



NEVADA IRRIGATION DISTRICT

ACQUISITION OF REAL PROPERTY

General Information

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
as Amended by the Uniform Relocation Act Amendments of 1987

This is an informational Pamphlet only. It is not intended to give a complete statement of all State or Federal laws and regulations pertaining to the purchase of interests in real property, including easements, for public use, technical legal definitions, or any form of legal advice.

INTRODUCTION

The Nevada Irrigation District (NID) provides this informational pamphlet to property owners from which NID proposes to acquire real property rights for its projects and facilities. Typically, NID must acquire easements for construction of a necessary pipeline facility, and occasionally, we must obtain an exclusive easement or fee ownership of a parcel. This pamphlet is not intended to be a complete summation of NID practices or the law. For specific advice, NID recommends consultation with a attorney, a licensed appraiser or other advisors knowledgeable in real estate matters.

NID, as a public governmental body, must adhere to federal and state laws that regulate public agency purchases of real property. Paramount among the many laws that guide us is the Federal Uniform Relocation Act that defines the general process we must follow. For any public agency, the purchase of real property is different from a private sale of a parcel of land or a home. In a private transaction, such as for a home, the parties may negotiate terms for a higher or lower sale price based on their individual means and desires. Either party has the ability to walk away from the sale, if agreeable terms are not reached.

In contrast, legally NID must offer the fair market value for the property it acquires, not less and not more. To offer less than fair market value is, by definition, unfair to an individual owner. To pay more than fair market value is a gift of public funds. Either practice would create inherent inequities in the treatment of different owners, and would foster obstacles to completing necessary public system improvements. Public funds are monies obtained from the public by a public agency such as NID through methods such as taxes, service payments, or fees. The Uniform Relocation Act protects property owners and NID by requiring the purchase of real property in a fair manner.

NID staff must balance its obligation to maintain a quality water supply system with its duty to compensate private property owners fairly for the property it acquires. Landowners' concerns receive consideration throughout the process of planning, constructing and operating our facilities. NID proactively eliminates or reduces impacts on property owners, wherever possible and feasible, with the following approaches:

- Attempt to locate facilities in roadways and existing easement areas,
- When we must cross a parcel we attempt to locate facilities in setback areas along property lines,
- Reduce the removal of or damage to trees.

NID strives to complete projects and operate in a manner that enhances the benefits and reduces negative effects for individual property owners.

This pamphlet contains further explanations and definitions related to NID's property acquisition process. Please continue reading, and if you have any questions, NID right of way staff will be more than happy to review and discuss your inquiries.

What Right Does NID Have to Acquire Property from me?

By virtue of state and federal law, NID has certain powers which are necessary for its effective operation. Similar to powers of the Federal and State governments to levy taxes and to maintain order, NID has the authority to acquire property that is necessary for its projects and facilities under the power of eminent domain using the Uniform Relocation Act. Eminent domain is the authority of a public agency to acquire needed property through a legal process. NID has the ability to pursue eminent domain through NID's legal status in the State of California. The purpose of eminent domain is so that the general public will have the availability of public services. Without the eminent domain process, one individual that declines to grant needed property, could block necessary public services to others. Eminent domain laws are set up to provide the greatest public good at the least private harm.

What protections does the land owner have?

The rights of each private landowner are also protected by laws such as the Fifth and Fourteenth Amendments to the United States Constitution, the State Constitution, and eminent domain laws. These laws guarantee that NID must offer "just compensation" to the owner from whom it acquires real property. The owner has additional protections, some of which are explained in this pamphlet.

What is "Just Compensation"?

"Just compensation" is generally considered to be the *fair market value* of the real property being acquired. The recognized definition of *fair market value* is the highest price on the date of valuation that would be agreed to by a seller (who is willing to sell, but under no particular or urgent necessity or obligation to do so), and a buyer (who is ready, willing, and able to buy, but under no particular necessity for so doing), each dealing with the other, with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

The *fair market value* of property being acquired, for which there is no relevant, comparable market, is its value on the date of valuation as determined by any method of valuation that is just and equitable.

"Just compensation" is not affected by circumstances that are speculative, subjective or apply broadly to a neighborhood, such as temporary, reasonable traffic delays or noise from equipment traffic within the construction area. Terms sometimes applied to such situations include "nuisance" or "inconvenience." Public agencies do not compensate property owners for such "nuisances" that commonly occur in the course of building or maintaining public works systems. "Nuisance or inconvenience" affects a broader range of the public than just the owner granting the property, and they do not affect the value of the remaining property.

How Will NID Determine How Much I Am Offered For My Property?

Before making an offer of compensation to you, NID will obtain an estimate of just compensation. NID hires an independent real property appraiser for most projects, to

provide a consistent approach in determination of *fair market value* for each acquisition. The appraiser will inspect your property and issue an appraisal report stating his or her opinion of the *fair market value* of the property rights to be acquired by NID. The appraisal report will be reviewed by NID to confirm that the estimate of value is appropriate for the acquisition.

NID is required to offer you “just compensation” for your property. This amount, with limited exceptions, is the fair market value of the property rights to be acquired. In some cases, there are compensable impacts beyond the fair market value that must be included in the final offer.

How Does an Appraiser Determine the Fair Market Value of my property?

Each parcel of real property is different; therefore, no single formula can be devised to appraise all properties. Among the factors an appraiser typically considers in estimating the value of real property are:

- How it compares with similar properties in the area that have been sold recently;
- How much it would cost to reproduce the buildings and other structures, less any depreciation;
- How much rental income it could produce; and
- Other factors affecting use of the property.

The determination of “just compensation” centers around the highest and best use of the property, focusing on the market value of the land and improvements. In most cases, NID acquires easements affecting unimproved land and projects are designed to avoid restricting the use of existing or future improvements.

What is in NID's Statement of the Basis for Its Determination of Just Compensation?

NID's statement of the basis for its determination of just compensation must be provided to you with the written purchase offer. Among other things, this statement will include:

- A general statement of NID's proposed use for the property;
- An accurate description of the property to be acquired;
- A list of the improvements covered by the offer and any conditions;
- The amount of the offer;
- An indication that the offer does not reflect any relocation payments or other relocation assistance which you may receive under other regulations; and
- The recognized definition of the term “fair market value”.

Must I Accept NID's Initial Offer?

NO. You are entitled to present your evidence as to the amount you believe is the value of your property and to make suggestions for changing the terms and conditions of the offer. NID must make reasonable efforts to consider and respond to your evidence and suggestions.

What Happens If I Would Like An Independent Opinion Of Value?

In 2006 Senate Bill 1210 was enacted into California law. One of the bills provisions created Section §1263.025 in the California Code of Civil Procedure. This section requires a public entity to "...offer to pay the reasonable costs, not to exceed \$5,000, of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property interest. This appraisal is required to be conducted by an appraiser licensed by the Office of Real Estate Appraisers (OREA)." The OREA carries a listing of licensed appraisers at their website at <http://www.orea.ca.gov>.

Pursuant to CCP §1263.025, should you wish to obtain your own appraisal, NID will pay the reasonable costs of an appraisal ordered by you (not to exceed \$5,000). In order to ensure appraisal costs are reasonable and to process payment accordingly, NID will need a full copy of the appraisal report, the owner-appraiser contract (if any), and the appraiser's invoice with a W-9 completed by the appraiser.

May I Have Someone Represent Me During Negotiations?

YES. If you would like an attorney, real estate agent, or anyone else to represent you during negotiations, please so inform NID in writing. However, State law does not require NID to pay the costs of any such representation.

If I Agree to Accept NID's Offer, How Soon Will I Be Paid?

If you reach a voluntary agreement to sell NID the real property and your ownership (*i.e.*, *title*) is clear of encumbrances (*i.e. loans, etc.*), payments will be made at the earliest possible date or at a mutually acceptable time. Generally, this should be possible within 90 days after you sign the Right of Way Agreement, Deed(s), Escrow Instructions, etc., and NID has signed acceptance. If you hold title subject to existing loans, then the escrow holder will need to obtain your lender's consent or agreement to subordinate to NID's acquisition. This may add time to the process; particularly if your lender(s) have been part of the recent reorganization of the financial services sector.

What Happens if I Don't Agree to the Purchase Offer by NID?

If you are unable to reach a voluntary agreement with NID, a public hearing of the NID Board of Directors will be held to determine the need and necessity for the acquisition of your property. You will be notified of the action and given reasonable advance notice of your right to attend the hearing. After the hearing, assuming need and necessity have been determined, NID will file a suit in court to acquire your property through a condemnation proceeding (*i.e. eminent domain*).

What Happens if NID Condemns to acquire rights on My Property?

Condemnation proceedings are procedures through a court to acquire real property under the power of eminent domain. Beginning with a necessity hearing and during the condemnation proceedings and trial, you will be provided an opportunity to introduce your evidence as to the need for acquisition and the value of your property to be acquired by NID. NID will have that same opportunity. After hearing the evidence of all parties during

the trial, the court or jury will determine the right to acquire and the amount of just compensation. To help you in presenting your case in a condemnation proceeding, you may wish to consider employing an attorney and other experts. However, the costs of these professional services and other costs incurred by you in presenting your evidence to the court may be your responsibility.

If construction must begin prior to the condemnation trial, NID may obtain a court's order of "immediate possession".

What is an Order for Possession?

An "order for possession" is a procedure within a condemnation proceeding. The "order for possession" issued by the court allows NID to have the use of the portion of your property, which is the subject of the proceeding, prior to an award of just compensation in court. This procedure is used typically only where the use of your property is necessary to accomplish timely construction of the project for which your property is required. To obtain an "order for possession", NID must deposit with the court or the County an amount not less than its appraisal of the fair market value of the property to be acquired. Sometimes, the owner is then permitted to withdraw a portion of or all of this amount, depending upon the individual circumstances. It is recommended that you have the help of an attorney if you intend to do this. Should the court award exceed the amount deposited by NID, you will be paid the difference, plus any interest that may be provided by State Law.

What Can I Do If I Am Not Satisfied With the Court's Determination?

If you are not satisfied with the court's determination of the amount for just compensation, you may file an appeal with the appropriate appellate court for the area in which your property is located. NID may also file an appeal if it believes the amount of the court judgment is too high.

Will I Have to Pay any Costs Incidental to selling NID the property?

You will not be responsible for the reasonable and necessary costs of typical services required to complete the easement transfer to NID. NID pays these costs which include recording fees, and any similar expenses which are incidental to transferring real property interests to NID; however, your lender(s) may require all or a portion of NID's "just compensation" payment be forwarded to them for credit against any outstanding loan balance owed by you.

Is it Possible to Donate My Property to NID?

YES. However, prior to accepting a donation, NID must inform the owner in writing of the amount it believes to be just compensation for the property to be acquired. The property owner must indicate in writing that although he/she understands he/she cannot be required to sell his/her property for less than just compensation, he/she voluntarily agrees to do so or to contribute the property without payment of compensation. You are advised to consult with a tax advisor and lender(s) prior to making a donation.

Other Factors That May Affect the Offer Value

Trees are often a concern for property owners. The value for trees within a permanent easement typically is included in the value of the property. When NID needs to remove a tree in a temporary easement NID will pay the fair market value of the trees, as established by an arborist hired by NID.

In some cases projects require the removal of improvements that may have a value that is distinct from the land value. Such features may include sheds, wells or landscaping. For items that NID cannot restore after the project, the District will compensate at fair market value. Typically, value is established based upon estimates from experts familiar with the particular type of improvement.

DEFINITIONS

The language used in relation to eminent domain proceedings may be new to you. These are some terms you may hear. Please note that these definitions are general and are provided to assist in the discussion related to the proposed acquisition. They are not intended to be legal definitions.

Acquire – To purchase.

Answer – The property owner's written reply, in appropriate legal form, filed with the court in response to the complaint and as requested by the summons.

Compensation – The amount of money to which a property owner is entitled under the law for the purchase or damage to the property.

Complaint – The document filed with the court by NID which initiates an eminent domain proceeding.

Condemnation – The legal process by which a proceeding in eminent domain is accomplished.

Counsel — An attorney or attorneys.

Easement — A non-possessory interest held by the Grantee in the property of the Grantor which accords the Grantee use of the Grantor's property.

Eminent Domain — The right of government to purchase private property for public use.

Final order of condemnation — The instrument which, when recorded, transfers title to public ownership.

Judgment — The court's formal decision based on applicable law and the verdict.

Loss of goodwill — A loss in the value of a business caused by NID acquisition of property that cannot be reasonably prevented by relocation of the business or the owner adopting prudent or reasonable steps that preserve the value of the business goodwill.

Market value — The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

Parcel — Usually means the property that is being acquired.

Plaintiff — The public agency that desires to purchase the property.

Possession — Legal control; to have the right to use.

Property — The right or interest which an individual has in land, including the rights to use or possess. Property is ownership; the exclusive right to use, possess or dispose of a thing.

Summons — Notification of filing of a lawsuit in eminent domain and of the necessity to file an answer or other responsive pending.

Temporary Easement — Rights having a limited duration, that make construction easier but that are not needed for the long term maintenance and operation of the facility. Value covers rental of the affected area.

Title — Legal ownership.

Trial — The hearing of facts from plaintiff and defendant in court, either with or without a jury.

Verdict — The amount of compensation to be paid for the property.