is not inflexible. If additional items of value are brought to light or other oversights noted during the course of negotiations, the negotiator should report the same for consideration. All counter offers should also be reported and responded to in writing. The district engineer may increase the offer over and above the established fair market value under the administrative settlement procedures of [Section 3.01-2](#) of this manual.

### 3.05-10 RETENTION OF IMPROVEMENTS

All improvements within the area required for highway right of way must be removed by one of several means. The usual procedures are:

- Retention by the property owner for a predetermined price
- Public sale, by sealed bids or at public auction for not less than a minimum predetermined price
- By the road contractor as part of the overall contract
- By a demolition contract (under separate contract)

If practicable and in the best interest of the department, the negotiator should attempt to conclude negotiations with the property owners on the basis that the owners retain and remove improvements. A complete written agreement between the Division of Highways and the owners will then be executed setting out the requirements and responsibilities. The negotiator should be familiar with the procedures set out in [Chapter 5](#) entitled Property Management Procedures relative to this matter in order to discuss the subject as it arises.

### 3.05-11 DATE OF POSSESSION

Department policy provides that the construction of projects shall be scheduled so that, to the greatest extent practicable, no person lawfully occupying the real property shall be required to move from their home, farm or business without at least 90 days written notice from the state or political subdivision having responsibility for the acquisition. For further information see [Chapter 6](#), Relocation Assistance Procedures, that is a valuable reference for negotiators even though it may not be one of their functions to provide such assistance. If construction schedules permit, occupancy may be continued under a rental agreement. Since the negotiators are normally in a position to advise on this, they should be familiar with [Chapter 5](#) entitled Property Management Procedures.

### 3.05-12

### EXPENSE TO OWNER

The negotiator should be very explicit in detailing the expenses or deduction to be incurred by the property owner for the consummation of the transaction such as taxes, judgments, lessees' interest, etc.

### 3.05-13

### CLOSING ON THE FIRST CONTACT

The complexity of the proposed taking will determine the negotiator's actions and behavior in closing on the first contact. On minor acquisitions, for road widening projects and the like, it may be advisable to proceed with the objective of closing the transaction with one call. Generally, however, it will take more than one meeting with the property owner to reach agreement.

### 3.05-14

### SUBSEQUENT CONTACTS

Before leaving the first meeting with the property owner, the negotiator should establish a date, by mutual agreement, for a second appointment and should leave a card, which lists a telephone number and address should the owner desire to contact the negotiator in the interim period. The number and frequency of contacts to be made are left to the discretion and judgment of the negotiator, except to the extent that they may be governed by established deadlines for the completion of the acquisition of right of way.

### 3.05-15

### ITEMS WHICH MAY ASSIST IN CLOSING

The following items, which differ somewhat from other types of real estate transactions, may be of benefit in closing an acquisition by the state.

- In the normal real estate transaction the seller must furnish proof of title by obtaining title insurance or bringing the abstract up to date. The state bears the expense of this title search and the title insurance.
- It is usually incumbent upon the owner to pay for the cost of preparing the necessary instruments to transfer title, including charges for the preparation of mortgage releases. The state provides these instruments at no cost to the owner. However, should it be necessary for an owner to actually incur expense in transferring title to the state for such items as penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the property, recording fees or mortgage release fees, the owner is entitled to reimbursement by the state.
- The majority of real estate transactions are handled through real estate brokers on a percentage fee basis. There are no brokerage fees in the transaction with the state.
- In most transactions the owner must give possession of the property at the time compensation is paid or shortly thereafter; however, in some cases in state acquisition, occupancy may be continued under a rental agreement. See [Section 3.05-11](#) of this manual.
- In some cases the seller does not receive the full consideration for some indefinite period of time or must accept a second mortgage in order to complete the transaction. With the state, it is a full cash sale.
- In many cases the owner must be absent from work to show the property to prospective purchasers and to assimilate the information and various documents needed. The state negotiator will discuss these transactions at the owner's convenience and will do much,

if not all of the leg work necessary so that the owner will be inconvenienced as little as possible, and loss of time from work, if any, is minimal.

- The owners may have the option of retaining any of the improvements located on the property by accepting the established retention value from the state.
- A relocation assistance program, administered by the state, is designed to reduce the cost and inconvenience to eligible families, businesses, and farm operations displaced.

### 3.05-16 EXPLANATION OF LEGAL RIGHTS, OBLIGATIONS, ETC.

Often a discussion of legal rights has to do with condemnation proceedings. It is a basic premise that the negotiator never threatens condemnation, even by inference or implication. The negotiator's responsibility and function are to explain the condemnation process and pointing out that the condemnation process is based upon certain constitutional and legislative provisions.

It is expected that there will be instances when condemnation appears to be the only recourse after honest efforts to reach agreement have failed. In such a case, the negotiator may be asked to describe the usual course of events in such proceedings, such as the "final offer" letter ([Exhibit 3.05-16A](#)) the request for condemnation, the filing of the complaint, etc. In doing so, the negotiator must emphasize that (1) a negotiated settlement can be reached even after such proceedings are initiated; and, (2) that at least 60 days before filing a complaint to initiate condemnation proceedings the department shall send a letter by certified mail, return receipt requested, to the owner of the property to be acquired giving the property owner the following information: 1) amount of compensation for the taking and the basis for computing it; 2) a statement that the department continue to seek a negotiated settlement with the property owner; and, 3) a statement that in the absence of a negotiated settlement it is the intent of the agency to initiate condemnation. ([Exhibit 3.05-16B](#)) However, after the complaint for condemnation has been filed in the court of record, and notice served, all contacts with the property owner must be authorized by the Special Assistant Attorney General in charge of the case.

### 3.05-17 UNECONOMIC REMNANTS

An uneconomic remnant is the remaining portion of real property, after a partial acquisition, which is determined by the department to have little or no value or utility to the owner.

When, in the judgment of the acquiring agency, either inaccessible or accessible remnants of land from which right of way is being acquired are determined to be uneconomic remnants, it is department policy that simultaneously with making of the offer to the owner to purchase the needed right of way, the department's negotiator shall also offer to purchase the uneconomic remnants. In the case of any accessible uneconomic remnant, such offer to purchase shall be contingent upon the owner furnishing the department with a written request to purchase said remnant. Offers to purchase such remnants may be made separately (See [Exhibit 3.05-17](#)) or may be merged into the offer for the needed right of way. Remnants may be acquired by separate deed or may be acquired by the deed for the needed right of way. (Also see [Section 4.16](#))

It is the negotiator's responsibility to notify the District Property Manager of such an uneconomic remnant/remainder acquisition so this information can be incorporated into the department's NORWAY inventory. (See [Section 5.09](#))

### 3.06

### NEGOTIATOR'S REPORT

Negotiators are required to maintain in the parcel file a current written record including, but not limited to, the pertinent points of each discussion or contact with the property owner, the date(s) and place(s) of such contact, offers made, the owners reaction thereto, and the signature or initials of the negotiator following each entry on the record ([Section 3.01.1](#)). This will prove beneficial to the negotiator and others within the department and the Federal Highway Administration in reviewing the history of the negotiation and in the analysis of negotiation procedures.

To assist in monitoring right of way activities to ensure compliance with Title VI of the Civil Rights Act of 1964, the negotiator should check the classification in the Title VI (Non-Discrimination) block in the Negotiator's Report. Also indicate in the proper blank the sex of the first-named owner of record shown on the Title Commitment or other evidence of ownership (M-Male, F-Female). In the case of a trust, corporation, or business entity where no individuals are named, no entry is required.

The inclusion of information regarding heirs and other owners of interest and their addresses, sales of property which the appraisers have not considered, counter-offers by the owner, points of discussion related to controversial or over-looked items, special considerations regarding the owners acquisition of the subject property or any of the comparable properties, and other details of title or value can be invaluable in subsequent discussions with the owner, for eminent domain proceedings if required, and future negotiations with others. If it becomes necessary for a different negotiator to take over the acquisition of a parcel, then notation of the change in negotiators should be made on said Negotiator's Report ([Exhibit 3.01-1A](#)). In any event each entry on the Negotiator's Report must be identified by the signature or initials of the negotiator making the entry.