

Right-Of-Way Acquisition Information

Introduction

La Plata County covers 1,700 square miles, and has over 655 miles of public roads. As a result of past and projected future growth it is necessary to maintain and make improvements to our roads to ensure and improve public safety.

One of the functions and responsibilities of the La Plata County Public Works Department is the construction, operation, maintenance and improvement of the public roads within the County. Adequate right-of-way (ROW) to construct, re-construct, and /or improve roads is critical in maintaining a functional transportation network that serves the traveling public and County residents.

As roads are constructed or improved, it is sometimes necessary for the County to acquire additional ROW. This guide provides a general overview of the ROW acquisition process as it relates to road construction projects. It is not intended to provide legal advice, nor does it cover every possible situation as each project is unique. Readers are encouraged to review this information, and contact the County to discuss specific items or ask questions.



Historical Background

The County's road system dates back to the 1870's, when Colorado was not yet a state. Although the law has always allowed for the acquisition of needed ROW for roads, historically the property owners themselves often petitioned the County for a road to be established through their land and owners typically donated the needed ROW (generally a minimum of 60' wide).

Current Needs

The historic ROW may not be adequate to reconstruct an existing road to meet present engineering standards, mobility needs, vehicle use, travel speeds, safety, etc. Therefore it is often necessary for the County to acquire new or additional ROW when a road project is undertaken.

Right-of-Way Acquisition Process

Research

Prior to beginning a road project, County staff researches the history, extent, and nature of the existing ROW. This involves reviewing information and maps going back to the 1870's, as well as more recent ROW dedications which have occurred through platting or previous road construction projects.

As the project enters the design phase, the design team will determine whether additional ROW is needed from adjacent property to accommodate the proposed improvements. The determination uses accepted engineering design standards, as well as information about the road's functional classification and its projected future design (for example where a two-lane existing road is expected to be expanded to include wider lanes and adequate shoulders).



Owner Contact

When ROW needs have been determined for a project, County staff (or their representative) will contact affected property owners. Typically a meeting will be scheduled with the property owners to explain the project, the acquisition process, and answer questions.

The discussion will include project details that will affect the specific property including the need for additional ROW, impacts to existing improvements including landscaping, changes to driveways, the need for temporary construction easements, timing of construction, etc.

The owner is encouraged to provide input and to ask questions regarding the impacts of the project, and will be provided contact information so they can follow up with County staff, or resolve issues that can occur prior to or during construction.

Agreement Components

In cases where a construction project requires acquisition of additional ROW, permanent or temporary easement for construction, it is necessary to negotiate a written agreement between the County and the owner.

The agreement details:

1. What the County is acquiring or impacting,
2. The size of the acquisition or easement,
3. The compensation (“just compensation” or “fair market value”) offered to for the additional ROW or easement.
4. Deadlines or time limitations on compliance with terms of the agreement.

In negotiating the terms of the agreement, it is the County’s goal to be fair to the property owner as well as taxpayers who will pay the costs associated with the project.

Determining Value

The process to determine the fair market value or just compensation for the acquisition can occur in a couple of ways:

For uncomplicated acquisitions with an initial value finding (estimated value) of approximately \$5,000 or less:

County staff will use County Assessor’s records to determine recent sales data for vacant parcels of similar size in close proximity to the project area. Based upon these sales, a per square foot or per acre value will be determined. We welcome input from property owners regarding their knowledge of land values and recent sales in the area.

For acquisitions with an initial value finding (estimated value) greater than \$5,000:

The County will usually hire an independent qualified appraiser to determine the value. The appraiser will contact the owner and make an appointment to inspect the property. Owners are welcome to accompany the appraiser during the inspection, and to provide information regarding ownership, tenants, improvements, other land sales, etc.

The report prepared by the appraiser reviews sales of other properties and analyzes all elements that affect value. The report identifies the fair market value of the portion of the property being acquired as ROW, and other compensation that should be paid for damages or temporary easements.

In Colorado, state law requires that, as stated in § 38-1-121(1), C.R.S., when the value of the acquisition is estimated by the Agency to exceed \$5,000, property owners have the right to hire an appraiser at the Agency's (County's) expense. The County 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.

Compensation

Utilizing the staff research or the appraisal report, the County then determines the amount of "just compensation" to be offered to the owner. This includes compensation for the actual ROW acquisition, and compensation for temporary construction easements, slope easements, drainage easements, impact on landscaping and/or trees, damage to improvements, etc. In the unusual case where the project requires removal of a sheds, garages, or other structures, compensation will also be included for these.

Finalizing the Agreement

The negotiations that occur between the owner and the County's representative are intended to be the basis for creating a formal written "Agreement" to be signed by the County and by the owner. This Agreement:

1. Indicates what is being acquired, and the size of the acquisition,
2. States what the parties have agreed to in regard to compensation for the ROW, and for other items.
3. States what commitments have been made by the parties, such as reconstruction (by the County) of driveways if impacted by the project, or removal of vehicles or other personal property by the owner.

In most cases, the owner agrees to provide to the County a signed legal document conveying property rights by a certain date, which is the formal grant of the ROW to the County. This document will be recorded with the County Clerk and Recorder.

If the County requires access to a portion of the property for a limited amount of time, the owner will also be asked to sign a Temporary Construction Easement which allows such access. Normally, the term of the temporary easement is one year from the start of construction, but the actual construction work is usually completed in a much shorter time.

Once the Agreement is signed by both parties, County staff requests that the Finance Department issue a check in the name of the owner(s), in the amount stated in the Agreement. Generally, it takes four to six weeks before the owner receives the compensation.

Eminent Domain

La Plata County makes every effort to reach an agreement with each property owner during negotiations. County representatives are receptive to additional information that owners can provide while working towards a fair settlement.

In the unusual case that an agreement cannot be reached, the County has the authority to acquire the property by exercising its power of eminent domain.

If eminent domain is undertaken, the County institutes formal condemnation proceedings with the appropriate State court, in accordance with State Law. The court may initially authorize the County to gain “possession and use” of the needed ROW so the project can proceed in a timely manner. Subsequent court hearings would be held to determine the final amount of just compensation to be paid by the County. It is common for owners to obtain legal counsel when they receive notice that the County will be exercising eminent domain.

Project Construction

Once the project is under construction, County staff will continue to communicate with adjacent property owners as well as road users.

We will accommodate the needs of affected property owners to the extent possible while recognizing that construction scheduling and timing of work activities are often dictated by outside forces such as school schedules, irrigation ditch flow requirements, availability of alternative routes, weather, etc.

While we strive to minimize negative construction impacts, we acknowledge residents and the traveling public may be inconvenienced during construction, and we appreciate your patience. Owners may call the Engineering Department (382-6363) at any time with concerns or questions.

Definitions

Acquisition

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

Appraisal

The act or process of estimating the monetary value of an interest in property. The appraisal is to be independent, impartial and prepared by a qualified appraiser. It must set forth an opinion of defined value for a specific described property. The value will be assigned as of a specific date and will be supported by the presentation and analysis of relevant market data. The term appraisal is also frequently used as a synonym for the written appraisal report.

Condemnation

The 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

In general, the right of a person or entity to use all or part of the property of another person or entity 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

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 (FMV)

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

Interest

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 a public agency must pay to acquire real property. 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 appraisal report as the fair market value for the property. If it becomes necessary for the acquiring agency to use the condemnation process, the amount paid through the court will be just compensation for the acquisition of the 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. Depending on the value of the lien relative to the value of the property, it may be required that the lien be paid in full when the property is acquired by the public agency.

Negotiations

The process used by acquiring agencies to reach amicable agreement with property owners 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

Any individual, partnership, corporation, or association.

Personal Property

In general, property that can be moved. It is not permanently attached to, or a part of, the real property.

Qualified Appraiser

A person who, by education, experience, ability, and licensing or certification requirements is capable of preparing an appraisal of a particular piece of real estate.

Real Property

The interest, rights, and benefits that go along with the ownership of real estate, which is land and the improvements thereon.

Right-of-Way ("ROW")

Land or property acquired for or devoted to transportation purposes.

County Contacts

Additional questions, request for more information, and/or comments can be directed to La Plata County Public Works Department:

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