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**Federal Highway  
Administration**

FHWA Indiana  
Division

Indiana  
Department of  
Transportation

# Program Review

## **Joint Administrative Settlements File and Process Review**

**May 2013**

**FINAL REPORT**



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## **Executive Summary**

The Federal Highway Administration (FHWA) and Indiana Department of Transportation (INDOT) conducted a Joint Administrative Settlements File and Process Review of right-of-way parcels. The purpose was to evaluate INDOT's with reasonable assurance that policies, procedures, practices, and action taken on federally funded projects related to administrative settlements complied with applicable federal requirements and guidelines (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and codified at 42 U.S.C. 4601, et seq. ("Uniform Act"), and regulations codified at 49 CFR Part 24 and 23 CFR Part 710).

A total of 50 parcel files were reviewed. This review did not include any settlements secured through the use of condemnation authority.

The files for parcels acquired through administrative settlements were reviewed jointly and cooperatively by staff of both FHWA and INDOT. The files reviewed were from a variety of federally funded projects across the State.

### **Observations**

The review team found that INDOT records were adequate and sufficient to support administrative settlements, and demonstrated compliance with federal recordkeeping guidelines and policies, but in certain limited instances, some areas of improvement were noted.

The review team found four parcel files didn't include a copy of the written notice of intent to the owner per 49 CFR 24.5 or the written notice included in the file did not include sufficient details per 49 CFR 24.102(b). Four files were missing evidence to verify receipt of the FHWA Acquisition Brochure which should have been included in Buyer's Report per INDOT's Real Estate Buying Manual.

Appropriate documentation was found showing administrative approvals for increased purchase prices, and their basis, but the documentation of working calculations were inconsistent. Similarly, when property owners had provided counteroffers of just compensation, copies of these documents were not always found in the files.

Upon conclusion of the on-site review of the files, INDOT provided FHWA with the necessary documentation missing from the four parcel files that demonstrate compliance with applicable federal guidelines and policies on those settlements identified as missing documentation.



Joint recommendations for improving INDOT documentation for administrative settlements are as follows:

- Closing Files – parcel files should be reviewed before being closed to ensure all required documentation is included and properly executed. A closing checklist that identifies the required documents to be included should be developed.
- Manual Revisions – INDOT's Office of Real Estate manuals are being revised to improve the use and application of administrative settlements. The manuals will provide adequate guidance regarding the information needed to support how or why an administrative settlement is reasonable, prudent and in the public interest.
- Training -- INDOT should provide training to staff and consultant buyers in the use of administrative settlements, and how to identify and interpret the necessary documentation used to arrive at the administrative settlement amounts.
- Notices to Owners – all required notices, negotiations, settlements and communications with property owners should be well-documented in writing, and included in a standardized Buyer's Report format.

While areas of improvement were identified by the review team, the team recognized several successful right-of-way practices utilized by INDOT that demonstrate consideration for the public interest (i.e. time and cost savings; property owners' rights and continued compliance with applicable state and federal requirements), including:

- Public Outreach - significant public outreach and education efforts to inform property owners about major projects, and the right-of-way acquisition process (i.e., "Kitchen Table" meetings).
- "Every Day Counts" - effective use and implementation of FHWA's "Every Day Counts" Tools for expediting project delivery (i.e., Incentive Payments and Right of Entry), resulting in time and cost savings to the public.
- Expedited Delivery - reducing the right-of-way acquisition schedule by combining staff and consultant resources to deliver right-of-way clear for construction ahead of schedule, resulting in time and cost savings to the public.
- Appraisal Process - thorough and complete documentation of the appraisal and appraisal review reports; offering a good explanation of the entire process; and including the addition of expert advice for extraordinarily complex appraisal problems.

The review team will share these practices with other state DOT's as evidence of innovative project delivery methods that support reasonable and prudent decisions being made in the public interest.



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## **Background**

Since 1971, the acquisition of land for a variety of government programs and projects has been subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and codified at 42 U.S.C. 4601, et seq. ("Uniform Act"), and regulations codified at 49 CFR Part 24 and 23 CFR Part 710. The Uniform Act provides for fair and equitable treatment of persons whose property will be acquired or who will be displaced because of programs or projects financed with federal funds. Congress amended and updated the Uniform Act in 1987.

There are many steps in the acquisition process to assure that the property owner is treated fairly and consistently and is offered just compensation in accordance with the Uniform Act and applicable federal regulations and guidelines. The federal-aid right-of-way process begins when a state transportation agency identifies that the acquisition of private property will be necessary for a federally funded state or local public agency highway project. Subsequently, the property owner must be provided a written notice explaining their rights under the law, the real property being acquired must be appraised by a qualified appraiser, and the appraisal must be reviewed by a qualified review appraiser. Then, the Agency must establish and offer just compensation for the real property, and any improvements or damages to any property residue that will be included in the offer. The primary goal during the acquisition process is to acquire the needed property interests through negotiations rather than condemnation and litigation.

Once the offer is made, good faith negotiations will occur to reach an agreement, without coercive action. If necessary, the purchase price may exceed the amount offered as just compensation. When reasonable efforts to negotiate an agreement have not succeeded, an authorized Agency official may approve an administrative settlement as being reasonable, prudent, and in the public interest.

When federal funds pay for or participate in an administrative settlement, federal regulations and guidelines provide that a written justification be prepared supporting the settlement. The Agency shall give full consideration to all pertinent information. This written justification must include all relevant information necessary to support the settlement and to document assurance that the action taken complied with applicable federal regulations and guidelines. This may include items such as value-related evidence justifying the increase and any new market information. It may also include recent court awards, estimated trial costs, an evaluation of trial risks or other valuation problems.

After reaching an administrative settlement, the Agency must pay the agreed upon purchase price to the property owner before taking possession of the property.



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Throughout the process, the Agency must maintain adequate records of its acquisition activities in sufficient detail to demonstrate compliance with federal regulations and guidelines.



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## Purpose and Objective

The purpose of this review was to evaluate the Indiana Department of Transportation's (INDOT) administrative settlements process and its documentation used to demonstrate compliance with federal regulations. This review provided the Federal Highway Administration's (FHWA) and INDOT with reasonable assurance that policies, procedures, practices, and actions taken on federally funded projects related to administrative settlements complied with applicable federal regulations and guidelines.

Administrative settlements are settlements reached before attempting to initiate an eminent domain proceeding, and that are based upon information that supports a purchase price above the initial approved fair market value offer. The settlements are based on an administrative decision with full consideration of all pertinent information, such as new market data and information; an update, revision, error, or oversight in the appraisals; an owner's appraisal or other supported opinion of value; recent court awards; estimated trial cost; and other valuation problems that may support such a settlement.

The administrative settlement definition can be found at 49 CFR 24.102(i)

*"The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement."*



## **Scope and Methodology**

The review team selected fifty parcels from the total population of parcels that used Administrative Settlements, over the past three calendar years. Parcels were then ranked by the percentage difference between the initial appraisal and the final settlement paid. The parcels with the highest percent difference between the initial appraised value and the final amount paid, were selected for review. The team discovered during its on-site visit that two parcels that were originally selected were not administrative settlements. These were not replaced and so the actual number of parcels reviewed was forty-eight.

The team used a review checklist and settlement spreadsheet to guide their review. The review team reviewed the following documentation from INDOT's Central Office of Real Estate parcel files for each of the administrative settlements:

- Appraisal Reports and Appraisal Review Reports
- Statement of Just Compensation
- Property owner or tenant improvements located within the acquisition
- Right of way Plans
- Title report, plat and legal description
- Buyer's Report
- Negotiation Documents-Uniform Offer Letter, Deed and, Easement Instruments, Incentive Agreement, Right of Entry, and Revised Offers of Acquisition.
- Approved Written Recommendation for Administrative Settlement

These documents were reviewed against the following regulations:

1. Title 42, United State Code (USC) 4651 and 4652
2. Title 49, Code of Federal Regulations (CFR) Part 24
3. Title 23, Code of Federal Regulations (CFR) 1.23
4. Title 23, Code of Federal Regulations (CFR) Part 710
5. INDOT's approved Real Estate Manuals



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## **Team Members**

The review team consisted of the following members:

Colleen Smith – FHWA Indiana Realty Specialist  
Jay DuMontelle – FHWA Indiana Planning, Environment, Right-of-Way and Civil Rights Program Manager  
Christina Currier – FHWA Resource Center and Texas Division Realty Specialist  
Michele Palicka – FHWA Resource Center and Georgia Division Realty Officer  
Bruce Bradley – FHWA Headquarters Office of Real Estate Services, Realty Specialist  
Scott Adams – INDOT Real Estate Director

Additional INDOT staff members that participated in the review process included: Mike Jett, Right-of-way Project Manager, and Steve Penturf, Condemnation Manager.



## Observations and Recommendations

The review team made the following observations and recommendations to improve INDOT's policies and practices to assure compliance with the federal requirements identified below:

### General Observations:

- The review team found that INDOT records were adequate and sufficient to support administrative settlements, and demonstrated compliance with federal recordkeeping guidelines and policies, but in certain limited instances, some areas of improvement were noted.
- The review team observed that the assembling of INDOT's parcel files could be improved. INDOT is required to maintain adequate records of its acquisition activities in sufficient detail to demonstrate compliance with federal acquisition laws and regulations (49 CFR Part 24 and 23 CFR Part 710). Required documentation was not consistently organized from one file to another.

### General Recommendation:

- A parcel file checklist would be useful and could help organize necessary documents in the file, and are easily organized and accessible for future review.

Observation #1: The review team observed four files needed to be supplemented to include additional documentation to support higher settlements being offered to the property owner (49 CFR 24.102(i)).

Recommendation #1: INDOT's Real Estate Buying Manual should be updated to include clearer guidance the use of administrative settlements. This should include examples of written justifications, per federal regulations. Better written justification and supporting documentation would help tell the story of the negotiation process and document the buyer's calculations used to recommend the higher value.

It is noted that since the team's on-site review of the parcel files, INDOT has supplied FHWA with supplemental documentation that supported and justified the settlement values of the four parcel files.

Observation #2: The team observed in a limited number of cases that INDOT's written administrative memorandum should include more detailed information explaining the underlying basis for settlement and demonstrating that the settlement was reasonable, prudent and in the public interest (49 CFR 24.102(i)).



Recommendation #2: INDOT should ensure documentation that reflects all justification used to support an administrative settlement is included in the parcel files. The team recommends that INDOT develop a parcel file checklist be used to ensure documentation is included in files before they are closed.

It is noted that since the team's on-site review of the parcel files, INDOT has supplied FHWA with supplemental documentation that supported and justified the settlement values of the four parcel files.

Observation #3: The review team observed in 19 files that offers to accompany an appraiser on the inspection of the owner's property was documented as having been done by phone call, and then noted in the parcel files.

Recommendation #3: Although INDOT's Real Estate Acquisition Manual allows the offer to be issued by phone, INDOT should more clearly and consistently demonstrate it has notified the property owner by providing a written invitation to accompany the appraiser, rather than extending this invitation by telephone and documenting the call in the parcel files. This would ensure the owner(s) were given their rights to discuss their concerns about the property with the appraiser.

Observation #4: The team observed that four of the parcel files reviewed were missing the "Intent to Acquire" notice sent to the property owner(s) to let them know of INDOT's interest in acquiring their real property and explaining the protections provided by applicable law and regulation.

Recommendation #4: INDOT should continue its practice of having buyer's also send a separate letter including all of the notices contemplated in 49 CFR 24.102(b).

It is noted that since the team's on-site review of the parcel files, INDOT has supplied FHWA with supplemental documentation that supported and justified the settlement values of the four parcel files.

Observation #5: The review team observed that some parcels files did not include documentation from the property owner supporting the basis of their counter-offer (49 CFR 24.102(f)).

Recommendation #5: INDOT should revise its Administrative Settlement procedures to include a review of the owner's evidence of value by a licensed appraiser, and identify the evidence which INDOT believes is most reliable and credible to support the owner's opinion, and that will be acceptable.



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Since the on-site review, INDOT has modified its process to include a review of the counter-offer by a licensed appraiser.

Observation #6: The review team observed four files were missing buyer's notes that may have verified receipt of the FHWA Acquisition Brochure which should have been noted in Buyer's Report per INDOT's Real Estate Buying Manual.

Recommendation #6: INDOT's current successful practice of requiring the property owner's signature or initials upon the Buyer's Report should be consistently applied and followed by all staff and consultant buyers. This should be emphasized in Buyer's training.



## Successful Practices

The review team also found that INDOT had adopted several innovative practices into its right-of-way acquisition process.

Review Appraisals -- Review appraisals were detailed and offered a good explanation of the entire appraisal process. Several files included a letter addressed to the property owner, from the appraiser, to accompany their inspection of the property, and that included a listing of all the documents in the package sent to the property owner.

"Kitchen Table" Meetings - "Kitchen Table" discussions were held with individual property owners on the Section IV of I-69 project to facilitate improved communications, public education, and awareness of issues regarding the right-of-way process and the project, in general. This extraordinary public outreach effort provided property owners with a list of persons who would be contacting them and for what reasons, and with photos of construction equipment the owners might expect to see during the surveying and pre-construction phases.

Combined Resources – A combined acquisitions and relocation team comprised of INDOT staff and consultants was utilized for the first time to clear right-of-way ahead of schedule for the Ohio River Bridges project. This successful practice reduced the time necessary to acquire, relocate, and clear all right-of-way, resulting in cost savings to the public.

Organization & Documentation – Buyers are encouraged to obtain the signature of property owners on the Buyer's Report to confirm details and information are shared and understood by the property owner. This best practice helps with the owner's understanding of the acquisition process and confirms their agreement with details of the transactions.

Problem Resolution - A creative solution to resolve a unique appraisal problem relied upon a specialized Wisconsin DOT appraiser to value a ginseng crop. This successful practice determined the value of the property owner's unique crop to arrive at a fair and accurate value for compensating the land owner.

Acquisition Incentives – INDOT employs the use of acquisition and relocation incentives to expedite project delivery. This successful practice contributes to a shorter project delivery cycle, lower condemnation rates, as well as time and cost savings.

Right of Entries – INDOT employs the use of an "Irrevocable Right of Entry" process to expedite access, planning, and pre-construction activities on parcels while administrative processes to clear the right-of-way continue. The property owner is



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compensated to allow INDOT access to their property while the full payment for their property is being processed in the state's financial system. This successful practice contributes to a shorter project delivery cycle, saving time and public tax dollars.



## Conclusion

Based upon the on-site visit and review of documentation provided by Indiana Department of Transportation (INDOT), the Federal Highway Administration (FHWA) is able to determine the state's Administrative Settlement process is adequate and sufficient to support administrative settlements as being reasonable, and compliant with federal regulations and guidelines.

During the Joint Administrative Settlements File and Process Review, the management staff of INDOT's Real Estate Division demonstrated a spirit of cooperation and knowledge of the requirements of the federal-aid right-of-way program. INDOT staff had already self-diagnosed several needed improvements prior to the review being conducted and welcomed guidance from the review team for advancement of its program during the review process.

Following the review team's on-site visit, INDOT has taken several steps to address issues identified during the review such as:

- INDOT's Administrative Settlement process was revised to better identify the documentation needed to support settlements;
- INDOT has initiated a full review and update of all of its Real Estate Manuals and intends to combine them into a single manual; and
- INDOT is already planning additional right-of-way education and training for all of its staff and consultants.

The review of documentation in the parcel files along with the planned programmatic improvements will help INDOT to demonstrate its compliance with the requirements to follow the Uniform Act and maximize the rights of property owners, as well as to improve project delivery. To that end, FHWA and INDOT will continue to partner and collaborate on key programmatic elements and processes to ensure ongoing compliance with applicable laws, rules, and regulations.



## Action Plan

In response to the review team's observations as outlined in this report, the following action items are provided for the benefit of INDOT to improve the federal-aid right-of-way program:

- **Supplementary Information** – INDOT has provided FHWA with supplementary data, information, and analysis on the four select parcel files to more thoroughly support and justify settlements made. Examples of acceptable supplementary information included evidence and analysis to support overall project cost savings resulting from construction delay claims, permit penalties, expert witness and appraisal fees, and excessive court awards, among others. Additional documentation also included the owner's appraisal, a broker price opinion, sales disclosures, and/or contractor's estimates for cost-to-cure items. This example of supplementary information should be incorporated into INDOT's Real Estate Manual.
- **Documentation** – INDOT should "tell a better story" with the documents generated throughout the transaction process, and include them in the parcel files. The Buyer's Report should be revised to more accurately reflect key agency-owner interactions and decisions. All correspondence, notices, letters, and emails should be accounted for in the file, along with a list of all documents and information provided to the owner. Documents should be dated to show when they were provided, and identify who provided the documents to the owner.
- **Training** – INDOT should provide supplementary training to staff and consultant buyers in the use of administrative settlements. Training should include how to identify and interpret the necessary documentation needed to justify a settlement in the public interest.
- **Administrative Settlements** – INDOT is revising its process to identify specific sources, types, and examples of acceptable evidence that may be used to support and justify an administrative settlement. The criteria and justification used should clearly establish the settlement as reasonable, prudent, and in the public interest. A counter-offer submitted by an owner based on market data should be reviewed by a licensed appraiser.
- **Notices to Owners** – All required notices, negotiations, settlements and communications with property owners should be well-documented in writing, and included in the Buyer's Report that is signed or initialed by the owners.



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- **Manuals** – INDOT is reviewing and updating its right-of-way manuals to include additional detail and guidance with respect to the administrative settlement process.
- **Early Right-of-Way Engagement** – Real estate staff should be engaged and included in the early stages of the project development process. The designer may benefit from the perspective of a right-of-way professional to identify and avoid costly and time-consuming acquisitions and relocations.



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## Appendices

### List of Parcels Selected to Review

Land Code	Parcel Number	Route	Work Type	Property Use
4512	26	US-41	Interchange Modification	Resident
5095	727	US-31	New Road Construction	Special Improvement
5219	6	US-150	Road Reconstruction (3R/4R Standards)	Resident
3205	24	US-231	New Interchange Construction	Agriculture
5537	14	I-69	New Road Construction	Resident
4269	65	US-52	Added Travel Lanes	Commercial
5547	65	US-52	Intersection with Added Turn Lanes	Resident
5426	1	I-69	Environmental Mitigation	Special Improvement
4808	7	SR-44	Intersection Improvement, Roundabout	Commercial
5533	12	I-69	New Road Construction	Agriculture
3786	107	SR-23	Auxiliary Lanes, Two-way Left Turn Lanes	Resident
4557	59	I-465	Interchange Modification	Commercial
5398	903	I-69	New Road Construction	Special Improvement
4936	9	SR-25	New Road Construction	Agriculture
5539	1	I-69	New Road Construction	Agriculture
4936	8	SR-25	New Road Construction	Agriculture
5285	37	I-69	New Road Construction	Agriculture
5197	27	SR-25	New Road Construction	Resident
4575	6	US-27	Intersection Improvement	Special Improvement
3786	103	SR-23	Auxiliary Lanes, Two-way Left Turn Lanes	Resident
5426	2	I-69	Environmental Mitigation	Special Improvement
5092	413	US-31	New Road Construction	Agriculture
5537	31	I-69	New Road Construction	Agriculture
5531	16	I-69	New Road Construction	Agriculture
4815	4	SR-61	Sight Distance Improvement	Special Improvement
5092	404	US-31	New Road Construction	Agriculture *
5435	1	I-69	Environmental Mitigation	Agriculture
5536	8	I-69	New Road Construction	Agriculture
5409	1	I-69	Environmental Mitigation	Agriculture
5416	1	I-69	Environmental Mitigation	Agriculture
4936	12	SR-25	New Road Construction	Agriculture
5533	1	I-69	New Road Construction	Agriculture
5537	30	I-69	New Road Construction	Agriculture
5531	39	I-69	New Road Construction	Resident
5412	1	I-69	Environmental Mitigation	Agriculture
5196	23	SR-25	New Road Construction	Resident
5001	25	SR-38	Sight Distance Improvement	Resident
5531	24	I-69	New Road Construction	Agriculture
5537	21	I-69	New Road Construction	Resident
4159	32	I-70	Interchange Modification	Agriculture



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Land Code	Parcel Number	Route	Work Type	Property Use
5092	446	US-31	New Road Construction	Agriculture
4747	18	SR-2	Interchange Modification	Agriculture
3786	117	SR-23	Auxiliary Lanes, Two-way Left Turn Lanes	Resident
3879	74	SR-19	Road Reconstruction (3R/4R Standards)	Commercial
5431	1	I-69	Environmental Mitigation	Agriculture
3879	38	SR-19	Road Reconstruction (3R/4R Standards)	Commercial *
3786	142	SR-23	Auxiliary Lanes, Two-way Left Turn Lanes	Resident
5410	1	I-69	Environmental Mitigation	Agriculture
5411	1	I-69	Environmental Mitigation	Agriculture
5420	1	I-69	Environmental Mitigation	Agriculture

**An asterisk (\*) is used to note the two parcel files selected for this review that were later found to not be administrative settlements.**



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