

A Format Approach to Administrative Settlements

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Perhaps the most frustrating experience for a right-of-way agent is the evaluation and recommendation of counteroffers. All too often, the agent must operate with minimal guidelines and limited settlement authority, despite being frequently presented with property owner counteroffers.

The Uniform Relocation Act (Public Law 91-646, amended by Title

IV of Public Law 100-17), while not addressing administrative settlements per se, encourages the expeditious acquisition of real property by agreements "...to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners...and to promote public confidence in Federal land acquisition practices..." The applicable Federal regulations, contained in 49

CFR 24.102(i), allow for administrative settlements "...when reasonable efforts to negotiate an agreement (at the offered just compensation purchase price) have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest."

But under what conditions is an administrative settlement "reasonable, prudent, and in the public interest?" On what basis should a property owner's counteroffer be accepted, or revised for acceptance?

Drawing upon the experiences of negotiating agents and right-of-way managers from various State high-

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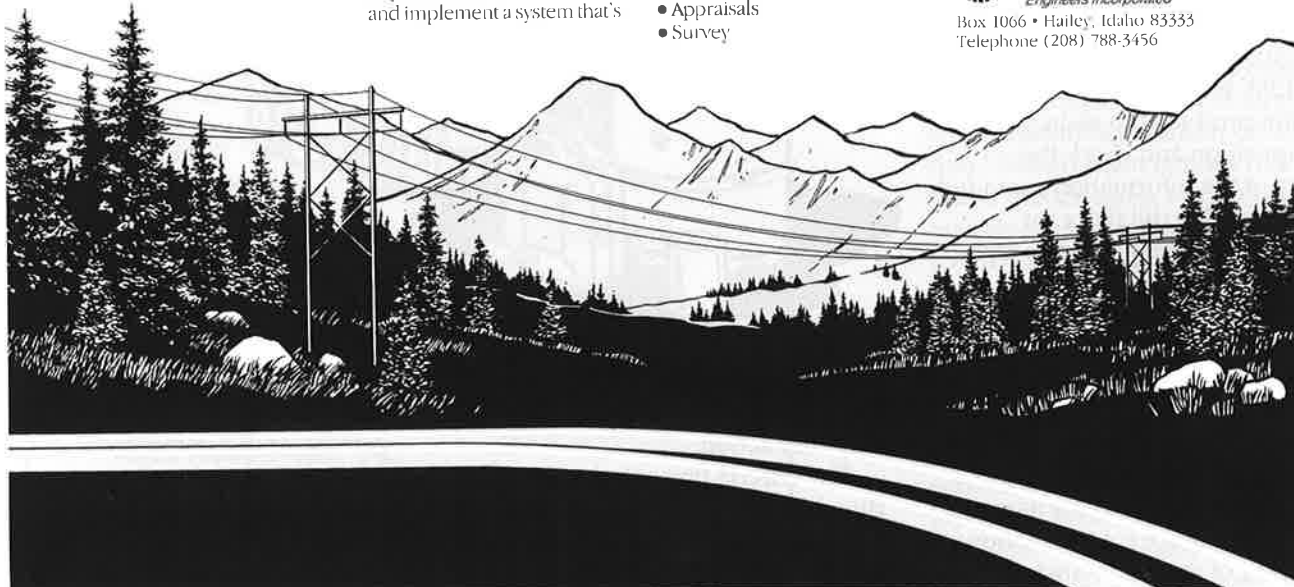
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way agencies, and from discussions on the intent and implementation of section 301, Title III, of the Uniform Relocation Act, the format approach presented in this article is useful and easily adapted method of determining and documenting the conditions which would render a counteroffer acceptable for settlement.

While representing neither any particular agency's policies or guidelines, nor any agency's actual method of operation, the **format** approach incorporates the considerations generally given to the evaluation of counteroffers by acquiring agencies. The forms developed to implement

this approach are both field functional and adaptable to computer generation. Should any acquiring agency wish to adopt the **format** method of documenting and supporting administrative settlements,

the negotiating agent a checklist to use is developing a recommendation of a property owner counteroffer. The items listed in "a" through "g" of the form cover the major counteroffer acceptance categories—value (derived

On what basis should a property owner's counteroffer be accepted, or revised for acceptance?

however, approval should be obtained from that agency's funding and/or monitoring authority. *Form A.S. 1: Administrative Settlement Recommendation*

The Administrative Settlement Recommendation (Form A.S. 1) provides

from the agency's and, if available, the property owner's appraisal); exposure in court (should the parcel be acquired through condemnation); and, alternative relief measures (such as a rent-back or construction mitigation).

How effectively the form leads the approving official to conclude an administrative settlement is warranted depends on the adequacy of the supporting documentation. If, for example, the basis of the counteroffer is an appraisal provided by the property owner, a summary of the merits of that appraisal (if possible, a review statement from the acquiring agency's appraisal review section) and copies of the relevant pages from both the property owner's appraisal and the agency's appraisal should be attached. Similarly, if the counteroffer is justified based on court awards on similar parcels in the project area, supporting documentation may be provided in the form of an analysis of relevant court cases (see *Form A.S. 2*, discussed below).

When a review of the supporting data suggests a minimum settlement increase is warranted, the agency may use a "minimum payment" schedule similar to the one on *Form A.S. 1*. Counteroffers should not be accepted routinely, without some basis in fact. The credibility of the agency's appraisal process is jeopardized by the wholesale use of administrative settlements. There are occasions, however, when a settlement is

Form A.S. 1 ADMINISTRATIVE SETTLEMENT RECOMMENDATION

State Project No.:	Federal-aid Project No.:
Parcel No.:	Property Owner Name:
Approved FMV Offer:	Date of Offer:

1. I recommend an administrative increase in the amount of \$ _____, based on:

- a. Review and reconciliation of all available appraisals, including any provided by the property owner.
- b. Value adjustment for appreciation since the date of value.
- c. Anticipated basis and value range of property owner's court testimony to just compensation.
- d. Cost of alternative mitigation measures, such as crop retention or construction relief.
- e. Economic feasibility of a rent-back.
- f. Analysis of specifically applicable court cases in the project area which support a possible high court award (see Form A.S. 2).
- g. Other considerations directly relating to the value and/or unique features of the subject parcel.

Supporting data must be attached for the items checked in "a" through "g" above.

The recommended administrative increase amount was determined as follows:

(or)

2. Based on a review of the attached supporting data, a specific counteroffer amount cannot be determined. However, the data support an administrative increase on the basis of: _____

Based on the following table, I recommend a minimum payment increase in the amount of \$ _____.

If FMV is more than:	but not more than:	the A.S. increase is the greater of:
\$ 0	\$ 5,000	\$ 250 or 20%
5,000	7,500	1,000 or 15%
7,500	25,000	1,125 or 10%
25,000	—	2,500 or 5%

Recommended by: _____ Date: _____

Approved FMV Offer: \$ _____ This administrative settlement is approved as being reasonable, prudent and in the public interest.

Admin. Increase: + _____

Approved Adm. Sett.: \$ _____

(Signature of approving official)

(Date)

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A FORMAT APPROACH

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the most expedient and economically feasible method of acquiring a parcel and the agency's appraisal leaves room for accepting a value in excess of the original purchase offer. If, for example, the appraiser indicates a range of unit values (per acre, per square foot, etc.), but settles on mid-range to derive fair market value, the negotiator may have some flexibility to settle for an amount in excess, but within a reasonable range, of the original offer. In the absence of other supporting data, such flexibility may justify use of a "minimum payment" schedule.

Form A.S. 2: Analysis of Related Court Cases

When support for an administrative settlement is based on recent court awards on similar parcels in the project area, the *Analysis of Related Court Cases* (Form A.S. 2) provides the acquiring agency a means of comparing related cases to the subject parcel. Consideration of court awards on parcels similar to the subject in terms of land type, size, location, improvements, highest and best use, basis of value, damages, cost-to-cure, and related amenities or conditions, offers a reasonable guide to the probable value exposure, in court, of the subject parcel.

Form A.S. 2 could be completed by the acquiring agency's legal section, or by the acquisition staff. If the agency's legal section maintains computer-generated condemnation data, the form could be used to match the subject with specific cases in terms of their related characteristics (land type, size, etc.).

Form A.S. 2

Analysis of Related Court Cases

Subject	Items of Comparison	Case Name/#:	Case Name/#:	Case Name/#:
	State Project No.			
	Federal-aid Project No.			
	Property Owner			
	Parcel #			
	Date of Value			
	Approved FMV			
	Land Type			
	Size			
	Location			
	Improvements			
	H & B Use			
	Approach to Value			
	Damages			
	Cost-to-Cure			
	Other			
	Basis of Legal Settlement			
	(or)			
	Basis of Court Award			
	Amount of Award or Settlement			
	Percentage Increase Over FMV Offer			

Based on the above analysis of recent court cases in the project area, I conclude that the subject parcel, if not amicably acquired, would be exposed in court to a potential increase above FMV of _____% to _____%.

(Signature of approving official)

(Date)



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