Right of Way Property Acquisition Information



Your Rights as a Property Owner

Department of Transportation State of Colorado

A Message from the Chief Engineer

Colorado's transportation infrastructure is dependent on the vast network of highways and streets. Because of the growth of our state and constant use of the highways and streets, it is necessary to maintain and make improvements to ensure public safety. It is the goal of CDOT to maintain and improve the State highways and roads in the most efficient, effective and elegant way possible.

Right of way is the land on which roadways are built, as well as the land immediately adjacent to the roadway. The amount of land needed for maintenance and improvements depends on the engineering standards that must be met for the type of roadway that will be built or improved. For most people, highway engineering, design and right of way acquisition are not of immediate concern. However, when you own or rent property that will be affected by highway construction, you may begin to consider road building from a different and personal viewpoint.

This booklet explains your rights as a property owner or tenant, and explains how the Department of Transportation will protect your interests. During this process your primary contact will be with a CDOT Real Estate Specialist who will answer your questions, explain details and assist you in every way possible.

Sincerely,

Timothy J. Harris, P.E. COLORADO DEPARTMENT OF TRANSPORTATION Chief Engineer

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Introduction

The Colorado Department of Transportation (CDOT) is responsible for building and maintaining the state's transportation system. Transportation improvements bring many advantages to an area – ranging from shorter commutes to increased business activity.

To accomplish this it is often necessary to acquire land from private property owners.

Private property rights are protected by both the Colorado and United States constitutions. To provide uniform and equitable treatment for those whose property is acquired and for persons displaced by such acquisitions, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987. This law, called the Uniform Act, is the foundation for the information discussed in this brochure. CDOT respects these fundamental rights and is committed to treating all persons with fairness and respect.



Region 2 Roundabout Project in Canon City

In proposing a highway improvement, CDOT considers a wide range of data to determine preliminary locations and designs that will be as compatible as possible with the community it will serve. When deciding on a new project, consideration is given to such things as local terrain, project cost estimates, area maps, and which alignment will have the least impact on adjacent properties.

The acquiring agency analyzes the social, economic, and environmental impacts a project might have on your community. Particular attention is given to those impacts that result in direct or indirect benefits or loss to a community or to highway users. The evaluation includes all impacts that are relevant and applicable to the particular location or design under consideration.

The findings of these studies are compiled into comprehensive reports that are reviewed by federal, state, and local government agencies. Following evaluation and analysis of information received, location and design approvals are requested from the Federal Highway Administration and CDOT Chief Engineer.

No single person decides where a highway will be located or whose property will be affected. It is a joint decision. Protection of the safety, health, and welfare of the traveling public is always a major consideration.

This brochure will provide you with information about the process of acquiring rights of way for public improvement projects. Here you will find information on the valuation process, negotiations between you and the real estate specialist, and settlements and payments.

To access more detailed information please visit our web page at http://www.dot.state.co.us/

Look under the Planning/Construction heading to find CDOT's right-of-way manuals and more on CDOT right-of-way policies and procedures.



Region 4
Fort Morgan
Over-lay
Project

Important Terms Used in This Brochure

Acquisition

Acquisition is the process of acquiring real property (real estate) or some interest therein. See the definition of real property.

AGENCY

For purposes of this brochure, "Agency" shall refer to CDOT primarily, but the requirements apply to any governmental or non-governmental organization or private party using federal financial assistance for a program or project that acquires real property or displaces a person. A real estate specialist is the Agency's representative; he or she will work with you throughout the process.

APPRAISAL

An appraisal is a written statement or report, independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of a described property as of a specific date, supported by the presentation and analysis of relevant market information.

BUSINESS

Any lawful activity, with the exception of a farm operation, conducted primarily for the purchase, sale, lease, and rental of personal or real property; or for the manufacture, processing, and/or marketing of products, commodities, or any other personal property; or for the sale of services to the public; or solely for the purpose of the Uniform Relocation Assistance Act, an outdoor advertising display or displays, when the display(s) must be moved or acquired as a result of the project.

CONDEMNATION

Condemnation is the entire legal process of acquiring private property for public use or purpose through the acquiring Agency's power of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An acquiring Agency then goes to court to acquire the needed property.

EASEMENT

An easement is the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right.

EMINENT DOMAIN

Eminent domain is the right of a government to take private property for public use. In the United States, just compensation must be paid for private property acquired through eminent domain.

FAIR MARKET VALUE

The sale price that a willing and informed seller and a willing and informed buyer can agree to for a particular property.

INTEREST

An interest is a right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

JUST COMPENSATION

The price the Agency must pay to acquire real property under eminent domain. The price offered by the Agency is considered to be fair and equitable to both the property owner and the public. The Agency's offer to the owner is "just compensation" and may not be less than the amount established in the approved valuation report as the fair market value for the property. If you and the Agency cannot agree on the amount of just compensation to be paid for the property needed, and it becomes necessary for the acquiring Agency to use the condemnation process, the amount determined by the court will be the just compensation for your property.

LIEN

A charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are taxes. Customarily, liens must be paid in full when the property is sold. You as the property owner are required to provide a clear title. Your real estate specialist can assist you with this.

MINERAL RIGHTS

Mineral rights are interpreted to mean the "deep" mineral interests such as oil, natural gas or coal, not the surface mineral interests such as sand and gravel.

NEGOTIATION

The process used by acquiring agencies to reach an amicable agreement with a property owner for the acquisition of needed property. An offer is made for the purchase of property in person or by mail, and the offer is discussed with the owner.

Person

A person is an individual, partnership, corporation, or association.

PERSONAL PROPERTY

In general, personal property is property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be included and valued in the appraisal of real property.

PROGRAM OR PROJECT

Any activity or series of activities undertaken by a federal agency. Also, any activity undertaken by a state, local agency or individual where federal financial assistance is used in any phase of the activity.

QUALIFIED APPRAISER

A person who, by education, experience, ability, and licensing or certification is capable of preparing an appraisal of real estate in compliance with certain requirements.

REAL PROPERTY

The interest, rights, and benefits that go along with the ownership of real estate, which is land and the improvements thereon. In some states, real property and real estate are synonymous. In other states, real property is used to mean the interest, rights, and benefits as well as the land and improvements.

UNECONOMIC REMNANT

The portion of an owner's property that remains after the Agency acquires the property needed for a program or project that the Agency determines has little or no value or utility to the owner. The Agency must offer to purchase the remnant.

WAIVER VALUATION

The term waiver valuation means an administrative process for estimating fair market value for relatively low-value, non-complex acquisitions. A waiver valuation is prepared by the Agency in lieu of an appraisal.



Region 1 US 285. Foxton Rd to Redmond Hill

Property Appraisal and The Determination of Just Compensation

The Agency determines specific property that needs to be acquired for a planned public project or program only after the project has been planned and government requirements have been met. The Agency will also review public records and other information about property in the area.

You will be notified as soon as possible of (1) the Agency's interest in acquiring your property, (2) the Agency's obligation to secure any necessary appraisals, and (3) any other useful information.

In Colorado, state law requires that, as stated in § 38-1-121(1), C.R.S., when the value of the taking is estimated by the Agency to exceed \$5,000, you have the right to hire an appraiser at the Agency's expense. The Agency will reimburse your cost for one real estate appraisal provided the cost of the appraisal does not exceed the usual and customary rate charged for appraisal services in the community where your property is located. The appraiser must apply recognized appraisal standards found in the industry for eminent domain acquisitions.

When the Agency begins to acquire private property for public use, the first personal contact with you should be no later than during the appraisal of the property.

An appraiser will then contact you to make an appointment to inspect your property. The appraiser is responsible for determining the initial fair market value of the property. The Agency will use the appraiser's report to establish the just compensation to be offered for the property.

You, or any representative that you designate, will be invited to accompany the appraiser when the property is inspected. The appraiser will also create an inventory of real property during the inspection. This provides you an opportunity to point out any unusual or hidden features of the property that the appraiser could overlook. You should also advise the appraiser if any of the following conditions exist:

- Other people have ownership or interest in the property;
- There are tenants on the property;
- Real or personal property that belongs to someone else is located on your property; or
- Hazardous material, underground storage, or utilities are present.

This is your opportunity to tell the appraiser about anything relevant to your property, including other properties in your area that have recently sold. The appraiser will inspect your property and note its physical characteristics. He or she will review sales, and in some cases leases, of other properties similar to yours in order to compare the facts of those sales with the facts about your property.

In 2008, Senate Bill 08-041 modified §38-1-105(4), §43-1-203 (1), §43-1-208(4) and §43-1-209 Colorado Revised Statutes (C.R.S.) to exclude acquisitions of oil, natural gas and other mineral resources through condemnation except for subsurface support of the highway.

The appraisal report will describe your property and the Agency will determine a value based on the condition of the property on the day that the appraiser last saw it, as compared with other similar properties that have sold or leased.

Just Compensation

Once the appraisal has been completed, a review appraiser from the Agency will review the report to ensure that all applicable appraisal standards and requirements were met. An approved appraisal will be used to determine the amount of just compensation to be offered for your real property. This amount will never be less than the fair market value established by the approved appraisal. If the Agency is only acquiring a part of your property, any allowable damages or benefits to the remaining property will be included in this amount. The Agency will provide a written offer of just compensation to you when negotiations begin.

Buildings, Structures and Improvements

Sometimes buildings, structures, or other improvements considered to be real property are located on the property to be acquired. If this is the case, the Agency must offer to acquire such buildings, structures, or other improvements if they must be removed or if the Agency decides that the improvements will be adversely affected by the public program or project. When an appraisal determines that an improvement can be considered real property (if owned by the owner of the real property on which it is located) then this improvement will be treated as real property.

Tenant Owned Buildings, Structures and Improvements

Sometimes tenants lease real property and build or add improvements for their use. Frequently, they have the right or obligation to remove the improvements at the expiration of the lease term. If, according to the appraisal, the improvements are considered to be real property, the Agency must make an offer to the tenants to acquire these improvements.

In order to be paid for these improvements, the tenant-owner must assign, transfer, and release to the Agency all right, title, and interest in the improvements. Also, the owner of the real property on which the improvements are located must disclaim all interest in the improvements.

Just compensation for an improvement will be determined by the appraiser. If improvements are considered personal property under state law, the tenant-owner may be reimbursed for moving them under the relocation assistance provisions. The real estate specialist will personally contact the tenant-owners of improvements to explain the procedures to be followed. Any payments must be in accordance with federal rules and any applicable state laws.

Exceptions to Appraisal Requirements

An appraisal is not required by the Agency under the following circumstances:

- If you elect to donate the property and release the Agency from the obligation of performing an appraisal.
- If the Agency determines that the acquisition is uncomplicated, and a review of available data supports a fair market value of \$25,000 or less. In this case a waiver valuation may be completed by the agency instead of an appraisal.

Negotiations

THE WRITTEN OFFER

The Agency will begin negotiations with you or your designated representative by delivering the written offer of just compensation for the purchase of the real property. If practical, this offer will be delivered in person by a real estate specialist. Otherwise, the offer will be



made by mail and followed up with a contact in person or by telephone.

All owners of the property with known addresses will be contacted unless they collectively have designated one person to represent their interests.

The Agency's written offer will consist of a written summary statement that includes all of the following information:

- The amount offered as just compensation;
- The description and location of the property and the interest to be acquired; and
- The identification of the buildings and other improvements that are considered to be part of the real property.

The real estate specialist will give you a reasonable amount of time to consider the written offer and to ask questions or to request clarification of anything that is not understood. If you believe that all relevant material was not considered during the appraisal, you may present such information at this time. The Agency will consider any reasonable requests that are made during negotiations.

PARTIAL ACQUISITION

Sometimes, the Agency does not need all the property you own. The Agency only purchases what it needs.

If the Agency intends to acquire only a portion of the property, the Agency must state the amount to be paid for the part to be acquired. If the Agency determines that the remainder property will have little or no value or use to you, the Agency will consider this remainder to be an uneconomic remnant and will offer to purchase it.

AGREEMENT BETWEEN YOU AND THE AGENCY

When you reach agreement with the Agency on the offer, you will be asked to sign a purchase agreement, a deed, an easement, or some other form of conveyance document prepared by the Agency. Your signatures will affirm that you and the Agency are in agreement concerning the acquisition of the property, including the terms and conditions of the acquisition.

If you do not reach an agreement with the Agency and the Agency has exhausted all its opportunities to reach a settlement with you, the Agency will initiate condemnation proceedings.

The Agency may not take any action to force you into accepting its offer.

Prohibited Agency actions include the following:

- 1. Advancing the condemnation process;
- Deferring negotiations;
- 3. Deferring condemnation;
- Delaying the deposit of funds for the owner's use with the court when condemnation is initiated; or
- Any other coercive action designed to force an agreement by an owner regarding the price to be paid for the property.



Region 3
I-70 at 24 Rd.,
Grand
Junction
New bridge
and 2
roundabouts

Payment and Possession

PAYMENT

The next step in the acquisition process is payment for your property. The real estate specialist will prepare or have the necessary documents prepared for transferring title and will handle most details throughout the process. Any outstanding loans or liens including property taxes prorated to the time of closing must be satisfied by the owner before or at the time the title is transferred.

Your incidental expenses will also be paid or reimbursed. Incidental expenses are those reasonable expenses incurred as a result of transferring title to the Agency such as: recording fees, transfer taxes, documentary stamps, evidence of title, surveys, legal descriptions of the real property, and other similar expenses necessary to convey the property to the Agency. The Agency, however, is not required to pay costs required solely to clear your title.

POSSESSION

The Agency may not take possession of your property unless you have been paid the agreed purchase price. In the case of condemnation, the Agency must have deposited with the court an amount for your benefit that is at least the Agency's approved appraisal of the fair market value of the property.



Region 6

Wadsworth and Grandview Bridge Replacement Project

Settlements and Condemnation

SETTLEMENTS

The Agency will make every effort to reach an agreement with you during negotiations. You may provide additional information and make reasonable counter offers and proposals for the Agency to consider. When it is in the public interest, most agencies may use the information provided as a basis for administrative and legal settlements, as appropriate.

CONDEMNATION

If an agreement cannot be reached, the Agency can acquire the property by exercising its power of eminent domain. It will do this by instituting formal condemnation proceedings with the appropriate state or federal court.

In Colorado, you can choose to have a board of commissioners or a jury to determine the amount of compensation you are due for the property the agency is acquiring. You and the Agency will be allowed to present information to the court during all proceedings. The final amount of just compensation will be certified by the court after it has heard all arguments.

Litigation Expenses

Normally, the Agency will not reimburse you for costs incurred as a result of condemnation proceedings.

If a case goes all the way to a valuation trial, the Agency will pay your reasonable court costs, but not your attorney's fees. However, your attorney's fees might be awarded if the amount of the final just compensation is more than 130% of the Agency's last written offer prior to condemnation.



Required Assurances or Certifications

Any agency receiving federal financial assistance for a program or project must assure or certify to the federal agency providing funds that in acquiring real property it agrees to the following:

"The Agency will comply with the land acquisition policies in the regulations governing real property acquisitions (49 CFR PART 24) to the greatest extent practical under state law."

The Agency will pay or reimburse property owners for the incidental expenses needed to transfer real property to the Agency.

The requirement for assurances or certification guarantees that you will be treated fairly and equitably by agencies acquiring real property for federally funded projects and programs. The information in this brochure should assist you in understanding the requirements that must be met by agencies, and your rights and obligations.



Region Map and Contact Information



Headquarters Central Office 4201 E. Arkansas Ave. 4th Floor Denver, CO 80222 303-757-9331	The Headquarters Central Office, located in Denver, is responsible for facilitating the provisions of statewide policies and guidelines, conducting quality assurance, providing training and development and technical assistance to the Regions in support of their responsibilities for program delivery.
Region 1 18500 E. Colfax Ave. Aurora, CO 80011 303-757-9114	Counties: Adams (Portion), Arapahoe (Portion), Boulder (Portion), Broomfield (Portion), Cheyenne (Portion), Clear Creek, Douglas (Portion), Elbert, Gilpin, Jefferson (Portion), Kit Carson, Lincoln, Park (Portion), Summit
Region 2 905 Erie Ave. PO Box 536 Pueblo, CO 81002 719-546-5400	Counties: Baca, Bent, Cheyenne (Portion), Crowley, Custer, Douglas (Portion), El Paso, Fremont (Portion), Huerfano, Kiowa, Las Animas, Otero, Park (Portion), Prowers, Pueblo, Teller.
Region 3 222 South Sixth St. Room 317 Grand Junction, CO 81501 970-683-6230	Counties: Delta, Eagle, Garfield, Grand, Gunnison, Hinsdale, Jackson, Lake, Mesa, Moffat, Montrose (Portion), Pitkin, Rio Blanco, Routt.
Region 4 1420 2nd St. Greeley, CO 80631 970-350-2152	Counties: Boulder (Portion), Broomfield (Portion), Larimer, Logan, Morgan, Phillips, Sedgwick, Washington, Weld, Yuma.
Region 5 3803 N. Main Ave. Suite 300 Durango, CO 81301 970-385-1400	Counties: Alamosa, Archuleta, Chaffee, Conejos, Costilla, Dolores, Fremont (Portion), La Plata, Mineral, Montrose (Portion), Montezuma, Ouray, Rio Grande, Saguache, San Juan, San Miguel.
Region 6 2000 S. Holly St. Denver, CO 80222 303-757-9212	Adams (Portion), Arapahoe (Portion), Boulder (Portion), Broomfield (Portion), Denver, Douglas (Portion), Jefferson (Portion).

Notes

Attach CDOT Business Card Here



Colorado's
Famous
"Million Dollar
Highway"
Part of the San
Juan Scenic
Skyway

