

Environmental and Transportation Services

Right of Way Division

Brad Faiman, NDDOT Right of Way
Raymond Barchenger, NDDOT Right of Way

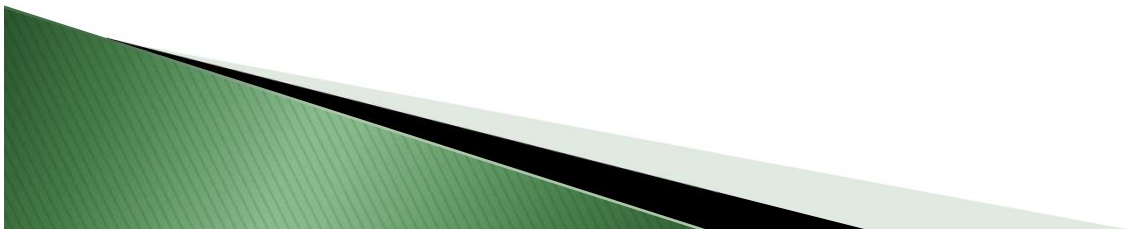
TITLE WORK
TITLE CURATIVE
SPECIAL PROPERTY INTERESTS
VALUATION AND APPRAISAL

- Brad Faiman – NDDOT
Right of Way Agent

Title Work

- ▶ Preliminary Certificate of Title (PCT)
 - Fee Simple Acquisitions
 - Permanent Easements

- ▶ Surface Ownership Report (SOR)
 - Minimum of 2 conveyances (Deeds) to show chain of title.
 - Current Tax Statement indicating accurate mailing address and contact information.



Preliminary Certificates of Title & Plats

Compare Plats to Title

These MUST MATCH

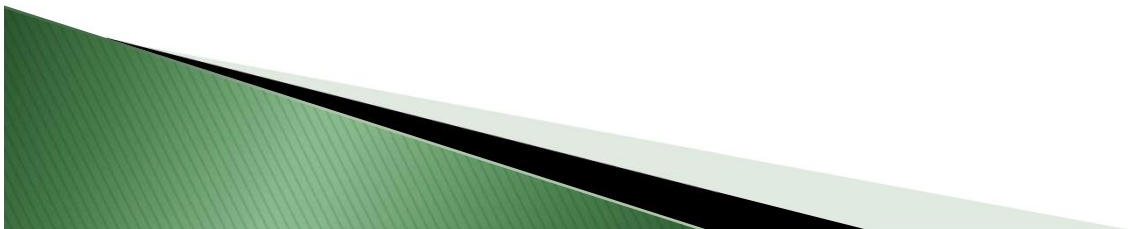
➤ Before Submitting, check the following:

1. Is the parcel Temporary or Permanent?
2. Does the title work submitted match PCT/SOR?
3. Is the ownership complete?
 - a) Indicate if Life Estate or Trust. Include spouse if married or indicate single. Don't show %, Jt or TIC.
 - b) This will be carried over to the negotiator documents, deeds & the plat.
4. Are addresses and spelling accurate?
5. Are the legal descriptions complete?



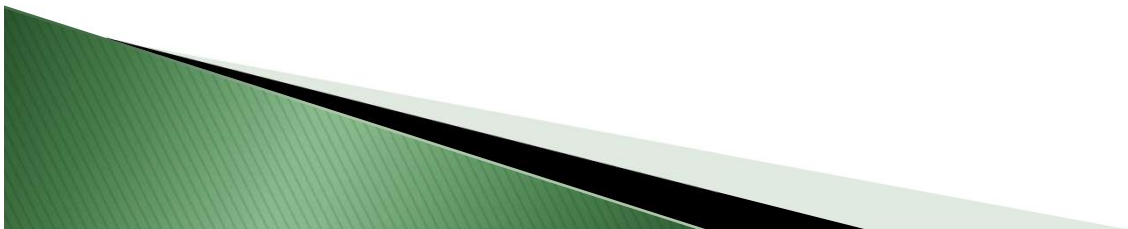
Ownership

- ▶ Joint Tenants
- ▶ Tenants in Common
- ▶ Life Estate



Title Curative

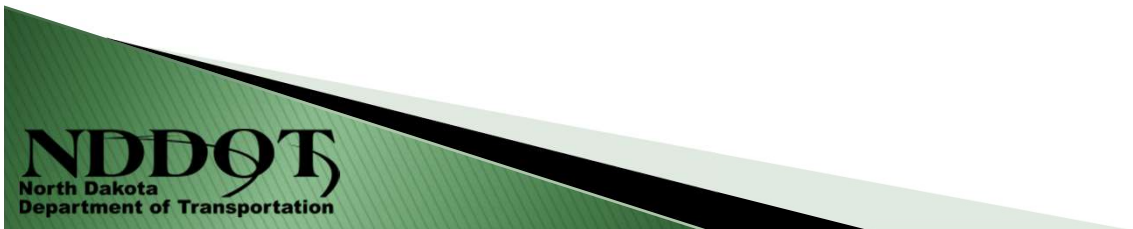
- ▶ Joint Tenancy
 - Copy of Death Certificate
- ▶ Tenants in Common
 - Copy of Death Certificate
 - Copy of Last Will & Testament
 - or Copy of Letters Testamentary appointing Personal Representative
- ▶ Life Estate
 - Copy of Death Certificate(s) for Life Tenant(s)



Negotiations – Title Curative

- ▶ Life Estate
 - Life Tenant and Remaindermen have to sign
 - Death Certificate required

- ▶ Corporate or municipal Ownership
 - Proof of authority to sign
 - Meeting minutes



Negotiations

Additional information needed

- ▶ **Mortgages**
 - Bank and Loan Officer information for partial release request.

- ▶ **Contract for Deed**
 - Signatures of both Buyer & Seller

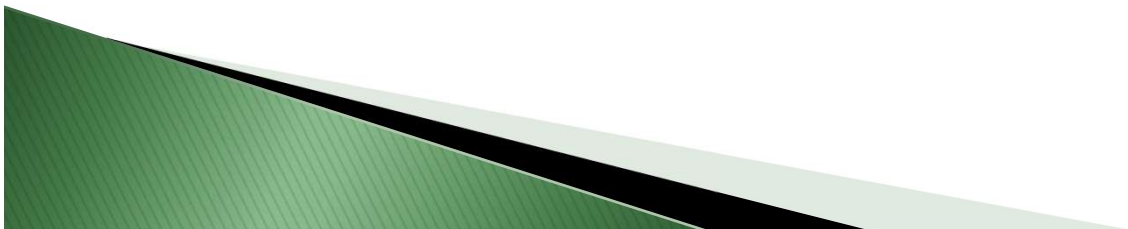
- ▶ **Leased or Rented**
 - Obtain Subordination of Rights if lease is recorded.
 - Particularly ag land, higher risk & higher value acquisitions.



Special Property Interests

These are all circumstances that will require extra time in the acquisition of right of way.

- ▶ **BIA Trust Lands (Allotment Lands)**
 - Grant of Easement – 51% of signatures
- ▶ **Federal Lands (USACE, USFWS, USFS, GSA)**
 - Permanent and Temporary Construction Easements
 - License and Right of Way Permit
- ▶ **North Dakota Trust Lands (State Land Department)**
 - Permanent or Temporary Easements
- ▶ **Railroad Lands**
 - Easement rather than Fee



Valuation And Appraisal

Exhibit A

- ▶ Waiver Valuation
- ▶ Basic Data Book
- ▶ Appraisal
 - Over \$10,000 in value IF property owner requests
 - Over \$25,000 in value or complex
- ▶ Donation
- ▶ Minimum Payment

Notification and Appraisal Waiver Form obtained regardless of which of the above applies.

Waiver Valuation

- ▶ A waiver is a short form appraisal which typically uses data from another source, including: a basic data book, market survey and/or information from knowledgeable party.
 - If value is under \$10,000 and uncomplicated
 - If \$10K to \$25K and uncomplicated
 - Owner may request appraisal
 - Note: Waiver values are typically on the higher end for compensation. If the property owner requests an appraisal, the appraisal value is used for compensation, whether it is the same, higher or lower.

Waiver vs. Appraisal

- ▶ Who can perform a waiver?
 - Any knowledgeable party can do waiver valuation
 - Must show support for value
- ▶ Who can perform an appraisal?
 - Appraisal must be completed by state certified appraiser that is free of any partiality to the subject



Minimum Payment

- ▶ In order to expedite and to avoid offering a few dollars on small projects, the NDDOT has a minimum payment policy.
 - Permanent Acquisition
 - Minimum compensation is \$600
 - Temporary Acquisition
 - Minimum compensation is \$300



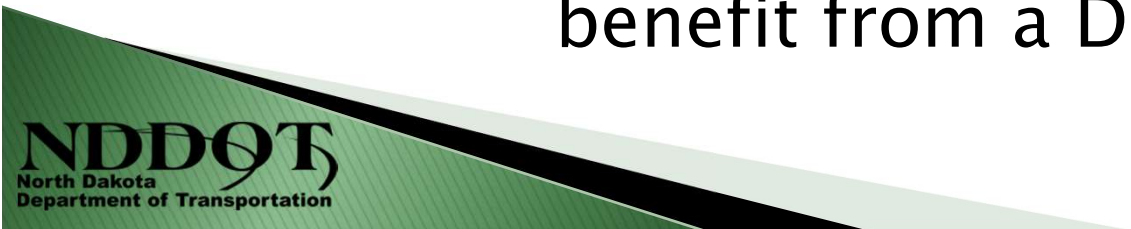
Minimum Payment

- ▶ Minimum payment is based on ownership and type of acquisition, not number of parcels.
 - One minimum payment per acquisition type
 - If both permanent and temporary acquisitions and neither exceed minimum payment, the property owner will receive a total of \$900 for minimum payment (\$600 for permanent plus \$300 for temporary).
 - If the fee value exceeds minimum payment and the TCE does not, the minimum payment will still be paid on the temporary construction easement and vice versa.

Basic Data Book

- ▶ What is it?
 - Collection of market data to support appraisals and waivers. Reduces amount of data included in an appraisal or waiver.
 - Conclusion of value for all property types found in a project. Can be subject to location, size, use, or any other value altering characteristic.
- ▶ Includes an ownership table with ROW cost estimate. **(NEW)**
 - Each ownership includes property type, and parcel number/size/cost
 - Summation of the estimated cost for the project

Only used when there are enough parcels to benefit from a Data Book.



What makes it complex?

The valuation is complex when:

- The acquisition includes any building or major structure.
- There are damages to the remainder after the acquisition.
- The highest and best use changes after the acquisition.

Valuation and Appraisal

▶ Procedure

- Procedurally, the appraisal should follow the Uniform Appraisal Standards For Federal Land Acquisition UASFLA (Yellow Book).
- Special benefits offset damages only, not take.

▶ Non-compensable damages

- Damages to business and loss of business.
- Circuitry of travel or rerouting of traffic.
- Damages of annoyance suffered by public generally.



RIGHT OF WAY LPA MANUAL
ACQUISITION DOCUMENTS
NEGOTIATION
EDUCATION
CONDEMNATION
RELOCATION

- Ray Barchenger – NDDOT
Right of Way Agent

Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects



[https://www.dot.nd.gov/
manuals/environmental/
local-row-
acquisition.htm](https://www.dot.nd.gov/manuals/environmental/local-row-acquisition.htm)

Negotiator Documents

NDDOT forms may be used as templates

- ▶ NDDOT language must be removed
- ▶ SFN number must be removed
- ▶ In the future, Blank forms will be in the LPA Manual

Acquisition Documents

Exhibit B

RIGHT OF WAY CHECK LIST

PCN _____ PROJECT _____ COUNTY _____
 PARCEL(S) _____
 LANDOWNER(S) _____

ACQUISITION DOCUMENTS:

(Submit in Order Listed)

- | Yes | No | N/A | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 1. Negotiator Report & Ownership Contact (Typed) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 2. Executed Memorandum Agreement w/Compensation & Parcel Breakdown |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 3. Approved Value Breakdown Page from Statement of Project Review |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 4. Memorandum of Offer(s) w/Compensation & Parcel Breakdown(s) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 5. Summary Narrative Form (Check One):
<input type="checkbox"/> Administrative Settlement <input type="checkbox"/> Condemnation Narrative |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 6. Executed Notification and Appraisal Waiver |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 7. Agreement for Entry and Construction Without Compensation |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 8. Executed Temporary Construction Easement |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 9. Executed Permanent Maintenance Easement |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 10. Executed Warranty Deed |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 11. Subordination of Rights (Leased Properties Only) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 12. Additional Written Communications (Negotiator Field Notes/Emails/Correspondence) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 13. Title Certificate/Pencil Abstract/Title Insurance/Plats |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 14. Executed W-9 (Not Required on Donations) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 15. NDDOT Title VI Public Participation Survey |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 16. Corporations/Partnerships - Corporate Resolutions or Other Documentation Authorizing Signer. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 17. Meeting Minutes (Schools, Churches, Counties, Cities, Hospitals, etc.) |

\$ _____ Total Compensation
_____ Approved By
_____ Date
<small>NDDOT USE ONLY</small>

TITLE CURATIVE REMINDERS:

- | Yes | No | N/A | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Joint Tenancy - Copy of the Death Certificate for Any Deceased Joint Tenant, Passes to Surviving Joint Tenant(s) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Tenants in Common – Ask for a Copy of the Will for Deceased, and Obtain Heirs Signature. If Will Has Not Been Probated, Obtain Copy of Letters Testamentary Appointing Personal Representative, and Obtain Personal Representative's Signature. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Life Estate Interest/Life Tenant – Obtain Copy of Death Certificate & Agreement for Remainderman |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Power of Attorney/Trust Agreement Documents Identifying Trustee(s) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Validate Outstanding Mortgage on Title Certificates & Provide Mortgage Contact Info |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Validate Judgments/Liens Against the Property for Permanent Acquisitions |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ownership Information Matches on the Plats, Title Work, and Acquisition Documents |

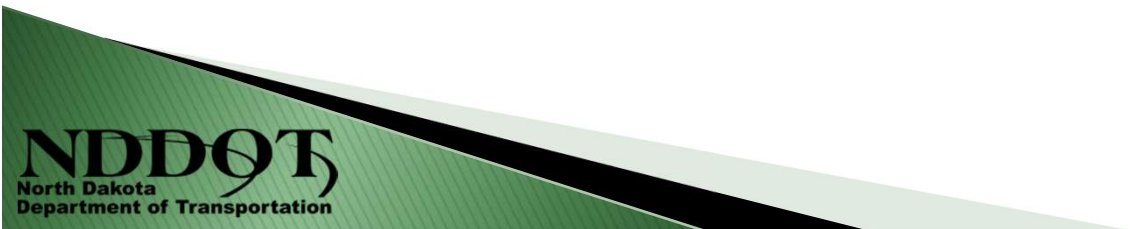
Prior to Submission, Verify Current Ownership via NDRIN – Verification Date: _____ Initials: _____

NEGOTIATOR _____ AGENCY _____ DATE _____



Acquisition Documents

- ▶ Get to know your project. Understand the plats.
 - ▶ Check Title/Plats and Docs to verify they match.
 - ▶ Research the Landowner(s).
 - ▶ Present *Memorandum of Offer* at first meeting.
- ❖ NDDOT strongly recommends meeting with all landowners face-to-face.



Compensation & Parcel Breakdown

Exhibit C

Check appropriate form and enter page numbers.



COMPENSATION & PARCEL BREAKDOWN

North Dakota Department of Transportation
Environmental & Transportation Services
SFN 61188 (2-2017)

PCN

Addendum to:

Memorandum of Offer Page of
 Memorandum Agreement Page of

Project
 County
 Parcel(s)

X Landowner Name(s) (Type or Print) Initial Date

ADD LANDOWNER

The following valuation breakdown describes parcels and/or temporary easement areas that are being acquired for highway purposes:

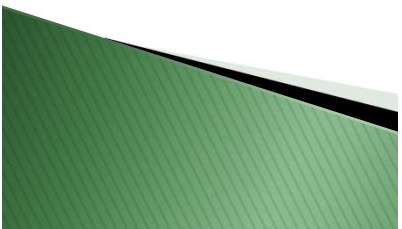
Permanent Acquisition <input type="checkbox"/> Yes <input type="checkbox"/> No						
Parcel #	Type of Permanent Acquisition	<input type="checkbox"/> Acres <input type="checkbox"/> Sqft	X	Value (Per Acre/Sqft)	=	Parcel Values
X			X		=	
ADD ROW						
Total Permanent Parcel Value						
Total Permanent Compensation						

Temporary Acquisition <input type="checkbox"/> Yes <input type="checkbox"/> No						
Parcel #	Type of Temporary Acquisition	<input type="checkbox"/> Acres <input type="checkbox"/> Sqft	X	Value (Per Acre/Sqft)	=	Parcel Values
X			X		=	
ADD ROW						
Total Temporary Parcel Value						
Total Temporary Compensation						

Compensation Breakdown	
Total Permanent Compensation	
Total Temporary Compensation	
Fencing	
Damages	
Total Compensation Due	



Landowners must initial. Does not signify signing a contract – only that they were presented the form.



Memorandum of Offer to Landowner

MEMORANDUM OF OFFER TO LANDOWNER

North Dakota Department of Transportation
Environmental & Transportation Services
SFN 6777 (3-2017)

Exhibit D

PCN

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Project
County
Parcel(s)

X	Landowner(s)		
Landowner Address	City	State	ZIP Code
ADD LESSEE			
Valuation Type	Approved Compensation		
<input type="checkbox"/> Appraisal <input type="checkbox"/> Waiver Valuation			

On behalf of the North Dakota Department of Transportation, the right of way agent is hereby authorized to offer the above approved amount as full compensation for the permanent and/or temporary acquisition of the above-identified parcels and all damages incidental thereto.

The attached Compensation and Parcel Breakdown is incorporated with this offer and describes the parcels and/or temporary easement areas that are being acquired for highway purposes.

Notes

ROW AGENT

Name (Type or Print)	
Agency	
Signature	Date

NDDOT ROW AGENT

Name (Type or Print)	
Signature	Date

Attach new Compensation & Parcel Breakdown form.



Negotiator Report & Ownership Contact

Exhibit E

NEGOTIATOR REPORT & OWNERSHIP CONTACT

North Dakota Department of Transportation
Environmental & Transportation Services
SFN 61181 (01-2017)

PCN				Project			
				Parcel(s)			
<input checked="" type="checkbox"/> Landowner(s)							
Mailing Address				City		State	ZIP Code
Telephone Number				Email Address			
ADD LANDOWNER							
Miscellaneous Contact Information							
Tenant <input type="checkbox"/> Yes <input type="checkbox"/> No							
Tenant Name							
<input checked="" type="checkbox"/> Mailing Address							
		City		State		ZIP Code	
Telephone Number				Email Address			
ADD TENANT							
Mortgage <input type="checkbox"/> Yes <input type="checkbox"/> No							
Bank Name				Contact Person			
<input checked="" type="checkbox"/> Mailing Address							
		City		State		ZIP Code	
Telephone Number				Email Address			
ADD BANK							
Negotiator Name						Total Compensation	
Parcel(s) Valued by				Date of Valuation		Date Landowner Signed	
Contact Notes and Remarks							
<input checked="" type="checkbox"/> Date							
		Time		Contact Type			
Notes							
ADD NOTES							

SFN 61181
Page 2 of 2

Additional Comments/Remarks			
Refer to the Memorandum Agreement for final Compensation and Parcel Breakdown.			
I certify that I have no current or prospective interest in the property that is subject to the valuation, either direct or indirect, and that my compensation is not based on the amount of the valuation.			
ROW Agent		NDDOT ROW Agent	
Name (Type or Print)		Name (Type or Print)	
Agency		Signature	Date
Signature		Date	
NDDOT Management Approval			
Name (Type or Print)			
Signature		Date	

All mortgages, liens & judgements must be listed.

Notification & Appraisal Waiver

Exhibit F

Understand this form and only check 1 of the 4 choices.

Explain that data book or waiver value is typically HIGHER than appraisal value.

NOTIFICATION AND APPRAISAL WAIVER

North Dakota Department of Transportation
Environmental & Transportation Services
SFN 60794 (4-2017)

PCN

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Project
County
Parcel(s)

X	Landowner(s)		
Landowner(s) Address	City	State	ZIP Code

ADD LANDOWNER

State and federal laws require just compensation be established and that a prompt written offer be made to acquire your property for the full fair market value. In no event will the amount offered be less than the state's approved value. The NDDOT will provide you with a written summary of the value established as just compensation in your offer.

I/we, the undersigned, understand that we are entitled to receive just compensation for our property being acquired by the North Dakota Department of Transportation (NDDOT) to construct the above-named highway project.

- 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).
- I/we agree to receive the payment based on Waiver Valuation. (NDDOT minimum payment policy is \$300 for temporary acquisition or \$600 for permanent acquisition)

Appraisals are required if the acquisition is estimated to be over \$25,000. In the event the acquisition is estimated to be over \$10,000 but under \$25,000, the property owner may request an appraisal.

- I/we agree to receive the payment based on Waiver Valuation.
- 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.

This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

LANDOWNER(S)			
X	Name (Type or Print)	Name (Type or Print)	
Signature	Date	Signature	Date

ADD LANDOWNER

ROW AGENT	
Name (Type or Print)	Agency
Signature	Date

Subordination of Rights

SUBORDINATION OF RIGHTS
North Dakota Department of Transportation
Environmental & Transportation Services
SFN 10044 (3-2017)

Exhibit G

PCN			
Project			
Parcel(s)			
Lessee(s)			
Lessee(s) Address		City	State ZIP Code
ADD LESSEE			
Date		County	

Only need this form if there is a Recorded Lease.

WHEREAS, the state of North Dakota, for the use and benefit of the North Dakota Department of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, has acquired or is about to acquire an interest in lands lying and being in the county listed above, state of North Dakota, and more specifically described as follows, to wit:

Recorded Document Number(s)

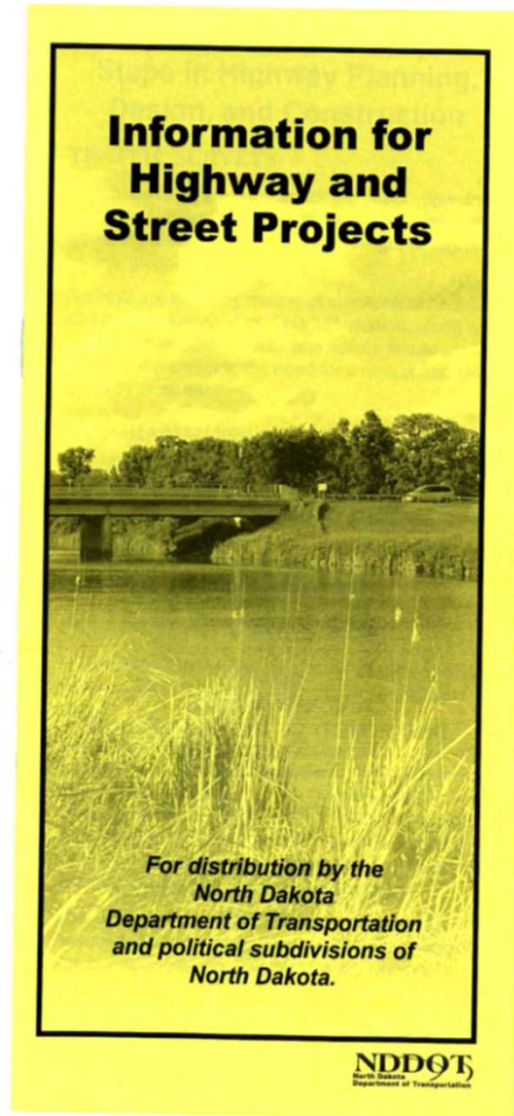
Recorded Lease Document Number(s).

AND WHEREAS, the Lessee has or claims to have prior right or interest of record in such land pursuant to the above document(s) on record in the Office of the County Records.

THEREFORE, that the Lessee(s), for and in consideration of the sum of one dollar and other valuable consideration to them in hand paid by NDDOT, the receipt whereof is hereby acknowledged, the Lessee(s) does(do) hereby subordinate any right or interest or claimed right or interest to the interest hereinbefore or hereafter acquired by the state of North Dakota, for the use and benefit of NDDOT, in the above-described property, to the extent that the Lessee(s) will cooperate in every way and not hinder the construction or use of a public highway including the entire right of way limits on or across the above-described property to be used for the purposes of NDDOT, and including all right of access, being the right of ingress to and egress from the above-described property, where included in the interest acquired or about to be acquired by the state of North Dakota, for the use and benefit of NDDOT.

This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Negotiation Resource Tool



Information for Highway and Street Projects

*For distribution by the
North Dakota
Department of Transportation
and political subdivisions of
North Dakota.*

NDDOT
North Dakota
Department of Transportation

Negotiations – Counteroffer

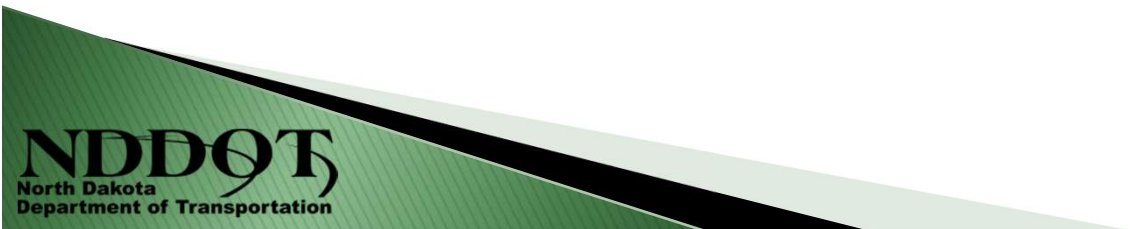
When the first offer is not accepted and there are items to negotiate, let the Landowner know you will take the information back to the Supervisor for a response.

It's important to remember that the negotiator is a liaison between the two parties.



Negotiations – Counteroffer

- ▶ Commit to a timetable.
- ▶ Make return calls/visits according to timetable.
- ▶ Prepare a new – *MEMORANDUM OF OFFER* – every time the offer has changed.
 - *A copy of each offer should be in the project file*
- ▶ In order to increase your likelihood of a successful negotiated settlement, have thorough knowledge of plats & plans.



Acquisition & Negotiation Education

International Right of Way Association (IRWA)

- ▶ IRWA Online and Live Classes (none are free)
 - 100 Principles of Land Acquisition
 - 103 Ethics and the ROW Professional
 - 200 Principles of Real Estate Negotiation
 - 803 Eminent Domain Law

IRWA offers many other courses and designations in Negotiation, Appraisal, Engineering, Relocation

www.irwaonline.org

Acquisition & Negotiation Education FHWA-NHI

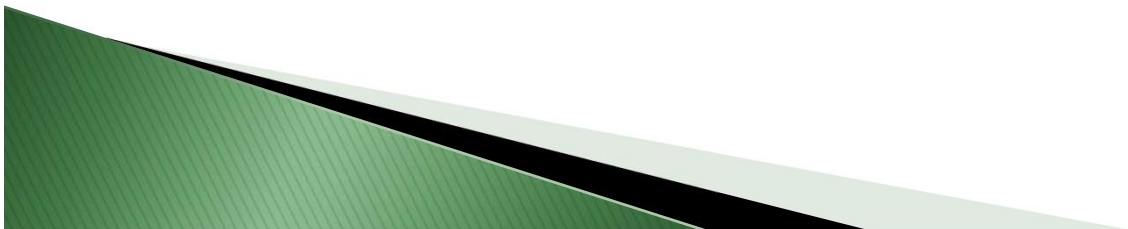
- ▶ FHWA-NHI Online classes are free
 - 141045 Real Estate Acquisition under the Uniform Act
(HIGHLY RECOMMENDED – NOW REQUIRED FOR NDDOT consultants – online class duration 6 hours)
 - 142052 Introduction to NEPA
 - 141041 LPA Real Estate Acquisition
 - 134108E TCCC Plan Reading for ROW

If you don't know what 23 CFR 710 is then FHWA-NHI 141045 is for you!

www.nhi.fhwa.dot.gov

NDDOT Lunch and Learn Program

- ▶ Visit our website to register for upcoming meetings and to see past meeting information
 - <https://www.dot.nd.gov/lunchandlearn.htm>
- ▶ Free to attend at each district office and via conference call



Condemnation

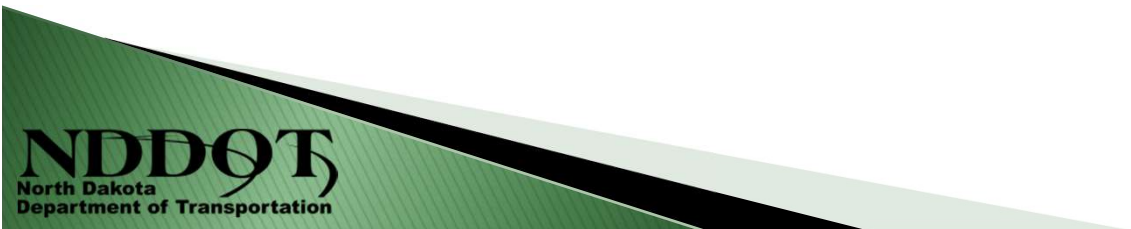
ALWAYS A LAST RESORT

If condemnation is necessary, the state law allows that the governmental agency may take possession upon making an offer to purchase, and by depositing the amount of offer with the Clerk of District Court of the county wherein the ROW is located. This is accomplished through Section 16 of the State Constitution and Section 21-01-22.1 of the NDCC. (Quick Take)



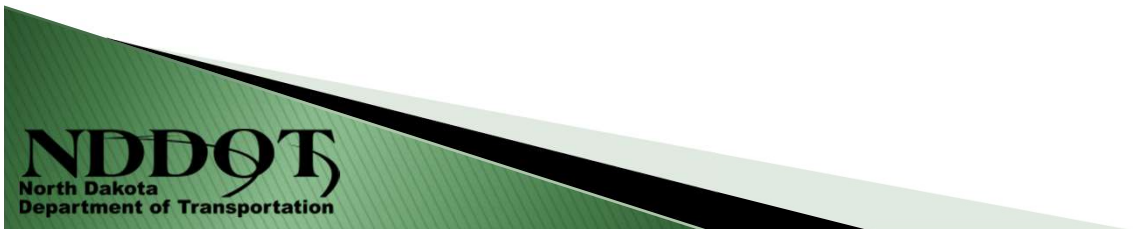
Condemnation

- The laws provide that all owners, both in-state and out-of-state, be notified in writing by the Clerk of District Court and that an offer along with a deposit has been made with the Clerk.
- The NDDOT attempts to give every party that expresses or appears to have an interest in the property “Notice” of the condemnation proceedings.
- Only the landowner(s) of record need to be served.



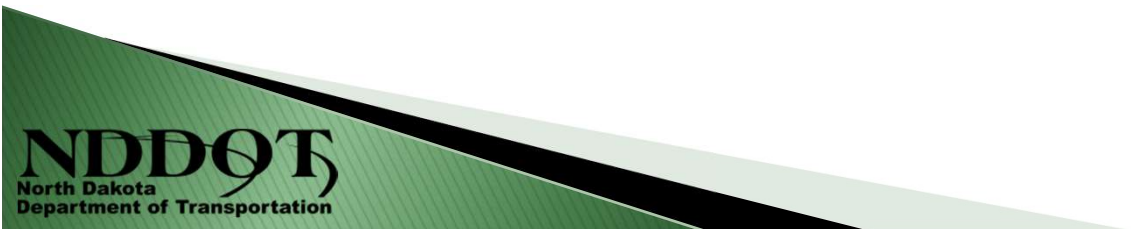
NDDOT Condemnation Process

- ▶ NDDOT sends pre-condemnation notice 35–40 days prior to right of way needed.
- ▶ 7–10 days later send condemnation paperwork and check to Clerk of District Court.
- ▶ Clerk of District Court notifies Landowner by Certified Mail.
- ▶ Landowner has 30 days after receiving the notice from the clerk of court to appeal.



Condemnation Appeal Process

- ▶ Court hearing is held to decide amount if an appeal is filed.
- ▶ The non–appeal process takes approximately 35 days.
- ▶ Receipt from the Clerk of Court replaces the Warranty Deed.
- ▶ The Receipt from the Clerk of Court is recorded in lieu of the warranty deed to show the transfer of ownership.
 - ✓ The NDDOT technically now owns the property



Condemnation Notes

- ▶ The landowner is now able to make arrangements with the Clerk of District Court's office and upon providing sufficient proof of ownership, pick up their proceeds check.
- ▶ During the condemnation process, if the landowner wants to contest the value of the offer, they must file an appeal with the Clerk of Court within 30 days of receiving the notice from the Clerk of Court.
- ▶ Note: Property owners who withdraw the deposited payment still may appeal, as may others with an interest in the property. By picking up the proceeds check does not in anyway compromise their right or ability to contest or continue on with an appeal.

Relocation

- ▶ Plan on additional time
- ▶ Not a simple little red X on a plat
- ▶ Must find a comparable replacement location
 - Hard to find
 - May need to build new property
 - Weather restrictions
 - Easily 1 year process
 - Cannot force them to move
 - Must have a 90 day notice prior to relocation
- ▶ Need trained, experienced Relocation Officer



Thank You!

Brad Faiman, NDDOT Right of Way
bfaiman@nd.gov – (701) 328-3649

Raymond Barchenger, NDDOT Right of Way
rbarchen@nd.gov – (701) 328-4437