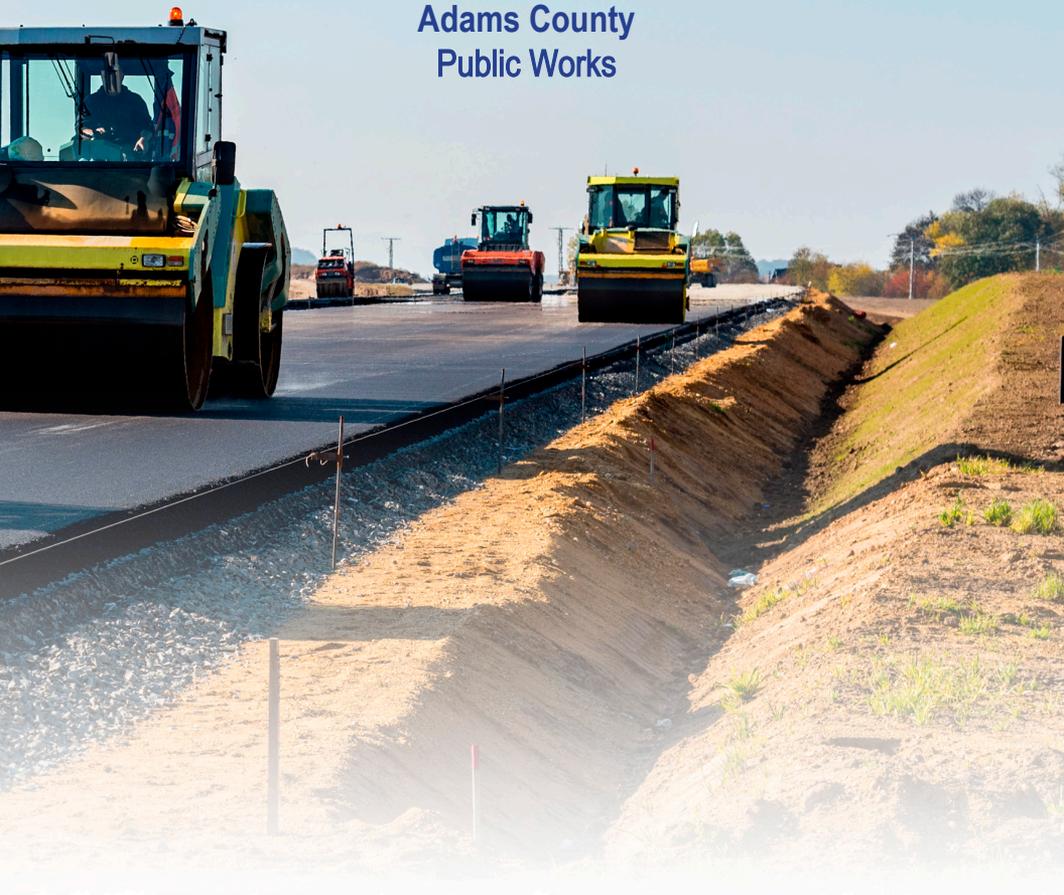


Right of Way Property Acquisition Information

Your Rights as a Property Owner

Adams County
Public Works



ADAMS COUNTY
COLORADO

ADAMS COUNTY GOVERNMENT CENTER



adcogov.org

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This pamphlet has been repurposed from its original creation by the Colorado Department of Transportation Right of Way Property Acquisition Pamphlet

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INTRODUCTION



The Adams County Public Works (ACPW) Department is responsible for building and maintaining the county's transportation system.

Transportation improvements offer many advantages that benefit local users as well as travelers and commercial users from across the nation. Typical improvements range from new roadways to expanding and improving existing transportation infrastructure. Many projects are local community roadway and arterial improvements. Some projects improve or create alternative transportation modes that benefit bicycle and pedestrian use and help reduce roadway congestion. Common goals among most of these transportation improvement projects is enhanced safety, better traffic flow and capacity, shorter travel times, and better local and regional access, all of which benefit community life, business opportunity, and development.

Need for Private Property

Many roadway and related projects can be built within ACPW's existing Right of Way (ROW)—property that ACPW owns or has certain rights to, such as an easement. Whenever possible, ACPW will build its projects within its own ROW. However, some roadway projects or improvements simply cannot be built within ACPW's existing ROW. In these circumstances, it is necessary for ACPW to acquire land or other property rights from private property owners.

Private property rights are protected by both the Colorado and U.S. 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 has since amended it. This law, known as the Uniform Act, is the foundation for the information discussed in this brochure.

ACPW respects these fundamental rights and is committed to treating all persons with fairness and respect.

Right of Way and Transportation Projects

In proposing a roadway improvement, ACPW 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.

ACPW 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 roadway users. The evaluation includes all impacts that are relevant and applicable to the particular location or design under consideration.

No single person decides where a roadway will be located or how it will be widened or realigned or otherwise improved such that private property might be affected. Protection of the safety, health, and welfare of the traveling public is always a major consideration.

This pamphlet 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, settlements, and payments.



WASHINGTON STREET SOUTH OF 55TH AVENUE –PHASE IV

IMPORTANT TERMS USED IN THIS BROCHURE

ACQUISITION

Activities to obtain an interest in, and possession of, real property. See the definition of “Real Property” in this section.

ACQUIRING AGENCY OR AGENCY

A state agency, which has the authority to acquire property by eminent domain under state law, and a state agency or person which does not have such authority. For purposes of this pamphlet, this includes ACPW or a local agency conducting business in a ROW project.

APPRAISAL

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, except a farm operation, that is conducted primarily for:

- ***Purchase, sale, lease and/or rental of personal and/or real property;***
- ***Manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;***
- ***Sale of services to the public;***
- ***Outdoor advertising display purposes, when the display(s) must be moved as a result of the project;***
- ***A nonprofit organization that has established its nonprofit status under applicable federal or state law.***

CONDEMNATION

Condemnation is the entire legal process of acquiring private property for public use or purpose through the Acquiring Agency's right 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 interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

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 U.S., just compensation must be paid for private property acquired through eminent domain.

FAIR MARKET VALUE (REASONABLE MARKET VALUE)

For purposes of eminent domain acquisition in Colorado, the term "Fair Market Value" is considered to have the same meaning and definition as the term "Reasonable Market Value" described in Colorado Jury Instructions for eminent domain acquisition: "Reasonable [Fair] Market Value means the fair, actual, cash market value of the property. It is the price the property could have been sold for on the open market under the usual and ordinary circumstances, that is, under those circumstances where the owner was willing to sell and the purchaser

was willing to buy, but neither was under an obligation to do so.”

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, equitable and “just” to both the property owner and the public. The Agency’s offer to the owner is determined as “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 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 is the just compensation for your property. See also definition of “Fair Market Value” (Reasonable Market Value) above.

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 property 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, family, 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 included and valued in the appraisal of real property.

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. Quite often the appraiser will be an independent contractor.

REAL ESTATE SPECIALIST

Also known as an “agent,” the real estate specialist is the Agency staff person or contract person who will help you through the acquisition.

REAL PROPERTY

Land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the right to control use, leasehold, and leased fee interests. 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.

WAIVER VALUATION

The valuation process used and the product produced when the Acquiring Agency determines that an appraisal is not required, pursuant to 49 CFR Part 24 § 24.102(c)(2) appraisal waiver provisions.

PROPERTY APPRAISAL AND THE DETERMINATION OF JUST COMPENSATION

The Acquiring Agency determines specific property that needs to be acquired for a 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 about:

1. The Agency's interest in acquiring your property
2. The Agency's obligation to secure any necessary appraisals
3. Any other useful information.

Colorado law (§ 38-1-121(1), C.R.S) requires that when the value of the acquisition is estimated by the Agency to be \$5,000 or more, 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 the necessary type of appraisal service in the community where your property is located. The appraiser must apply recognized appraisal standards found in the industry for eminent domain acquisitions. To qualify for appraisal fee reimbursement, property owners have 90 days from receipt of notification by the Agency to deliver a completed appraisal report to the Agency for the proposed acquisition.

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 your property.

Exceptions to Appraisal Requirements

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

- ***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. However, if the estimated fair market value is \$10,000 or more, the property owner may require the Agency to prepare an appraisal, in which case the Agency will not prepare a waiver valuation. Your agent can explain more to you about an Agency waiver valuation if this valuation method will be employed
- ***If you elect to donate the property and release the Agency from the obligation of performing the appraisal***

Appraisal

A staff or contract appraiser will contact you to make an appointment to inspect your property. The appraiser is responsible for determining the fair market value of the property. The Agency will use the appraiser's report to establish 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:

1. Other people have ownership or interest in the property
2. There are tenants on the property
3. Real or personal property that belongs to someone else is located on your property
4. 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 describe its physical characteristics and analyze its highest and best use. He or she will review sales, and in some cases leases, other properties similar to yours in order to compare the facts of those sales with the facts about your property. The appraiser may have questions for you about your property (e.g. physical aspects; legal circumstances; real estate-related income and expense information; other questions). You are not required to answer the appraiser's questions, but such information might be important to ensuring the most complete and reliable appraisal report.

Under Colorado law, the Agency will not acquire by condemnation—and the appraisal will not include—mineral property rights such as oil, natural gas, and other deep subsurface mineral resources, except those which might be necessary for subsurface support of the roadway.

The appraisal report will present descriptive and analytical material that supports the appraiser's value conclusions and a summary of compensation for the proposed acquisition as of a stated date of value (commonly the date the appraiser last saw the property). Based on this, other appraisal report, or based on a waiver valuation, the Agency will determine "just compensation" for the acquisition.

Appraisal Review and Just Compensation

Once the appraisal has been prepared, an Agency will review the report to ensure that all applicable appraisal standards and requirements were met. An approved appraisal will be relied on as basis for the amount of just compensation to be offered for your real property that the Agency needs for the project. 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 offsetting special benefits to the remaining property will be included in this amount. The Agency will provide a written offer of just compensation to you to initiate the acquisition.

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. Real property improvements are those that have been attached to the land in a permanent manner—improvements that if removed might be damaged as a result or which might cause damage to the building or other structure by their removal. Such improvements are real property that will be included in the appraisal.

Tenant-Owned Buildings, Structures, and Improvements

Sometimes tenants lease real property and build or add improvements to the leased property for their use. Tenants often 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 tenant-owned 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. The compensation due for an improvement will be determined by the appraiser.

All real property improvements are appraised in “as is” condition at their contributory value to the land in place. If improvements are considered personal property under state law, the tenant-owner may be reimbursed for moving them under the relocation assistance provisions. Any payments must be in accordance with applicable state laws.

NEGOTIATIONS

The Written Offer

The Agency will begin negotiations with you or your designated representative by delivering the Agency’s 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 the following information:

1. The amount offered as just compensation
2. The description and location of the property and the interest to be acquired
3. The identification of the buildings and other improvements 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 any 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

Often, the Agency does not need all the property you own. The Agency only purchases what it needs for the program or project.

If the Agency intends to acquire only a portion of your 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.

Temporary Construction Easement

Sometimes, the Agency will need to obtain a temporary construction easement (TCE) from you for the purpose of constructing the curb, gutter, and sidewalk within the right-of-way, modifying the driveway approaches, modifying the ground contours behind the curb, gutter and sidewalk where there will be sidewalk and for relocating privately owned improvements which are currently within the street right-of-way such as fences, mailboxes, driveway approaches and any other items that need to be relocated to private property. The TCE is a temporary use or rental of your property to do the previously mentioned work. You will be compensated for the temporary use of your land at ten (10) percent of the fair market value of the land as determined by the appraiser.

Agreement Between You and the Agency

When you reach agreement with the Agency on the purchase offer, you will be asked to sign a Right-of-Way or purchase agreement, a deed, an easement, or some other form of conveyance document prepared by the Agency. Your signature(s) 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 as prescribed under the law.

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
2. Deferring negotiations
3. Deferring condemnation
4. Delaying the deposit of funds for the owner's use with the court when condemnation is initiated
5. Any other coercive action designed to force an agreement by an owner regarding the price to be paid for the property



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 also will 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***
- ***Survey;***
- ***Legal descriptions of the real property***
- ***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 or valuation of the fair market value of the property.

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 right 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 determine the amount of compensation you are due for the property acquired by the Agency. These proceedings take place in a “valuation hearing” (commission) or “valuation trial” (jury), and you and the Agency will be allowed to present information to the court about the fair market value of the property acquired.

The commission or jury will determine just compensation for the acquisition, and the final amount of just compensation will be certified by the court upon conclusion of the value hearing or trial.

LITIGATION EXPENSES

If an eminent domain case goes all the way to a valuation hearing or trial, the Agency will pay your reasonable court costs, but not your attorney’s fees. However, your reasonable attorney’s fees will be awarded if the amount of the final just compensation determined in the hearing or trial is 130 percent or more than the Agency’s last written offer prior to condemnation.

CONCLUSION

The purpose of this brochure is to explain the rights and benefits of property owners whose real property is to be acquired. Furthermore, our mission is to serve the Adams County community with integrity and innovation.

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