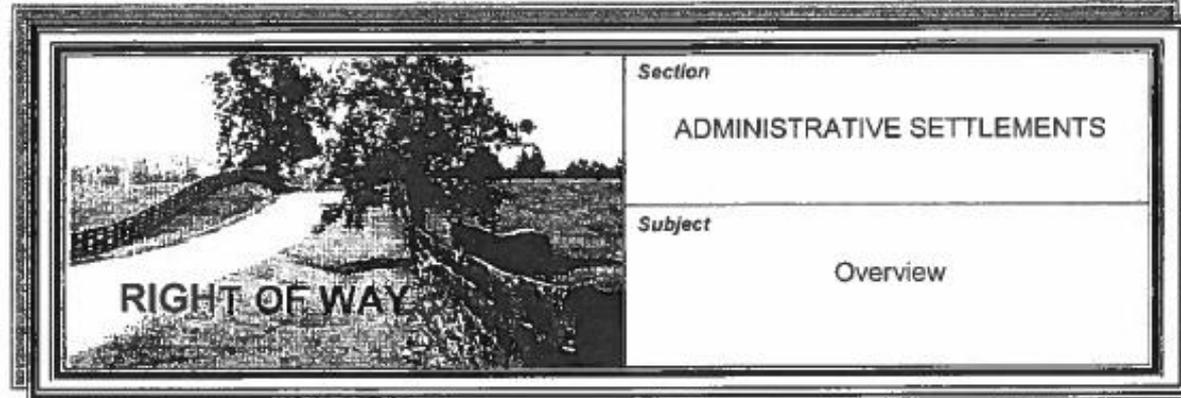




WRITING ADMINISTRATIVE SETTLEMENTS

Kelly Divine



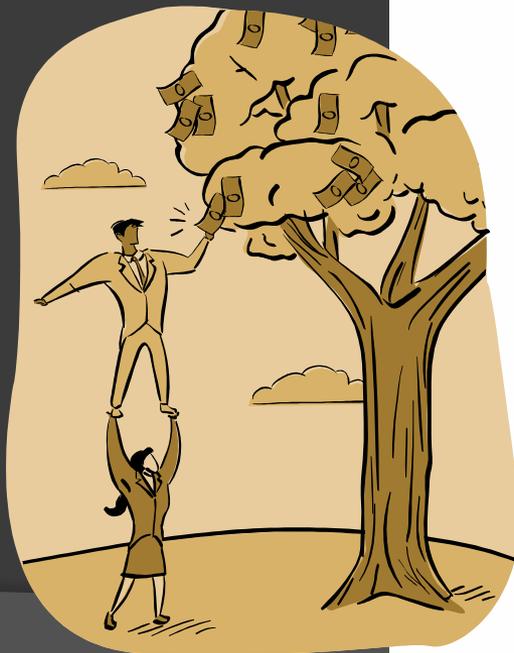
DEFINITION: Administrative settlements occur when the Director of the Division of Right of Way and Utilities, the Acquisitions Branch Manager, and the district right-of-way supervisors acquire a parcel above the appraised fair market value.

GENERAL GUIDELINES: Administrative settlements require varying levels of approval dictated by the amount of increase above the approved offer to purchase. Settlements are not to be made until the appropriate approval has been obtained.

Examples of circumstances where an administrative settlement may be used to complete the acquisition include:

- Omission of a minor item from the appraisal that alters just compensation by a negligible amount
- Property owner's submission of a counteroffer not substantially different from the offer of just compensation
- Compensation for issues that cannot be included in an appraisal

A record of all administrative settlements and justifications is required in the parcel file and in the Division of Right of Way and Utilities computer system (RWU).





TRANSPORTATION CABINET

Frankfort, Kentucky 40622
www.kentucky.gov

Ernie Fletcher
Governor

Bill Nighbert
Secretary

Marc Williams

For acquisitions within the range of \$2,500 up to \$25,000 the administrative authority is \$2,500. If administrative settlement is greater than \$2,500, Central Office approval is required.

For acquisitions within the range of \$25,001 to \$50,000 the administrative authority is \$5,000. If administrative settlement is greater than \$5,000, Central Office approval is required.

For acquisitions of \$50,001 or more, the administrative authority is \$10,000. If administrative settlement is greater than \$10,000, Central Office approval is required.

(Right of way Supervisor) may complete the transaction without Central Office approval if the amount of the deviation falls within the guidelines listed below or less.

For acquisitions within the range of \$2,500 up to \$25,000 the administrative authority is \$2,500. If administrative settlement is greater than \$2,500, Central Office approval is required.

For acquisitions within the range of \$25,001 to \$50,000 the administrative authority is \$5,000. If administrative settlement is greater than \$5,000, Central Office approval is required.

For acquisitions of \$50,001 or more, the administrative authority is \$10,000. If administrative settlement is greater than \$10,000, Central Office approval is required.

Administrative Settlements

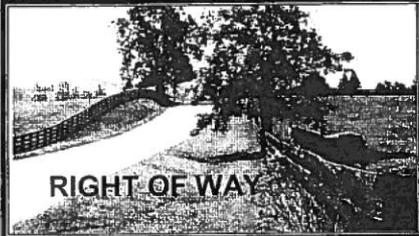
Page 2

March 26, 2007

Any deviations of \$1,000 or less shall be clearly explained in the TC 62-77 Record of Contacts. If the deviation exceeds \$1,000 but are less than the perscripted limits above, the district right of way supervisor is to supplement the parcel file with a memorandum giving a detailed description of the parcel negotiations and justification for the settlement. The memorandum is to accompany the request for payment sent to Central Office.

On a parcel involving owner-occupied relocation assistance, written notification must be provided to the Relocation Branch Manager explaining the amount of the increase and the justification for such increase so a determination can be made as to its effect on the replacement housing computation.

SD/kc

	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Substantial Deviation</p>

SUBSTANTIAL DEVIATION:

An administrative settlement may be made to acquire a parcel at an amount that varies substantially from the approved appraisal if the settlement is:

- Prudent and reasonable
- In the interest of the public

Kentucky Transportation Cabinet (KYTC) employees, sub-agents of the KYTC, and local public agents are to all follow this process.

Note: Substantial variations above the fair market value on mega-projects and interstate projects require Federal Highway Administration approval.

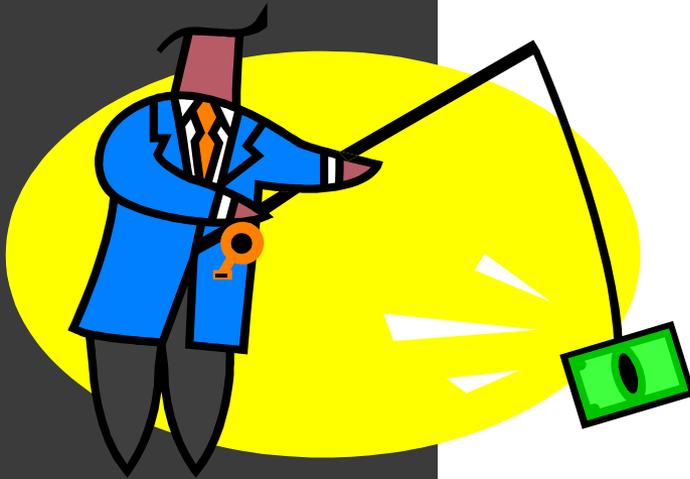
The district right-of-way supervisor's recommendation for settlement is to:

- Document in detail the reasons for the proposed settlement
- Provide spaces for approval by the:
 - ◆ Acquisition Branch Manager
 - ◆ Director of the Division of Right Way and Utilities

If necessary, two branch managers (one of whom acts for the director) may approve the recommendation. In some circumstances, the district right-of-way supervisor may obtain verbal approval, but it is to be confirmed in writing immediately.

DOCUMENTATION: The written request is to be documented in the following manner:

- Description of property before acquisition
 - ◆ Location and current use of property
 - ◆ Land size, topography, and access
 - ◆ Improvements and special land improvements
 - ◆ Value before acquisition (A note is to be made if the minor acquisition review valuation was used to determine just compensation.)



DOCUMENTATION
(cont.):

Note: If prior verbal approval was obtained from the Central Office, this should be stated at the outset, and should include the date of approval and the name of the individual who granted the approval.

➤ Description of acquisition (if not a total acquisition)

- ◆ Land and improvements being acquired
- ◆ Grade change and access
- ◆ Any anticipated damages
- ◆ Description of remainder
- ◆ Fair market value offer, and including a breakdown of the offer

➤ Description of negotiations

- ◆ Concerns of owner (including why the owner feels the Department of Highways' offer is not indicative of the fair market value)
- ◆ Counteroffers
- ◆ Final counteroffer

Other data or concerns

➤ Documentation in support of justification for settlement

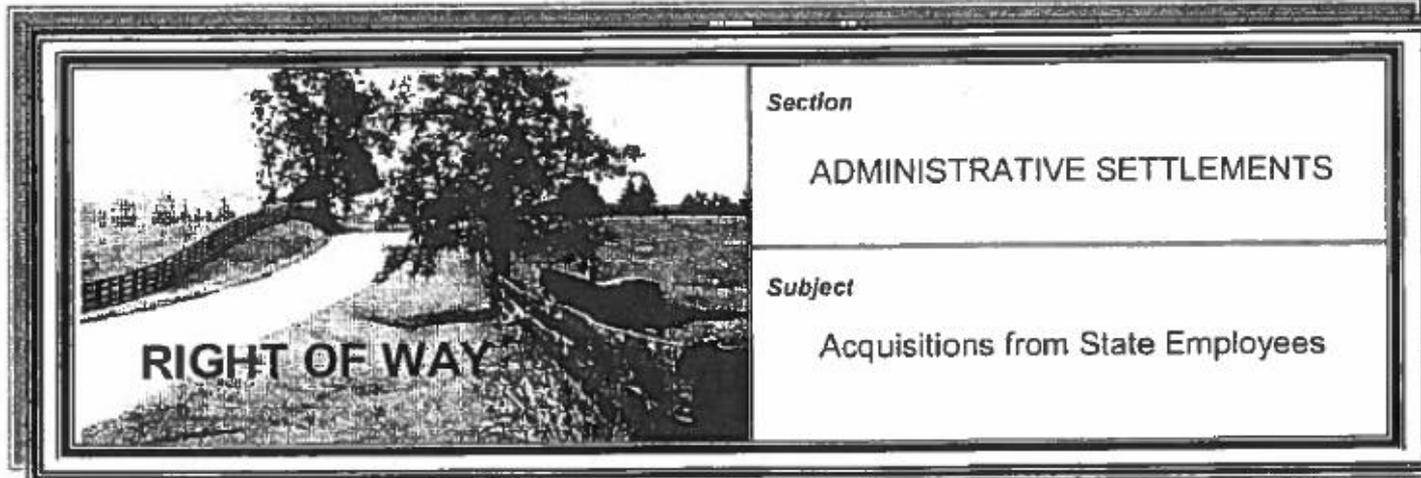
- ◆ Statements declaring that:
 - Offer is the least amount the property owner will accept
 - Relocation assistance is or is not involved in the acquisition
- ◆ Report listing the benefits to the Department of Highways

Note: This report should show how the settlement would eliminate the cost of litigation, risks, and exposure to a larger award issued by a commissioner or jury verdict. Any recent cases to support this argument are also to be included.

- ◆ Any aspect of the acquisition or evaluation process that may be particularly difficult for the Department of Highways to defend and gives further credence to the settlement
- ◆ Declaration that states, "I believe it is reasonable, prudent, and in the best interest of the Commonwealth to accept this settlement."

The Director of the Division of Right of Way and Utilities or the Acquisition Branch Manager may make an administrative settlement if one or the other approves. In such instances, whoever makes the settlement is to prepare the written documentation for such settlement. A copy of the approved settlement is to be forwarded to the district.





**ACQUISITIONS
FROM STATE
EMPLOYEES:**

If the Cabinet acquires property from a state employee and bases the settlement on an increase in compensation above the approved appraisal, the district right-of-way supervisor is to justify the increase in writing. Regardless of the amount of the increase, the supervisor is to:

- Write a detailed recommendation for the administrative settlement
- Submit the recommendation for approval to the:
 - ◆ Director of the Division of Right of Way and Utilities
 - ◆ Acquisition Branch Manager





3. Recommendation

Description of Property

Tract of land located in Barren County.

Description of Acquisition

3,650 square feet fee simple

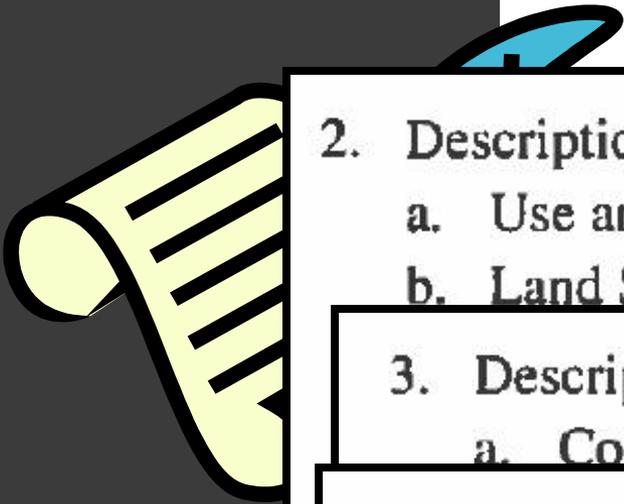
865 square feet of temporary easement

Description of Negotiations

Owner did not agree with State's offer.

Documentation

Cheaper than going to court.

- 
2. Description of Property Before
 - a. Use and Location
 - b. Land Size, Topography, and Access

3. Description of Negotiations
 - a. Concerns of Owner

4. Description of Acquisition (if not a Total Acquisition)
 - a. Land and Improvements
 - b. Grade Change and Access
 - c. Anticipated Damages

5. Documentation
 - a. Benefits to the Department to accept
 - b. Weaknesses of our position or strengths of property owner
 - c. History

6. Effects, if any, on RHP computations



Appraisal-Appraisal Report

Item No.	Parcel No.	Appraiser Name
3-108.30-SYP	0157	LEIGH ANN DUNCAN-PARKINSON
Date Submitted to District Office		Appraisal Type
8/16/2011		Partial Acquisition

1. Purpose of Appraisal

The purpose of this appraisal is to estimate the fair market value of the subject property as a whole before the acquisition, and the fair market value of the remainder(s), if any, immediately after the acquisition, in order to arrive at an estimate of just compensation for the acquisition in accordance with State Law. The interest appraised is Fee Simple unless otherwise stated. Fair Market Value as herein referred to may be defined as: "That price which a willing buyer would pay in cash and a willing

3. Summary of Facts and Conclusions

Value Conclusions	Area Acquired	Units	UOM
a) Value Before Acquisition: <u>\$86,500.00</u> ✓	Fee Simple R/W	<u>24622.0000</u> ✓	<u>SF</u>
b) Value After Acquisition: <u>\$64,900.00</u> ✓	Permanent Easement:	<u>512.0000</u> ✓	<u>SF</u>
c) Difference: <u>\$21,600.00</u> ✓	Temporary Easement:	<u>27290.0000</u> ✓	<u>SF</u>
d) Temporary Easements: <u>\$5,800.00</u> ✓	Other		
e) Total c + d <u>\$27,400.00</u> ✓			
Use Total Compensation of: <u>\$27,400.00</u> ✓			

Persons Contacted

Last Name/Company	First Name	Date Contacted	Contact Type
Wyatt	Brenda	05/09/2011	Owner
Pursley	William	05/09/2011	Owner
Pursley	Mark	05/09/2011	Owner
Pursley	Bennie	05/09/2011	Owner

3. Summary of Facts and Conclusions

Value Conclusions	Area Acquired	Units	UOM
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c) Difference: <u>\$21,600.00</u> ✓	Temporary Easement:	<u>27290.0000</u> ✓	<u>SF</u>
d) Temporary Easements: <u>\$5,800.00</u> ✓	Other		
e) Total c + d <u>\$27,400.00</u> ✓			
Use Total Compensation of: <u>\$27,400.00</u> ✓			

4. For Contingent and Limiting Conditions See

Check if None

See Sales and Research Report for Limiting Conditions



Appraisal-General Data and Property Description Summary Report

Item No.	Parcel No.	Appraiser Name
----------	------------	----------------

3-108.30-SYP

1. Five-Year:

Grantor

Volma Pursley, et

(If more than

Highest and Best Use: Re

The Highest and Best Use as
and land use trends in the ar
improvements, tract size and

Lessee Name / Compan

2. Location And Neighb

(Discuss only items pertinent to

The subject property is locat
5.4 miles southeast of the cil
along Highway 90 is built-up
balance.

- Gravel Drive
- Landscaping
- Pond
- Septic System 2
- Circular Gravel Dr

3. Land Description

Land Topography: (L) Level (SR) Slightly Rolling (R) Rolling (H) Hilly (W) Waste
Land Quality: (E) Excellent (VG) Very Good (G) Good (F) Fair (P) Poor

Land Classification	Topography & Quality	Rating Factor	Area	UOM	Composite
Residential	SR / G	Average	3.8000	AC	
Agri/Hobby Farm	SR / G	Average	13.2000	AC	

SUBJECT'S LAND CLASS RATING
IS:(if applicable)

$$0.0000 + 17.0000 = 0.0000$$

Site Improvements	Conditions	Quantity	UOM
Septic System	Average	1.0000	EA
Gravel Drive	Average	1200.0000	SF
Landscaping	Average	1.0000	LS
Pond	Average	1.0000	EA
Septic System 2	Average	1.0000	EA
Circular Gravel Drive	Average	1800.0000	SF



Appraisal-General Data and Property Description Summary Report

5. Buildings

(Describe each component, list unusual features, and rate each for condition)

Principal Buildings:

Condition Rating (E) Excellent (V) Very Good (G) Good (A) Average (F) Fair (L) Low Cost (NA) Not Apply

Building #	1										
Principal Improvement	1986 Fleetwood Mobile Home										
Net Condition	Average										
Class	D	Foundation	Underpinning/Blocks	A	Attic	None	NA				
Cost Source	M & S	Ext Walls	Metal Siding	A	Floors	Carpet/Vinyl	A				
No. Stories	1	Roof	Metal	A	Int. Finish	Vinyl/Panelling	A				
Actual/Estimated Age	25 yrs	Porch	Front	A	HVAC	FAE/Central	A				
Effective Age	20 yrs	Basement	None		Baths/Restrooms	1.0	A				
No. of Bedrooms	3	Basement Finished			Fire Place	None	NA				
		Garage/Carport	None	NA	Storm W&D						
		Kitchen	Range/Hood/Cabinets	A	Electrical	Standard/Breakers	A				

Principal Buildings:

Condition Rating (E) Excellent (V) Very Good (G) Good (A) Average (F) Fair (L) Low Cost (NA) Not Apply

Building # 1
Principal Improvement 1986 Fleetwood Mobile Home
Net Condition Average

Class	D	Foundation	Underpinning/Blocks	A	Attic	None	NA
Cost Source	M & S	Ext Walls	Metal Siding	A	Floors	Carpet/Vinyl	A
No. Stories	1	Roof	Metal	A	Int. Finish	Vinyl/Panelling	A
Actual/Estimated Age	25 yrs	Porch	Front	A	HVAC	FAE/Central	A
Effective Age	20 yrs	Basement	None		Baths/Restrooms	1.0	A
No. of Bedrooms	3	Basement Finished			Fire Place	None	NA
		Garage/Carport	None	NA	Storm W&D		
		Kitchen	Range/Hood/Cabinets	A	Electrical	Standard/Breakers	A

Floor Info(#,Room,Area) 1,5,924.0000/

	Storage				Sneeing	yi	p Shingles	
4	Barn	D	1728.0000	SF	Wood	Dirt/Gravel	Metal	Fair
5	Chicken Coop	D	612.0000	SF	Wood	Dirt	Metal	Average

1. Narrative Description of Acquisition

(Include direction of acquisition area and class(es) of land, cuts and fills, buildings, site improvements.)

The fee simple taking from the property will contain an area of 24,622 square feet, or .565 acres. The taking will begin at the property's northwest corner, where it will be 62' deep (measured along the property line). From that point, proposed right-of-way will run in a basically easterly direction and taper in to a depth of 28' at Station 318+12. It will then taper outward to a depth of 47' at Station 320 before tapering in again to a depth of 15' at Station 321. From that point it will taper outward gradually to a depth of 19' in front of the mobile home and a depth of 24' at Station 323. It will then continue eastward at a depth of 24' until it terminates at the northeast corner of the property.

The land acquired in fee simple has a Highest and Best Use of residential. Site improvements located within proposed right-of-way that will be acquired include the septic system and gravel drive located south of Station 317+50, 300 square feet of the gravel drive east of Station 321+55 and some of the landscaping in front of the mobile home and Building 3.

2. Narrative Description of Remainders

(Describe each remainder separately. Include area and class(es) of land, site and neighborhood analysis, improvements, cutland fills, proximity, access. Explains highest and best use.)

The remainder will contain 16.435 acres of land. All buildings will remain, as will site improvements sufficient to serve the remainder. Access will be provided via an entrance at Station 321+55. Given this remainder's size, access and the nature of improvements, its Highest and Best Use is anticipated to remain the same as in the Before situation. Damages to the remainder are anticipated, however, due to the change in grade and presence of a guardrail at the west end and the proximity of the roadway. A permanent easement encumbrance is also expected to be placed on the remainder.

3. Discussion of Anticipated Damage and / or Special Benefits

(Discuss the factors which may affect highest and best use and the contributing value of each remainder. Estimated damages shall include only items or conditions compensable under Kentucky law. Discuss and document adjustments for curable functional obsolescence. Damage studies must reflect circumstances and economic conditions applicable to the subject. Use Continuation sheets if necessary for calculations or additional comments.)

Damages - Change in Highest and Best Use of Land

As discussed above, the roadway along the west end of the property will be constructed on a considerable fill relative to the property's frontage and a guardrail will be installed along the westernmost 501 feet of the property's frontage. Given the change in topography and the lack of typical, reasonable access to this portion of the property, this land is expected to have a Highest and Best Use of agriculture in the after situation. This change in potential use is expected to result in a diminution in value. The land area anticipated to have a change in Highest and Best Use has been estimated by the appraiser to be 1.5 acres. (Land allocations are based on typical depth of residential sites in the immediate vicinity of the subject property). In the before situation, this land was estimated to contribute \$9,000 per acre. In the after situation, the land is anticipated to contribute \$2,042 per acre. When this reduction in value of \$6,958/acre is applied to the remaining area of 1.50 acres, indicated damages are: $\$6,958/\text{acre} \times 1.50 \text{ acres} = \$10,437$ or USE \$10,400.

Damages - Permanent Easement

Damages to a small portion of the remainder (512 sf or .012 acres) are anticipated due to a permanent easement encumbrance. This area will be used for drainage purposes, and the owner will lose the use of it for all practical purposes. It is the opinion of



Acquisition - Administrative Settlement

Rev. 4/11

Item No.	Parcel No.	Project Number	County
3-108.30-SYP	0157	6899203R	Barren
Project Description	PRIORITY SECTION 2, RECONSTRUCT KY-90 EAST OF GLASGOW FROM APPROX. 0.57 MILE EAST OF KY-2198 (LICK BRANCH ROAD) TO APPROX. 0.38 MILE EAST OF KY-839. (2002BOPC)(08CCR)(10CCR)		

1. Property Owners

Name	Address
Velma Pursley	care of Brenda Wyatt POA Glasgow KY United States 42141
William Pursley (POA for Velma Pursley)	150 Beaver Point Road Glasgow KY United States 42141
Mark Pursley	1365 Witty Road Glasgow KY United States 42141
Brenda Wyatt (POA for V. Pursley)	5840 Burkesville Road Glasgow KY United States 42141
Bennie Pursley	440 Bethel Church Road Glasgow KY United States 42141
Betty Brooks	1426 Carthage Highway Lebanon TN United States 37087
Marla Thompson	86 Ironbridge Rd Bowling Green KY United States 42103
Justin Pursley	40607 Cherokee Oaks Drive Three Rivers CA United States 93271 0518

Offer Date	10/5/2011	Offered	\$27,400.00	Asked	\$38,000.00	Increase	\$10,600.00
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2. Lessee Owners

Name	Address

3. Recommendation

Description of Property
This is a recommendation for an administrative settlement on subject parcel, increasing the compensation from \$27,400.00 to \$38,000.00, an increase of \$10,600.00.

Subject property is a level to slightly rolling 17.00 acre rural residential/agricultural tract located on the south side of Burkesville Road in Barren County, approximately 3.9 miles southeast of the Louie B. Nunn Parkway and 5.4 miles southeast of Glasgow, Kentucky. Due to lack of zoning, the immediate area is comprised of a wide variety of land uses varying from residential to rural commercial to larger undeveloped tracts. This is typical of highway frontage in small communities and no adverse marketing conditions are observed. Subject parcel's highest and best use, according to the appraiser, is residential/agricultural based upon size, location, available utilities, and land use trends in the area.

Improvements situated on subject property include a 924 square foot mobile home, an 894 square foot Masonite sided detached garage, a 1,246 square foot frame residence currently used for storage, a 1,728 square foot wood frame barn, and a 612 square foot chicken coop. Special site improvements consist of 1,200 square feet of gravel drive, 2 septic systems, a farm pond, various landscaping, and 1,800 square feet of circular gravel drive.

Subject parcel has direct access onto Burkesville Road via a 14 foot residential entrance located at approximately Station 321+55. The before value of subject property, based upon the state's approved appraisal, is \$86,500.00.



Acquisition - Administrative Settlement

Rev. 4/11

Description of Acquisition
Department will be acquiring 24,822 square feet of fee simple right of way for the reconstruction of Burkesville Road. The proposed acquisition begins at subject parcel's northwest corner. It then traverses in an easterly direction across entire frontage varying from approximately 82 feet to 15 feet in depth. Site improvements being acquired include on-site system, miscellaneous landscaping, and approximately 300 square feet of gravel drive. The shifting of the right of way will result in the front yard depth being reduced from a minimum of 65 feet to a minimum of 46 feet, equating to an approximate 29% loss of front yard area.

In addition, a 512 square foot permanent easement will be acquired for perpetual drainage maintenance. The proposed easement is approximately 30 feet wide and 17 feet deep while being located at approximate Station 319+00.

The proposed easement will be acquired for entrance, slope, and detour construction uses. The proposed easement extends across the entire frontage varying from 72 feet to 10 feet in depth. It will be situated within 8 feet of the mobile home resulting in an approximate 83% temporary loss of front yard area. The easement will be leased for a two-year construction period with full ownership reverting to the owner upon completion of the project.

Subject property will consist of 16.435 acres severed right after highway construction. The proposed grade level along Burkesville Road will vary from level to an approximate 17 foot fill, while direct access onto KY Highway 90 will continue along the same entrance and location. The state's fair market value offer is \$27,400.00 and is summarized as follows:

- Simple Right of Way - \$5,100.00
- Site Improvements - \$3,200.00
- Drainage Damages - \$13,300.00
- Temporary Easement - \$5,800.00

Description of Negotiations
Discussions with the property owners were initiated with the title facts being verified, the proposed acquisition explained, and the fair market value offer made both verbally and in writing. Typical discussion then ensued.

The property owners felt the state's offer was considerably low and greater damages should have been applied deriving the significant proposed grade elevations and installation of guardrail along approximately 500 linear feet of frontage. The owners expressed their intentions to construct 2 duplexes along KY 90 where the proposed guardrail will be installed, therefore, restricting their future development. They were also concerned about the temporary nature of the easement being situated within 8 feet of the mobile home. The property owners made an initial counter offer in the amount of \$50,000.00, which was denied due to a lack of justification. After further negotiations, the owners lowered their counter offer to \$42,000.00, which was also denied by the negotiator. The property owners then made a final offer in the amount of \$38,000.00 which they stated would be the least acceptable amount. The negotiator agreed to write a settlement recommendation for that amount subject to Central Office approval.

Documentation



Acquisition - Administrative Settlement

Rev. 4/11

The Department was able to get the property owner to commit to a settlement that is subject to Central Office approval. The settlement is in the amount of \$38,000.00, an increase of \$10,600.00, above the state's fair market value offer approved for the following reasons:

In this situation, the right of way will be considerably closer to the mobile home. The right of way will be reduced from 65 feet to a minimum of 46 feet, resulting in an approximate 29% loss of front yard area. This is a significant diminution in value. In addition, the proposed temporary easement will be situated within 8 feet of the mobile home, resulting in an additional 83% temporary loss of front yard area.

The property will be encumbered by a 512 square foot permanent easement for perpetual drainage maintenance. The easement will be permanently affected by the imposition of the easement due to the loss associated with

along the west end of subject property will be constructed on an approximate 17 foot fill and a guardrail along 501 linear feet of subject's westernmost frontage resulting in 1.50 acres being reduced from agricultural land due to the change in topography and reasonable access. The appraiser did acknowledge that the property will incur damages as a result of the issues mentioned and allocated \$13,300.00; however, the appraiser is in no doubt that the more subjective components of the appraisal process and this settlement will give

the fair market value rate allocated by the negotiator for the 27,290 square foot temporary easement also appears to be reasonable considering detour construction and scarification. The District Three Appraisal staff confirmed that a 50% rental rate in similar instances on past highway projects.

The amount the property owners will accept and the settlement will eliminate the possibility of an eminent domain proceeding or jury award. The settlement is also nominal when considering the administrative costs of litigating a parcel that involves multiple owners, several of which live out of state.

The Department pursued fair market value and just compensation in the appropriate and legal manner. It is an economical standpoint, it would be reasonable, prudent, and in the best interest of the state to accept this settlement.

The Department's assistance involved with this acquisition.

Project Manager		Supervisor	
10/18/2011	Approval Date	10/18/2011	Approval Date
KELLY DIVINE	Signature	KELLY DIVINE	Signature
Acquisition Branch Manager		Director	
10/19/2011	Approval Date	10/19/2011	Approval Date
DAVID ORR	Signature	KEITH McDONALD	Signature

Administrative Settlements Involving Minor Acquisition Reviews (MARs)

INFORMATION ISN'T AS READILY AVAILABLE,
SO MORE RESEARCH AND DISCUSSION WITH
THE NEGOTIATOR IS REQUIRED

Identify subject parcel as a MAR valuation parcel

No precise data involving structures and site improvements

No before and after value

No highest and best use

No mention of damages within the justification

Points To Remember

Provide DETAILS ,DETAILS , and more DETAILS (especially in the justification section)

Settlements must be approved by the appropriate individual(s) prior to the owners executing the documents. If prior approval was granted verbally, it needs to be duly noted at the beginning of the settlement.

Emphasize within the settlement that this proposed increase is SUBJECT TO CENTRAL OFFICE APPROVAL

Do not mention or imply damages if the settlement involves a minor acquisition review (MAR)

Points To Remember

At the conclusion of each settlement, address whether or not the parcel involves relocation assistance. If so, in what form of relocation benefit and does the settlement affect the relocation housing payment?

All administrative settlements need to be included in the parcel batches submitted to central office, even settlements less than \$2,500.00 (Memo the file).



Godfather's Pizza
Evansville and Henderson

The End