



Right-of-Way Acquisition and Eminent Domain

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Overview

- Laws and Regulations
- Right-of-Way Acquisition Process
 - Project Planning – Identification of Property Owners
 - Types of Property Rights Acquired
 - Appraisal/Review Appraisal
 - Acquisition
 - Relocation
 - Property Title
- Eminent Domain and the Condemnation Process



Laws and Regulations

Federal

- 49 CFR Part 24
- 23 CFR part 710
- The Uniform Act
- Amendment V US Constitution

State

- SD Constitution
 - Article VI, Section 13
- State Statutes
- "Just Compensation"
- SDDOT ROW Program Manual



Project Planning

- Title Search – Identification of Property Owners
- Public Meetings
- Landowner Meetings
- Project is Released to ROW Office



Types of Property Rights Acquired

- Right-of-Way Taking – Fee simple interest
- Permanent Easement (PE)
 - Variety of PE needs
- Temporary Easement
- Control of Access
- Others

Each parcel could consist of one or a combination of property rights to be acquired.



Appraisal/Review Appraisal

- Waiver of Appraisal
 - Estimate based on sales, market trends, etc. to determine just compensation
 - For non-complex acquisitions and under \$25,000
 - Landowner has a right to an appraisal
- Appraisal
 - Before Value
 - After Value
 - Difference determines offer of just compensation, subject to appraisal review
- Review Appraisal
 - Reviewer makes sure proper appraisal procedures were used



Acquisition

- Acquisition agent coordinates meeting with landowners
- Review of project and property impacts
- Offer of compensation
- Negotiation, consideration of additional information
- Engineering considerations/alternative design
- Administrative settlements
- Right of Entry
- Condemnation as a last resort



Relocation

- In addition to the acquisition of real property, landowners may be eligible for relocation benefits.
 - Personal Property
 - Residential
 - Business

Relocation agent establishes benefits and assists landowner throughout the relocation process.



Property Title

- Clear title required to complete acquisition
 - Mortgages
 - Liens
 - Judgments
 - Leasehold Interests
- Final Steps
 - Internal Audit
 - Recording of plats, deeds, easements, etc.
 - Payment to landowners



Eminent Domain: Federal Constitution

Amendment V to the United States
Constitution:

"...nor shall private property be taken for
public use, without just compensation."



Eminent Domain: State Constitution

Article VI Section 13 of the S.D.
Constitution:

"Private property shall not be taken for public use, or damaged, without just compensation."



State Statutory Powers and Procedures

- South Dakota Codified Law 21-35
 - Applies to many different entities with the power of eminent domain
- South Dakota Codified Law 31-19
 - Applies to South Dakota Department of Transportation



Necessity of Acquiring Property

"Before acquiring land or material by condemnation, the Department of Transportation shall, by resolution, declare the necessity for acquiring the land or material[.]" *SDCL 31-19-2.*

Necessity of Acquiring Property

The resolution "passed by the Transportation Commission" must be attached to the condemnation petition. *SDCL 31-19-3.*



Necessity of Acquiring Property

To successfully challenge a necessity determination, the landowner must show:

- Fraud;
- Bad Faith; or
- Abuse of Discretion



Necessity of Acquiring Property

- The resolution of necessity is afforded great deference by the court.
- It's not enough to simply show other design options.



Quick Take

- Ability to secure possession before jury determination of just compensation
- By agreement or court order
 - Sets date of taking
- Release of State's estimate of just compensation when possession is granted



What is a Taking or Damaging of Private Property?

- Issue for the Court (not the jury) to decide
- Property is defined by state law
- May be decided through a motion or court trial



When Are Access Changes a Taking or Damaging of Private Property?

- Substantial Impairment of Access (Unreasonable Access)
- Special Injury
 - Peculiar to the owner's land
 - Injury different in kind and not merely in degree from the impact on the general public



When Are Access Changes a Taking or Damaging of Private Property?

- Controlled Access Highway?
- State Grant of Property Right?
- Reduction of Access Approaches?
- Median?
- Highway Intersection Closure?
- Other?



Just Compensation

- Right to jury trial
- Fair market value on date of taking
- Based on highest and best use of the property
- Prejudgment interest of 4.5% per year
- Reasonable attorney fees and fees of two experts if compensation award is 20% or more above State's final offer (includes pre-judgment interest)



THANK YOU