

RECOMMENDED RIGHT-OF-WAY PROCEDURES GUIDANCE MOUNTAINLAND & UTAH COUNTY PROGRAMMED PROJECTS

1.0 | Purpose and Process

Mountainland Association of Governments and Utah County manage a program of Metropolitan Planning Organization (MPO) funded projects. Based off the awarded funding type of the programmed projects, Mountainland or Utah County act as the Project Manager. The local jurisdictions, UDOT, UTA, and other eligible transportation agencies (Project Sponsor) present to the MPO project concepts and are awarded funding through a biannual competitive selection process. Awarded programmed projects are managed by each Project Sponsor generally through the jurisdiction or agency or by a hired project consultant. Most projects require purchasing right-of-way. This document establishes recommended policy for the Program Manager so that right-of-way procedures are addressed by the Project Sponsor in satisfying state and federal laws.

2.0 | Policy

The Program Manager recognizes the impacts of purchasing property for transportation projects. The Program Manager also recognizes the importance of adhering to laws regarding right-of-way purchase. In purchasing right-of-way, the Project Sponsor can hire a professional consultant that will use practical methods, technical expertise and financial resources prudently to perform land acquisitions.

This policy is to be used as guidance and as a recommendation to the Project Sponsor. The Project Sponsor should follow this policy, but can choose to use a different right-of-way purchase process or no process at all. In all cases if local, state, or federal law requires that certain procedures be performed, the project sponsor bears all burdens towards any litigation brought against the project for not adhering to these laws.

3.0 | Background

The local jurisdictions of Utah County, UDOT, UTA and other transportation agencies are charged with providing transportation systems that are safe, effective and facilitate the movement of people and goods, while protecting and preserving Utah's unique environment. The Program Manager's goal is to provide sustainable transportation systems that will meet present and future mobility needs while minimizing adverse impacts property owners.

The intent of this policy is to guarantee that the purchase of property for transportation projects is done in a fair and prudent manner for both the Project Sponsor, the land owner, and the greater region as a whole.

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4.0 | Right-of-Way Procedures Explained

The recommended right-of-way procedures are generally governed by existing federal, state and county statutes and ordinances.

Once a project is accepted for implementation, the right of way is finalized and the corresponding list of affected property owners is tabulated. That list includes the current owners of record and the impact/takings of their individual parcels.

The Project Sponsor is welcome to use the Utah County short list of accomplished appraisers that usually hold an MAI accreditation. The Project Sponsor may also choose to use their own appraiser.

Once the appraisals are returned, they're examined noting the bottom line values together with the review of the comparables used to reach that value plus any damages as determined. If questions arise during this evaluation, the appraiser is questioned. Otherwise, once his/her value is determined to be "true" just compensation, a series of paperwork consisting of: "Offer to Purchase", "Statement of Just Compensation" are prepared and presented for approval by our department head or the county commission or both.

Respective landowners are then contacted and briefly informed of the pending project and alerted to the probability that all or part of their property is impacted. A face to face meeting is then scheduled.

During that meeting, project plans are explained to the landowner covering the scope of the project and its public need. Should project plans and drawings be insufficient in showing how the landowner is impacted, permission is obtained to have his/her property surveyed with physical markers showing said impact. Once this is understood, the Offer to Purchase is presented together with the Statement of Just Compensation that will typically involve a detailed explanation of the appraisal as to how these values were established. A document explaining the Property Owner's Rights might also be included. A copy of said appraisal might be left with the landowner.

The landowner may have several questions at this point, and these are addressed as best as possible.

The landowner is then given a time period to consider the offer and evaluate the appraisal process. He/she understands that this is not the final contact and he/she must accept or reject this offer without a process of negotiation.

This is when the negotiation process begins and additional questions are asked. This can become a time-consuming segment, but it is important that the landowner feel that he/she has input and acceptance in determining a final property value. The landowner might offer suggestions and these

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should be considered. For example, it has been Utah County's experience that improvements to the landowner's remaining ground could be performed as part of the construction process. These "betterments" could then be deducted from a final cash value, or simply offered as incentive to move towards acceptance.

It should be noted, that the threat of eminent domain is never used unless the landowner becomes belligerent over time and has rejected all offers and the negotiation process isn't bearing fruit and the project time line is becoming critical. Prior to this point, however, it can also be proffered that a second appraisal can be performed using an appraiser of the landowner's choosing, provided said appraiser is qualified and acceptable. Such second appraisals are typically paid for by the acquiring agency as required by applicable law. Further appraisals beyond this can also be obtained, but are usually at the landowner's expense.

Once the negotiation process is complete, the Land Purchase Contract is then prepared containing all the criteria approved including cash values and betterments. Once that contract is signed by the landowner, it is then presented to the Project Sponsors governing body for acceptance.

A recognized title company can then be employed, if desired, to handle the final closing including the distribution of monies.

A side note to eminent domain, said proceedings are generally dictated by law. Utah County has, in the past, used such filings to obtain a Right of Occupancy which permits the project to proceed while additional negotiations are held in an attempt to finalize the acquisition without resorting to the court for a final value determination. It is very rare that full eminent domain will need to be used to reach a settlement.

As an agent, one should always remember to keep notes of dates and efforts made during the entire period of negotiations.

5.0 | Right-of-Way Procedures Outlined

5.1 | Project identified

5.2 | Concept Plans developed

5.3 | Right-of-way needs identified

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- 5.4 | List of affected properties with current owners and the impact of each parcel
- 5.5 | Initial contact with land owners
- 5.6 | Parcels are appraised by MAI accredited appraiser
- 5.7 | Review of appraisals – either in house or by another appraiser
- 5.8 | Statement of Just Compensation prepared and approved
- 5.9 | Offer to Purchase prepared and approved
- 5.10 | Meet with land owners to:
 - a) Discuss project and impacts
 - b) Present and review State of Just Compensation and Offer
 - c) Obtain permission to enter property for survey
 - d) Present owner with Summary of Property Owners' Rights
- 5.11 | Land owner may accept or reject offer
- 5.12 | Land owner may request second appraisal (paid for by the project)
- 5.13 | Negotiations with land owner may include:
 - a) Value of taking
 - b) In-kind compensation
 - c) Betterments (improvements beyond the value of the taking)
- 5.14 | 4 Options Letter – start of condemnation process (eminent domain)
 - a) Continued negotiation (with a signed right of entry and occupation agreement)
 - b) Mediation (available through the Office of the Property Rights Ombudsman)
 - c) Arbitration (available through the Office of the Property Rights Ombudsman)
 - d) Litigation
- 5.15 | Land Purchase Contract, include purchase price and any in-kind compensation and betterments
- 5.16 | Closing, use a mutually acceptable Title Company

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6.0 | Suggestive Forms and Examples

The following pages offer possible forms as described previously. These are merely suggested and do not prejudice your right to make your own forms.

- 6.1 | Executive Summary of Property Owners' rights
- 6.2 | Summary for the basis of just Compensation
- 6.3 | Example of Offer to Purchase Right of Way
- 6.4 | Example of Statement of Just Compensation
- 6.5 | Example of 4 Options Letter

6.1 | Executive Summary of Property Owners' rights

EXECUTIVE SUMMARY OF PROPERTY OWNERS' RIGHTS (TAKEN FROM A BOOKLET WRITTEN FOR UTAH PROPERTY OWNERS)

- 1. Fair Market Value.** You have the constitutional right to receive “just compensation” when an agency acquires your property; in other words, to receive the “fair market value” of the land or property acquired. Just compensation can include compensation for a decrease in the market value of the portion of your property that remains when part of your property is acquired, if that decrease in value occurs because of the public improvements planned. In some cases, just compensation can include damages caused by the project to property that is not acquired, but which is damaged by the project.
- 2. Full Payment.** You have the right to receive full payment for “just compensation”, in the full amount that is determined by negotiation or by a court, jury, mediation or arbitration before the agency takes title to your property.
- 3. Early Occupancy.** If the agency wishes to occupy your property before “just compensation” can be agreed upon, you are entitled to receive the money that the agency is offering you for the acquisition of your property before they occupy it. In such cases, you may still reserve the right to have the “just compensation” determined by a court, jury, mediation or arbitration and to receive more compensation if you are found to be entitled to more.
- 4. Public Documents.** You have the right to examine and make copies of any public documents, including project maps, specifications or other project materials in the agency’s possession.
- 5. Open Meetings.** You have the right to attend any meetings held by an elected or appointed council or commission to discuss the project and to tape record the proceedings. You do not have the right to speak unless the meeting is a public hearing. You may be legally excluded if the officials move to go into an executive session to discuss the acquisition of real property or to discuss imminent legal proceedings
- 6. Other Property Owners.** You have the right to request that the agency provide a list of any other property owners whose property is also being acquired for the project.
- 7. Public Purpose.** You have the right to know for what public purpose your property is being acquired and to challenge the necessity of the acquisition.
- 8. Offer and Negotiation.** You have the right to negotiate with the agency before condemnation proceedings begin. For that purpose, the agency is required to provide you with a written determination of the value of the property that is to be acquired from you and of any damages that will arise as a result of the acquisition.

9. **Appraiser.** You have the right to accompany the appraiser retained by the agency during his or her inspection of your property and to talk to the appraiser before a value is reached.
10. **Appraisal.** You have the right to know the amount of the appraised value of your property and of any damages assessed and to request a copy of the appraisal report. If a copy is denied, you are entitled to know what appraisals exist and why you are not allowed to see them during negotiations. If the matter goes to formal mediation, arbitration or trial, you will be entitled to see the appraisal(s) well before the hearing.
11. **Other Damages.** Your right to just compensation includes payment for the land, and also for any improvements on the land if they contribute value to the property. Just compensation also includes the net lost value of any remaining property that you keep. (Known as “severance damages”) You may also be entitled to just compensation for any special and unique damage done to any portion of your property that is not acquired for the project and for any temporary occupancy of any portion of your property that is not being acquired, but which must be used by the agency or its contractors during construction of the project.
12. **Relocation Costs.** You have the right to be paid certain relocation expenses from the agency if it requires you to move as a result of the condemnation. These amounts are determined by statute, but may be mediated or arbitrated if, after using whatever appeals processes the agency provides to review such matters, a dispute still exists.
13. **Replacement Dwelling.** You have the right to be offered a comparable replacement dwelling that is safe and clean and reasonably close to your employment and public services if you are displaced from your home.
14. **Displaced Business or Farm.** You have the right, if your small business or farm is displaced by the project, to receive the agency’s assistance in identifying replacement properties available on the private market, located within the agency’s jurisdiction.
15. **Prior Notice.** Unless an emergency exists, you have the right to receive 90 days written notice before a move is required.
16. **Rollback Taxes.** You have the right to have the agency pay any greenbelt rollback taxes if condemnation results in your land losing greenbelt status.
17. **Ombudsman.** You have the right to consult with the State of Utah’s Property Rights Ombudsman and to inquire about your rights and responsibilities in eminent domain proceedings. The Ombudsman can be reached at 801-537-3455.

18. **Second Appraisal.** You have the right to an additional appraisal at the agency's expense, if you request it and the Ombudsman, or a mediator or arbitrator appointed by him, considers the appraisal reasonably necessary to resolve a dispute about just compensation.

19. **Alternative Dispute Resolution.** If the amount of just compensation cannot be negotiated, the agency has the right to institute legal action against you. If you would rather arbitrate eminent domain issues than go to court, you have the right to request arbitration through the Ombudsman. If the Ombudsman determines that arbitration is appropriate, you have the right to arbitration even if the agency objects.

20. **Evidence.** You have the right to offer any relevant and admissible evidence at arbitration or trial, including the use of expert witnesses, to justify the amount of just compensation you consider appropriate. Any witness testifying to property value must be a licensed appraiser.

21. **Disclosure and Review.** You have the right to know about and examine any evidence that will be used by the agency to establish the amount of just compensation prior to formal mediation, arbitration or trial. This includes copies of any appraisals the agency has obtained to determine just compensation and other evidence they plan to offer.

22. **Testify.** You have the right to testify at arbitration, and, if qualified, to testify at trial regarding the value of your property.

23. **Cross Examination.** You have the right at arbitration or trial to cross examine the expert witnesses that the agency relies upon in establishing the amount of just compensation that it claims to be fair.

24. **Appeal.** You have the right to appeal to the District Court if you are not satisfied with an arbitrator's determination.

25. **Jury Trial.** If the matter goes to court, you have the right to choose to have the amount of compensation determined by a jury rather than by a judge.

26. **Appellate Review.** You have the right to appeal a District Court decision to an appellate court, if appropriate.

27. **Oral Representations or Promises.** Please be advised that oral representations or promises made during the negotiation process are not binding upon the agency seeking to acquire your property by eminent domain.

6.2 | Example of Summary Statement for the Basis of Just Compensation

SUMMARY STATEMENT FOR THE BASIS OF JUST COMPENSATION

Property Owner: John E. and Jane E. Doe

Project: 4800 West Road Widening Project

The following is a summary statement furnished to you as owner or owners of real property to be acquired by UTAH COUNTY, hereinafter referred to as "the County". The Statement describes the basis for the amount of money established by the County as just compensation for the subject parcels and/or easements to be acquired.

a. Legal Description:

"see attached legal description"

b. Satisfaction of Liens and Encumbrances: The offer is made conditional upon your satisfaction at or prior to closing of all outstanding liens and encumbrances against the property, and taxes prorated to date of closing.

c. Property consists of: fee simple title to a rectangular parcel approximately 19-feet wide and 210 feet long of .09 acres off the west side of Parcel # 14:004:02

d. Purchase Price: The purchase price shall be the total sum of **\$28,000.00**. The purchase price represents the full amount believed by the County to be just compensation and fair market value of the subject parcels together with any and all severance and consequential damages arising from the severance of the subject parcel from a larger parcel and the construction of the proposed improvements on the subject parcels, including the impact such severance and or construction has on the future development potential of the remaining property.

e. Offering Price Equals Fair Market Value: The County has determined the amount offered as just compensation is not less than its approved appraisal of fair market value of the property interests described above and the assessed severance and consequential damages.

f. Just Compensation: The County's determination of just compensation is based upon its inspection of the property and its consideration of an appraisal of the property made by an independent appraisal firm, Steve Nielsen and Company. Said appraisal was completed by Steve Nielsen, MA, Utah Certified General Appraiser # 5468930-CG00. Said appraisal concluded the value of the subject property and the temporary construction easements and severance damages to be the sum of \$28,000 as of May 5, 2008.

6.3 | Example of Offer to Purchase Right-of-Way

UTAH COUNTY OFFER TO PURCHASE RIGHT OF WAY

Project No.:

Parcel No.:

Owner:

Utah County hereby makes you an offer of:

as the purchase price for the tract(s) of land described in the Utah County project shown above. You are not required to vacate your property until payment of the purchase price is made available to you. Your signature on the Offer to Purchase is only for the purpose of verification that such an offer has been made to you and does not prejudice your right to have the final amount determined through condemnation proceedings in the event you do not accept the County's offer. Information regarding your rights in potential condemnation proceedings are explained in the document presented to you at this time.

THIS IS NOT A CONTRACT TO PURCHASE, BUT MERELY AN OFFER TO PURCHASE FOR THE AMOUNT INDICATED ABOVE.

Date _____

By _____

Received a copy of the above offer this ____ day of _____, 20____

6.3 | Example of Statement of Just Compensation

UTAH COUNTY
STATEMENT OF JUST COMPENSATION

Project:

Parcel(s):

Grantor:

The following information is the basis for the amount estimated by Utah County to be Just Compensation:

- (a) Identification of the real property to be acquired (location, etc.):
- (b) Ownership Size
- (c) Identification of improvements, buildings, fixtures to be acquired:
- (d) Impacted landscaping
- (e) Improvements taken that will/can be replaced and/or constructed as part of project:
- (f) Summary of fair market value:
 - 1. Land.....
 \$\$\$
 - 2. Improvements..... \$\$
 - 3. Damages.....
 \$\$
 - 4. Less special benefits..... \$\$
 - 5. Total=.....
 \$\$\$

Utah County declares this offer is the amount that has been established by the County as Just Compensation and is in accordance with applicable State laws and requirements. Just Compensation is defined as that fair market value to the property taken, plus damages, if any, to the remaining property, less any benefit which may accrue to said property by reason of the construction process.

Date:

Right of Way Agent:

Example of 4 Options Letter



Utah Transit Authority

669 W. 200 South, Salt Lake City, UT, 84101

By Certified Mail No.
December 2, 2016

John E. Doe
PO Box 1234
Orem, UT 84059

Project Name: Provo/Orem Transportation Improvement Project
Project No.: S-0265(23)3 Pin: 10266
Parcel No.(s): 159:2
Parcel Address: 90 South State Street, OREM, UT 84058

Dear Mr. John E. Doe:

We regret to inform you that due to our as yet unsuccessful negotiations, we must now begin the condemnation process. The condemnation process will allow you to achieve a final resolution of value for the above referenced property, while enabling the Utah Transit Authority (UTA) to fulfill the project need, which is to purchase the property for the above referenced project.

Please be aware that even though we will begin the condemnation process, we are willing to continue to negotiate with you. If you choose to continue negotiating in good faith, please share the reasons why you believe UTA's offer is unacceptable as well as any supporting documentation you believe supports your claim. We will carefully consider the information and hopefully reach a settlement with you once the issues have been resolved to our mutual satisfaction. If you have decided to accept our offer, please execute the documents presented to you, and return them to us by Dec. 16, 2016.

We would also like to draw your attention to several options available to you. We hope that these options may help us negotiate a settlement. These options are not mutually exclusive. You may decide to use any of these options alone or together with other options.

OPTION 1: Continued Negotiation. You may continue negotiating with us outside of litigation if you will agree to sign a *Right of Entry and Occupancy Agreement*. This Occupancy Agreement will enable UTA to proceed with the project under its time deadlines, while reserving the issue of compensation for future negotiations. Choosing this option will make a court action for condemnation unnecessary while good faith negotiations continue. If no Occupancy Agreement is signed, UTA will need to seek Occupancy of the property through the courts. UTA would prefer to obtain the right to occupy with your agreement and continue negotiating with you toward a settlement. UTA can provide you with a copy of the form Occupancy Agreement upon request.

OPTION 2: Mediation. Mediation is available through the Office of the Property Rights Ombudsman ("Ombudsman Office"). In Mediation, a neutral third party assists the parties in fairly resolving their disputes. The Ombudsman Office has been created to provide this service free of charge. The mediator can order that a second appraisal be performed at UTA's expense if the mediator believes it is reasonably necessary to resolve the dispute. For more information, please contact the Ombudsman Office at (801)530-6391 or at its office at the Heber M. Wells Building, 160 East 300 South, SALT LAKE CITY, UT, 84111.

OPTION 3: Arbitration. Arbitration is also available through the Ombudsman Office to settle issues over compensation. Arbitration is similar to a court proceeding except that the arbitration process is less formal. A neutral third party holds a hearing, listens to the information presented by all the parties, evaluates the evidence, and issues a decision. More information is available from the Ombudsman's Office.

OPTION 4: Litigation. If you do not wish to use any of these options to reach a negotiated settlement, we will proceed with the condemnation and your just compensation amount will be determined by the court. We recommend that you seek the advice of an attorney if this is the option you choose.

We appreciate the fact that you have a hard decision to make, and assure you that we will continue to work with you through this process even as we go forward with the condemnation process. We are hopeful that you will be able to accept the offer as is, but if that is not the case, please contact me by Dec. 16, 2016 to discuss the process and where we need to go from here. You may also contact the Ombudsman Office anytime. They will answer your questions, help you to understand your options, and further explain the condemnation process to you.

Please note that if the purchase of your property will require your displacement and relocation, appropriate relocation assistance will be made available to you. Your relocation assistance eligibility and benefits should have already been discussed with you. However, as relocation assistance is not typically included in a condemnation action, any dispute regarding relocation assistance may need to be appealed and/or litigated separately.

We remain available to discuss your options with you at your convenience. Thank you for your continued cooperation.

Sincerely,

Todd Keizer (Consultant) / Acquisition Right of Way Agent
310-497-4012



/ Right of Way Manager, Team Leader

DERRICK SORENSEN
MGR OF PROPERTY
ACQUISITIONS/DISPOSITIONS