



# Better Roads Brochure

prepared for the

## South Dakota Department of Transportation



by the

# RIGHT OF WAY PROGRAM

July, 2013

## INTRODUCTION

Government programs designed to benefit the public as a whole often result in acquisition of private property and sometimes the displacement of people from their residences, businesses or farms. Acquisition of this kind has long been recognized as a right of government and is known as the power of eminent domain. The Fifth Amendment of the Constitution states that private property shall not be taken for public use without just compensation.

To provide uniform and equitable treatment for persons whose property is acquired for public use, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amended it in 1987. This law, called the Uniform Act, is the foundation for the information discussed in this brochure.

All Federal, State, and local government agencies, as well as others receiving Federal financial assistance for public programs and projects, requiring the acquisition of real property, must comply with the policies and provisions set forth in the Uniform act and the regulation. Revised rules for the Uniform Act are published in the Federal Register annually. The rules are reprinted each year in the Code of Federal Regulations (CFR), Title 49, Part 24 and may be obtained at the following web site: [www.fhwa.dot.gov/realestate/lpguide/app2.htm](http://www.fhwa.dot.gov/realestate/lpguide/app2.htm).

The agency is dedicated to keeping the landowners of the State informed about the highway program and seeking their participation in developing the best possible highway system.

This brochure has been prepared to serve two purposes. The first is to provide you with information pertaining to the process involved in a highway project from initial planning to completed construction. The second purpose is to provide information to owners whose property will be affected by the construction or improvement of a State highway.

We ask that you read this brochure carefully as it is intended to answer many of the questions people have concerning the highway program and the acquisition of property for highway purposes.

The agency provides service without regard to race, color, gender, religion, national origin, age, or disability, according to the provisions contained in South Dakota Codified Law 20-13, Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act of 1990 and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Local-Income Populations, 1994.

Any person who has questions concerning this policy or who believes they have been discriminated against should contact the Department's Civil Rights Office at (605)773-3540.

## **THE STATE HIGHWAY SYSTEM**

A modern highway system is vital to our progress and to perpetuate this progress requires additional and improved roadways. Every rural area, town, and city in South Dakota has some highway needs.

It is the responsibility of the South Dakota Department of Transportation to serve the needs of the citizens of the State through construction and maintenance of a quality system of highways. To fulfill this responsibility the South Dakota Department of Transportation utilizes the following series of steps in the planning, design and construction of a highway:

1. Advance Planning
2. Programming
3. Preliminary Engineering
4. Public Meetings
5. Project Design
6. Right of Way Appraisal
7. Right of Way Acquisition
8. Contracts Let
9. Construction

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## **1. ADVANCE PLANNING**

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Thorough planning includes traffic surveys and studies of transportation needs. Data and information from these studies is used as input to several management systems that provide details on future transportation desires and programming of alternatives.

When a highway project is proposed the general location is selected based on considerations of safety, economy, convenience, environmental, construction, and maintenance costs. These factors are weighed along with the input from the public meetings and provide the basis for determining the need for a new or improved highway.

## **2. PROGRAMMING**

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After the need for a new or improved highway is established, it is presented to the Transportation Commission. The Commission verifies or reviews the priority in relation to all the needed improvements throughout the State. On the basis of priority and anticipated revenue the highway improvement is placed in the long range construction program. These projects are prioritized and added to the new program annually.

## **3. PRELIMINARY ENGINEERING**

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Various highway design engineers, through the use of aerial photographs and ground surveys, study the terrain in the area to be served. Safe, feasible routes and alternatives are then selected. This information is reviewed by appropriate agency personnel who aid the designer in selecting the most practical improvement option(s) for presentation at a public meeting.

## **4. PUBLIC MEETINGS**

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Public meetings for the location and design of the highways are held in the general locale of most projects. Notices of scheduled meetings are published in local newspapers. Efforts are made to contact impacted landowners by mail.

Everyone is urged to attend and take part. You will be given the opportunity to comment and ask questions concerning the proposed highway improvement. This is your chance to provide input which will be considered in reaching a final decision on the proposed project and is important to the process.

Please notify the SDDOT ADA Coordinator within 48 hours of public meetings if you have special needs for which this agency will need to make arrangements. The telephone number for making special arrangements is 605-773-3540 or 1-800-877-1113 (Telecommunication Device for the Deaf).

## **5. PROJECT DESIGN**

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Design of the project begins after a decision has been reached as to which alternative(s) the project will follow and where the project is ranked in the programming explained above. Design plans detail how the highway improvement will be built. The plans show grades, drainage, slopes, and other details as well as the limits of the necessary right of way which must be acquired for the project. The design of a project involves 3 major steps:

- a. Preliminary Design Meeting
- b. Landowner Meetings
  - Adjacent landowners are encouraged to attend and given the opportunity to meet Design and Right of Way personnel to discuss the project and its effects on their property prior to the design being finalized.
- c. Final Design Meeting

During Preliminary and Final design meetings, personnel of the Department of Transportation from the Road Design, Bridge Design, Hydraulics, Surfacing, Right of Way, Utilities, and Environmental offices review the project site. County and City officials are invited when their respective responsible areas are affected by a state construction project.

## **6. RIGHT OF WAY APPRAISAL**

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Appraisal is the means by which the market value is estimated for the property to be acquired or any ensuing damages caused by the project to the remainder of your property. The appraisal is based on the plans and plats prepared after final design of the project is complete.

An appraiser will inspect each property to determine the extent of the proposed acquisition and how the completed project will affect any remaining property.

Unless your property is minimally impacted by the project, the appraiser will give you or your designated representative an opportunity to accompany him/her on an inspection of the property. You can explain operations and property features which may affect value. The appraiser will gather relevant information concerning the value of your property such as recent sales and rental values.

Your property is then compared to similar properties which have been sold recently in the locality. The price paid and conditions of each comparable sale are carefully investigated as a part of estimating the market value of your property. The courts have defined market value as:

The highest price for which property considered at its best and most profitable use can be sold in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment. The market value of property includes every element which affects such value and which would influence a willing and able purchaser at the time of acquisition. Market value does not mean speculative or remote value, nor one affected by sentimental or adverse elements. The measure of consequential damages to the remainder is the difference between the fair market value of the remainder of the tract immediately prior to the acquisition and its value thereafter.

The appraisal is examined by a review appraiser to ensure accurate data and good judgment was used.

A sound appraisal aids the assurance of a mutually satisfactory settlement. Both the State and the property owner have an interest in a sound appraisal.

## **EXCEPTIONS TO THE APPRAISAL REQUIREMENT**

The Uniform Act requires all real property to be acquired must be appraised, but it also authorizes waiving that requirement for small parcel or low value acquisitions.

Regulations provide the appraisal may be waived:

- If you elect to donate the property and release the agency from the obligation of performing an appraisal, or
- If the Right of Way office believes the acquisition of your property is uncomplicated after reviewing available data supports a fair market value likely to be \$10,000 or less, the agency may prepare a waiver valuation, rather than an appraisal, to estimate your fair market value.

If the agency believes the acquisition of your property is uncomplicated and a review of available data supports a fair market value likely to be over \$10,000 but less than \$25,000, the agency, with FHWA approval, may prepare a waiver valuation rather than an appraisal to estimate your fair market value. After you have discussed the waiver valuation with a Right of Way agent, you may elect to have the agency appraise your property.

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## **JUST COMPENSATION**

Once the appraisal of fair market value is complete, a review appraiser from the agency will review the report to ensure that all applicable appraisal standards and requirements are met. When they are, the review appraiser will give the agency the approved appraisal to use in determining the amount of just compensation to be offered for your real property. 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, there may be damages or benefits to your remaining property. Any allowable damages or benefits will be reflected in the just compensation amount. The agency will prepare a written offer of just compensation for you when negotiations begin.

## **BUILDINGS, STRUCTURES, AND IMPROVEMENTS**

Sometimes buildings, structures, or other improvements are located on the property to be acquired. If they are real property, the agency must offer to acquire at least an equal interest in them if they must be removed or if the agency determines that the improvements will be adversely affected by the public program or project.

An improvement will be valued as real property regardless of who owns it.

## **TENANT-OWNED BUILDINGS, STRUCTURES, AND IMPROVEMENTS**

Sometimes tenants lease real property and build or add improvements for their use. Frequently, they have the right or obligation to remove the improvements at the expiration of the lease term. If, under State law, the improvements are considered to be real property, the agency must make an offer to the tenants to acquire these improvements as real property.

In order to be paid for these 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.

For an improvement, just compensation is the amount the improvement contributes to the fair market value of the whole property, or its value for removal from the property (salvage value), whichever amount is greater.

A tenant-owner can reject payment for the tenant-owned improvements and obtain payment for his or her property interests in accordance with other applicable laws. The agency cannot pay for tenant-owned improvements if such payment would result in the duplication of any other compensation otherwise authorized by law.



If improvements are considered personal property under State law, the tenant-owner may be reimbursed for moving them under the relocation assistance provision.

The agency will personally contact the tenant-owners of improvements to explain the procedures to be followed. Any payments must be in accordance with Federal rules and applicable State laws.

Tenants on the property may be eligible for relocation benefits.

## **7. RIGHT OF WAY ACQUISITION**

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### **THE WRITTEN OFFER**

The acquisition phase will begin by contacting you or your designated representative to discuss the purchase of the real property and/or temporary construction easements. If practical, a representative from the Right of Way office will meet with you in person to discuss the project and deliver the written offer of just compensation. If a personal visit is not feasible, the written offer will be made by regular or electronic mail and followed up with a contact by telephone or electronic mail. All owners of the property will be contacted.

An agency representative will explain agency acquisition policies and procedures in writing, either by use of an informational brochure, or in person.

The agency's written offer will consist of a written summary statement that includes all of the following information:

- The amount offered as just compensation.
- The description and location of the property and the interest to be acquired.
- The identification of the buildings and other improvements that are considered to be part of the real property.

The offer may list items of real property you may retain and remove from the property and their retention values. If you decide to retain any or all of these items, the offer will be reduced by the value of the items

retained. You will be responsible for removing the items from the property in a timely manner. The agency may elect to withhold a portion of the remaining offer until the retained items are removed from the property.

Any separately held ownership interests in the property, such as tenant-owned improvements, will be identified by the agency.

The agency may negotiate with each person who holds a separate ownership interest, or, may negotiate with the primary owner and prepare a check payable jointly to all owners.

The agency will give you a reasonable amount of time to consider the written offer and ask questions or seek clarification of anything that is not understood.

If you believe all relevant material was not considered during the appraisal, you may present such information at this time. Modifications in the proposed terms and conditions of the purchase may be requested. The agency will consider any reasonable requests that are made during negotiations.

## **PARTIAL ACQUISITION**

Most often an agency does not need all the property you own. The agency will usually purchase only what it needs.

If the agency intends to acquire only a portion of the property, the agency must state the amount to be paid for the part to be acquired.

In addition, an amount will be stated separately for damages, if any, to the portion of the property you will keep.

If the agency determines 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. You have the option of accepting the offer for purchase of the uneconomic remnant or keeping the property.

## **AGREEMENT BETWEEN YOU AND THE AGENCY**

When you reach agreement with the agency on the offer, you will be asked to sign an option to buy, a purchase agreement, an easement, or some form of deed prepared by the agency. Your signature will affirm that you and the agency are in agreement concerning the acquisition of the property, including terms and conditions.

If you do not reach an agreement with the agency because of some important point connected with the acquisition offer, the agency may suggest mediation as a means of coming to agreement. If the agency thinks that a settlement cannot be reached, it will initiate condemnation proceedings.

The agency may not take any action to force you into accepting its offer. Prohibited actions include:

- Advancing the condemnation process.
- Deferring negotiations.
- Deferring condemnation.
- Delaying the deposit of funds with the court for your use when condemnation is initiated.
- Any other coercive action designed to force an agreement regarding the price to be paid for your property.

## **SETTLEMENT**

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 use the information provided as a basis for administrative or legal settlements, as appropriate.

## **PAYMENT**

The next step in the acquisition process is payment for your property. As soon as all the necessary paperwork is completed for transferring title of the property, the agency will prepare a voucher for payment.

## **POSSESSION**

The agency may not take possession of your property unless:

- You have been paid the agreed purchase price, or
- In the case of condemnation, the agency has deposited with the court an amount for your benefit and use that is at least the amount of the agency's approved appraisal of the fair market value of your property, or
- The agency has paid the amount of the court award of compensation in the condemnation proceeding.

If the agency takes possession while persons still occupy the property:

- All persons occupying the property must receive a written notice to move at least 90 days in advance of the required date to move. In this context, the term person includes residential occupants, homeowners, tenants, businesses, non-profit organizations, and farms.
- An occupant of a residence cannot be required to move until at least 90 days after a comparable replacement dwelling has been made available for occupancy. Only in unusual circumstances, such as when continued occupancy would constitute a substantial danger to the health or safety of the occupants, can vacation of the property be required in less than 90 days.

## **CONDEMNATION**

If an agreement cannot be reached, the agency can acquire the property by exercising its power of eminent domain. It will do this by instituting formal condemnation proceedings with the appropriate State or Federal court.

If the property is being acquired by anyone that has condemnation authority, the condemnation action will take place in State court and the procedures will follow State law.

## **8. CONTRACTS LET**

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After all the property rights have been secured, the projects are let to contract on a competitive basis. Public lettings are held throughout the year. Qualified contractors are invited to submit bids for each project. Results of these bid lettings are considered and contracts are let to the lowest responsible bidder

## **9. CONSTRUCTION**

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Highway construction is generally a seasonal industry with most work being done between April and October. Construction of bridges, grading, and paving are elements of a highway project which require special skills and experience. Many different contractors may be found working on a single project because of the special skills or experience required.

# **QUESTIONS AND ANSWERS**

## **HOW ARE HIGHWAYS FINANCED?**

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All Federal, State and urban funds come from highway users in the form of motor fuel taxes, motor vehicle registration fees and compensatory fees paid by commercial carriers. No property or other taxes are used to finance the construction or maintenance of the state highway system.

## **WHY DOES THE STATE NEED MY PROPERTY?**

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Planning studies, research and cost analysis indicate the need for the highway project in your area and the additional impact to your land. The projects attempt to accomplish the maximum public benefit with a minimum of privately owned property being impacted.

## **WHY DOES THE STATE HAVE THE RIGHT TO BUY MY PROPERTY FOR HIGHWAY PURPOSES?**

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Federal, State and municipal governments have the right to acquire the properties they need in order to provide necessary public services. This is called the Right of Eminent Domain (South Dakota Codified Law 31-19 and 21-35). The government unit also has the responsibility under the law to assure just compensation for the property. No private property may be taken for public use without payment of just compensation.

## **WHAT IS CONTROLLED ACCESS?**

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Controlled access is defined as “a highway or street especially designed for through traffic and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right of way or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility” (South Dakota Codified Law 31-7-1 and 31-8-1).

South Dakota Codified Law 31-8-6 further states “No person has any right of ingress or egress to, from or across any controlled-access facility to or from abutting land, except at any designated point at which access may be permitted”.

Examples of controlled access include:

Interstate systems - traffic is permitted to turn off or on an interstate route only at an interchange.

Primary or Secondary systems - direct access is allowed only at certain permitted points along the highways.

## **HOW ABOUT ACCESS TO MY PROPERTY?**

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Access to the state trunk highway system is subject to regulation by the department. When evaluating entrances along a highway, the department considers many factors, including safety, efficiency, design standards, and the needs of abutting landowners. If you have concerns about gaining access to your property, you should share those concerns with department representatives.

Whenever a subdivision of land is proposed, any access consideration to the abutting highway must follow the provisions set forth in South Dakota Codified law 11-3-12.1

## **WHAT IS A TEMPORARY EASEMENT?**

A temporary easement is the right to use a portion of your property for construction purposes of performing work outside the acquired right of way. The landowner retains ownership of the construction easement area and the permission for entry terminates one year after construction of the project has been completed.

The most common use of temporary easements is for cut slopes, fill slopes, detours, and minor drainage channels.

## **WHAT IS THE STATE'S POLICY ON FENCING?**

The agency will acquire possession of all fences within the right of way and easement areas and will require the contractors to clear but not salvage the fence. The landowner will be permitted to salvage whatever portion of the fence desired. If a landowner wants to salvage fence the fence must be removed before the contractor is ready to clear the fence. The agency cannot promise the contractor will make any delays to permit this salvage. The agency will not be responsible for retention of livestock when the landowner salvages the fence. Any fence salvaged by the landowner must be removed from adjacent to the right of way so there are no unsightly stockpiles within sight of the highway.

The agency will provide a fence along the right of way for Interstate projects. On all primary and secondary highway projects the owners adjacent to the right of way involving fences will be given options for fencing consideration at the time of negotiation.

Option 1: The landowner may elect to remove the existing fence or have the agency remove and not replace the existing fence during construction. If this option is chosen the agency will not construct temporary or permanent fence to retain livestock.

Option 2: The agency will provide a replacement fence with one of its standard types in those areas where an existing fence is being used and is

within the work limits. If the second option is chosen the fence provided will be one of the standard types conforming as nearly as possible to the existing fence but in no case will it be less than a four strand barb wire fence. Any temporary fence as part of Option 2 will be provided where necessary to retain livestock when the contractor clears the existing fence. This fence is the property of the contractor. The contractor will remove the temporary fence after the permanent fence has been placed.

On Interstate projects the fence will be located inside the right of way line, remain as property of the State and be maintained by the agency. On all primary and secondary highways any fence provided will be located outside the right of way line, and will become the property of the landowner who will be responsible for maintaining it.

Fences that are different than the six standard type fences offered by the State will be valued and compensation will be provided to the owner of the fence for replacement.

### **WILL I BE PAID FOR CROP DAMAGE?**

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Crop damage will be paid when a crop is damaged or destroyed by the agency, its employees, agents or contractors in the normal exercise of their duties in the survey, testing, maintenance or construction of a State highway project. Crop damage will be paid only when a crop has been planted prior to the State's acquiring title or right of entry to the respective areas and in easement areas where survey stakes have not been set to outline such easement area. Crop damage will not be paid within the acquired right of way or easement area for alfalfa or other perennial grass being used for pasture.

The Area Engineer will determine if the claimed crop damage meets the above requirements. If so, the Area Engineer will measure the area of crop damaged. The amount of crop damage, or percentage thereof, payment will be based on the above measurements, average yield of adjoining fields and market price at the time of harvest less a predetermined harvesting cost. Normally the crop damage payment will not be made until after the grading portion of the project has been completed.

### **WILL LIVESTOCK PASSES BE PROVIDED?**

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A livestock pass must be justified from an engineering, safety, and economic standpoint. The owner who has a need for a livestock pass should make his/her request known at the landowner's meeting. This request will be forwarded to the Right of Way Program in Pierre where it is evaluated for consideration prior to the granting or rejection of the request. If the livestock pass is granted the landowner may be asked to contribute to the cost of the structure.

## **WHAT IF I HAVE AN UNECONOMIC REMNANT?**

If it is determined there is an uneconomic remnant during the appraisal process the State will offer to purchase it at the appraised value. You have the option of accepting the offer for purchase or keeping the uneconomic remnant.

An uneconomic remnant is a parcel of real property severed from a larger tract of land which the owner is left with after the partial acquisition for highway right of way having little or no value or utility to the owner.

## **WHAT ABOUT MY IMPROVEMENTS?**

Owners of real property involving buildings or other improvements are generally given options as a part of the acquisition process.

1. The State offers to purchase the improvements outright along with the land. If purchased the improvements are typically sold at public auction or by sealed bids.
2. If the owner wishes to retain the improvements, at a predetermined salvage value, (s)he may do so. The salvage value will be deducted from the overall purchase price. Relocation of an occupied dwelling is covered separately in the Relocation Brochure.

Once the State has taken possession of an improvement, the improvement and any fixtures become the property of the State, unless an exception is made in writing at the time of settlement.

## **WHEN MUST I REMOVE RETAINED ITEMS?**

All Right of Way Agreements specify a date by which the owner must remove the retained items. A request for an extension of time to remove retained items must be made by the owner in writing to the Right of Way Program prior to the letting date for consideration. After the letting date the request must be sent to the Region Engineer for consideration.

When an owner fails to remove retained property by the agreed upon date, the State has the right to dispose of these items in a manner most economical to the State.

## **WILL THE STATE PAY RELOCATION COSTS?**

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Any person lawfully occupying property acquired by the State who is displaced as a result of the acquisition of real property for a highway project is eligible for relocation assistance. The agent and/or relocation personnel will discuss such matters and inform you of your entitlements.

Relocation and your entitlements are explained in greater detail in the Relocation Brochure.

## **WHAT HAPPENS IF I DO NOT ACCEPT THE STATE'S OFFER?**

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If you determine you are unable to accept the State's offer of just compensation, ask the Acquisition Agent if a Right of Entry can be authorized for you to sign and executed by the parties. If a Right of Entry is executed, the agency will be able to enter upon the needed property to begin construction in accordance with the plans. If you sign a Right of Entry, you will be paid the amount of the just compensation offered. Settlement will be made at a later date, usually after construction completion through negotiations or court proceedings.

If you do not accept the State's offer of just compensation or do not execute a voluntary Right of Entry, the State may proceed to obtain possession of the property needed through the eminent domain process. The State may acquire possession of your property through a possession hearing with the Court. The amount of just compensation determined by a court appraisal will be deposited with the Clerk of Courts in your county. The amount of the final payment will be determined at a later date. In some cases, the State may proceed directly to the condemnation

trial in which case the possession date and compensation will both be established at the trial.

## **WHAT ABOUT MY LOAN?**

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The State makes payment directly to the property owner in most cases. If there is a mortgage or lien on the property a partial release is required. The State will secure a partial release from the lending institution. The State is responsible for any service fees. The lending institution may require their name on the payment check along with your name.

## **WILL I BE REQUIRED TO PAY RECORDING FEES, TRANSFER TAXES, MORTGAGE PREPAYMENT PENALTY COSTS OR REAL PROPERTY TAXES FOR THE RIGHT OF WAY TAKEN?**

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Expenses incidental to transferring title to the State are normally paid by the State. If any such costs are incurred by the owners they may submit a claim to the State for reimbursement.

Real property taxes do not need to be paid by the property owner for any month that the State is in legal possession for more than sixteen (16) days (South Dakota Codified Law 10-4-19.1).

## **MUST I PAY INCOME TAX ON THE SALE OF MY LAND?**

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The proceeds from the sale of land to the government are generally subject to taxation under Internal Revenue Service (IRS) rules. You should consult the local IRS office, your attorney or accountant for further information concerning your tax situation.

## **WHAT ABOUT LAND THAT IS IN CRP?**

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It is the responsibility of the landowner to inform the local FSA office of right of way and permanent easements that are acquired for public use. This is considered an involuntary loss of land by the participant. The CRP payments should be prorated to eligible participants based on the date the land was acquired for public use. The CRP acreage may be continued on temporary easements under CRP-1 if there is minimal impact on the affected acreage and the vegetative cover is maintained.

Your FSA office will require you to bring documentation such as the executed right of way agreement to prove the acres are being taken out of CRP through a public use acquisition.

## **WHEN CAN I EXPECT PAYMENT?**

Generally payment for right of way may be expected within thirty to forty-five days following execution of the required documents for right-of-way acquisition. Payments involving titles clouded by mortgages, judgments, liens, or other title issues could take somewhat longer.

## **WHERE CAN I GET ADDITIONAL INFORMATION?**

The Right of Way representative who contacted you can usually provide, or obtain, any information requested.

Additional information may also be obtained by contacting the Right of Way Program, South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. Telephone Number (605)773-3746.

## **WHAT ABOUT UTILITIES?**

As part of the construction project there are underground and overhead public or private utilities which will be affected and may need to be relocated. Through a separate contract with the Public Utilities such as power, telephone, rural water, and cable television. The state has the utility company adjust its location to an area outside of the road right of way or the utility may relocate within the right of way by permit. The Public Utility Company that relocates outside of the new right of way line will secure its own easement from the landowner.

Privately owned utility such as electrical lines to barns, signs, or wells will be valued by an appraiser or through negotiations, with estimates from professionals familiar with the specific utility type. With both type of utility relocation, private or public, the items such as trees, fences, or lawns will generally be moved/ disturbed prior to construction of the roadway. This may require the utility company or by the landowner if they have decided to salvage any improvement within the new right of way to be removed.

## **IMPORTANT TERMS USED IN THIS BROCHURE**

### **Agency**

An agency referenced in this brochure is typically the South Dakota Department of Transportation. It can be a government organization; Federal, State, or local, a non-government organization (such as a utility company), or a private person using Federal financial assistance for a program or project that acquires real property or displaces a person.

### **Acquisition**

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

### **Appraisal**

An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

### **Condemnation**

Condemnation is the legal process of acquiring private property for public use or purpose through the 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 agency then goes to court to acquire the needed property.

### **Easement**

In general, an easement is the right of one person to use all or part of the property of another person 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. Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow reconstruction of a driveway during construction.

### **Eminent Domain**

Eminent domain is the right of government to acquire private property for public use. In the United States, just compensation must be paid for private property acquired for projects.

### **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**

Just compensation is the price an agency must pay to acquire real property. The courts have generally defined just compensation as being the appraised fair market value of the property being acquired and the damages to the remainder of the property. An agency official must make the estimate of just compensation to be offered to you for the property needed. That amount may not be less than the amount established in the approved appraisal report as the fair market value for your property. If you and the agency cannot agree on the amount of just compensation to be paid for the property needed, and it becomes necessary for the agency to use the condemnation process, the amount determined by the court will be the just compensation for your property.

### **Lien**

A lien is 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. Customarily, liens must be paid in full when the property is sold.

### **Negotiation**

Negotiation is the process used by an agency 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, 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 to be included and valued in the appraisal of real property.

**Program or Project**

A program or project is any activity or series of activities undertaken by an agency where Federal financial assistance is used in any phase of the activity.

**Waiver Valuation**

The term waiver valuation means an administrative process for estimating fair market value for relatively low-value, non-complex acquisitions. A waiver valuation is prepared in lieu of an appraisal.

**Right of Entry**

A right of entry is an agreement in which the landowner grants possession of right of way and easements to the state with monetary settlement occurring at a later date.

## NOTES