

There are times when Clackamas County must acquire right of way over private properties to improve existing roads or construct new roadway facilities. A right of way is an easement which grants the County access to a portion of private property for public use. It is the County's policy and practice to obtain right of way with fairness and equity.

The County is empowered to acquire private property for public use. With this authority goes the obligation to protect the rights of individual property owners. The County thus has a dual responsibility – recognition and protection of the individuals who are directly affected by acquisition of land, and competent and efficient service to the public as a whole.

PUBLIC HEARINGS

Public hearings, when required, are held during the scoping and design stages of a project. Such hearings provide opportunities for public participation to ensure that roadway locations and designs are consistent with federal, state and local goals and objectives.

The Corridor Hearing is held after preliminary studies have been made on several possible routes. During the course of this hearing, Department of Transportation and Development staff and the Citizen Transportation Advisory Committee record testimony for review.

Upon selection of a corridor, a detailed survey is performed within that corridor and a preliminary design plan is developed to present at a Design Hearing. The Design Hearing provides an opportunity to present testimony about the final roadway plan. If there is no choice of corridors, such as with an improvement to an existing roadway, a single hearing may be held.

After all data and testimony have been studied, the County adopts a final design and authorizes the acquisition of right of way.

JUST COMPENSATION

Definition -- Owners of property needed for a roadway project are offered "just compensation" for the required right of way. *Just compensation* includes the estimated value of all of the land and improvements within the

area needed by the County. Improvements include buildings, fences, landscaping, paving and other additions to the land. In addition, if only part of a property is to be acquired, *just compensation* may also include any measurable loss in value to the remaining property due to the partial acquisition.

Just compensation is based on the County's valuation of the needed property and its estimation of any damages to the remaining property. County procedures, guided by federal and state regulations, are designed to protect both owners of properties needed for roadway right of way as well as other taxpayers.

Process -- The valuation process is conducted by an experienced, qualified County employee or by an independent appraiser under contract with the County. The appraiser arrives at the value by:

- Comparison of similar properties in the local real estate market that have recently sold
- Knowledge and consideration of costs and depreciation for any improvements to be acquired, and
- When applicable, by the property's income potential.

The property to be acquired is inspected by the qualified appraiser during the first part of the valuation process. The property owner is given 15 days advance written notice of intent to appraise. The owner has the opportunity to schedule the site review with the appraiser and accompany the appraiser during the detailed inspection of the property.

Any increase or decrease in the value of the needed property that results from public knowledge of the upcoming roadway project is disregarded in the valuation process.

After the final value estimate is reviewed for completeness and accuracy, the County establishes *just compensation*. The County's offer of *just compensation* may include an offer to purchase any remaining property determined to have no

economic value, often referred to as a "non-economic remnant."

ACQUISITION PROCEDURE

The Right of Way Agent who calls on the property owner has studied the County's valuation of the needed property and can illustrate with maps and other data how the acquisition will affect the property. The County's offer will be confirmed in writing together with an acquisition summary statement, and appraisal or other valuation report, which provides the basis for that amount.

The Agent is a Notary Public and is authorized to obtain an easement for right of way or a deed to purchase the property, subject to the acceptance by the County Road Official.

The Agent is not permitted, under County, state and federal procedures governing acquisitions, to engage in "horse trading"; rather the Agent is confined to the monetary values indicated by the appraisal process. However, the County will review and may reconsider its position in light of new evidence of value presented by the property owner, including a documented professional appraisal.

The County may not take any action that would coerce the property owner into accepting its offer. The County is prohibited from advancing the time of condemnation or postponing the deposit of funds in court for the owner's use.

The property owner is not required to accept the County's offer or to enter into an agreement which the owner believes is unfair. Owners have a minimum of 40 days to accept or reject the County's offer, unless an emergency has been declared. A refusal may simply be a case of disagreement between the two parties as to the value of the property.

If the parties are unable to agree on the compensation to be paid or if title cannot be cleared, a condemnation action will be filed by the County. Once this action is filed, a trial date will be determined. However, an owner can elect binding arbitration prior to trial through the Court for amounts of \$20,000 or less, and non-binding arbitration for amounts between \$20,000

and \$50,000. Arbitration is not available for amounts greater than \$50,000.

Discussions and mediation to try to resolve differences can, of course, continue even after a condemnation action is filed. The filing allows the County to proceed with the construction project.

IMPROVEMENTS

When the County acquires an easement, it must also acquire any buildings or other improvements located within the easement area. If buildings must be removed, the County **MAY** allow the owner to retain those improvements. Interested owners should discuss this possibility with their Right of Way Agent.

PAYMENT

If a property owner signs the easement or a sale deed and the Road Official approves it, the transfer of title and payment proceeds. As in a private sale, the owner is responsible for clearing any encumbrances to the title such as unpaid taxes, assessments, mortgages, outstanding leases and any other liens against the property. The Right of Way Agent and/or a representative of the County will help the owner clear title. No payment can be made until an Easement or a Warranty Deed conveying clear title to the County has been recorded in County Deed Records.

After the easement or deed is recorded, authorization is given to prepare a check to compensate the owner for their property. Normally, when no cloud or encumbrances obscure the title, the property owner will receive payment for the easement or property approximately four weeks after the Road Official approves the acquisition.

If a condemnation action has been filed, the amount established by the County as *just compensation* will be deposited with the court for distribution in accordance with the order of the court.

The property owner is entitled to be reimbursed for fair and reasonable costs incurred for expenses incidental to conveying their property to the County. Such expenses could be, but are not limited to, penalty costs for prepayment of any pre-existing recorded mortgage

encumbering the property, mortgage release fees and the County's portion of the real property taxes.

POSSESSION

The property owner is not required to surrender possession of their property until they have been paid the agreed purchase price or until an amount equal to the County's established estimate of *just compensation* has been deposited with the court for their benefit.

When negotiations begin, the property owner, as well as any tenants occupying the property, will be notified in writing of the County's intent to acquire the property. Owners or tenants will not be required to move from their home, farm or business location any earlier than 90 days following that notice or within 30 days after payment, whichever is later. However, if the purchase does not require the owner to move, the agreement to purchase the property may require the owner to surrender possession of property upon payment.

The County is aware of the need for a reasonable time for relocation. If the property is not needed for several months, the owner's or tenant's continued occupancy may be permitted for a short time. The amount of rent the County will charge the owner or tenant, may not exceed the fair rental value of the property to a short-term occupant.

For more specific information about relocation and relocation benefits, please see the County's flyer on the Relocation Assistance Program.

NON-DISCRIMINATION

The Clackamas County Department of Transportation and Development is committed to compliance with Title VI of the Civil Rights Act of 1964, the ADA Title II and all other non-discrimination directives. For additional information, accommodations or complaints contact the Nondiscrimination Coordinator at (503) 742-4696 or at swilliams@clackamas.us.



ACQUIRING LAND FOR ROADWAYS AND PUBLIC PROJECTS:

*The land acquisition program for
Clackamas County and the
Clackamas County Development
Agency*

DEPARTMENT OF TRANSPORTATION & DEVELOPMENT

Development Services Building
150 Beaver Creek Road
Oregon City, OR 97045

www.clackamas.us/transportation

RIGHT OF WAY OFFICE

Department of Transportation
& Development
Development Services Building
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4675