

Right-Of-Way Acquisition Information



Introduction

Larimer County covers 2,600 square miles, and has over 1,000 lineal miles of public roads. These roads are located within public right-of-way (an area that has been established by the County for transportation, drainage, etc.).

One of the functions and responsibilities of Larimer County is the construction, operation, maintenance and improvement of the public roads within the County. Adequate right-of-way (ROW) to construct, re-construct, and /or improve roads is critical in maintaining a functional transportation network that serves the traveling public and County residents.

As roads are constructed and/or improved, it is sometimes necessary for the County to acquire additional ROW. This guide provides a general overview of the ROW acquisition process as it relates to road construction projects. It is not intended to provide legal advice, nor does it cover every possible situation as each project is unique. Readers are encouraged to review this information, and contact the County to discuss specific items or ask questions.





Historical Background

The County's road system dates back to the 1860's, when Colorado was not yet a state. Although the law has always allowed for the acquisition of needed ROW for roads, historically the property owners themselves often petitioned the County for a road to be established through their land and owners typically donated the needed ROW (generally a minimum of 60' wide).

Current Needs

In current times, the originally-established ROW may not be adequate to reconstruct an existing road in a manner that meets present engineering standards, mobility needs, vehicle use, travel speeds, safety, etc. Thus it may be necessary for the County to acquire new or additional ROW when a road project is undertaken.

The following pages provide a review of how ROW is typically acquired for a roadway project.

Right-of-Way Acquisition Process

Research

Prior to beginning a road project, County staff researches the history, extent, and nature of the existing ROW. This involves reviewing information and maps going back to the 1860's, as well as more recent ROW dedications which have occurred through platting or previous road construction projects.

As the project enters the design phase, the design engineer will determine whether (and how much) additional ROW is needed from each individual property that adjoins the project. The determination uses accepted engineering design standards, as well as information about the road's functional classification and its projected future design (for example where a two-lane existing road is expected to someday be expanded to four-lanes).

Owner Contact

When ROW needs have been determined for a project, County staff (or their representative) will contact each affected property owner. A meeting is arranged with each owner at their property to explain the nature of the project, the acquisition process, and answer questions.

The discussion will also include details about how the project will affect that specific property including the need for additional ROW, impact on landscaping, changes to driveways, the need for temporary construction easements, timing of construction, etc.

The owner is encouraged to provide input and to ask questions regarding the impacts of the project. He/She is given contact information so they can call County staff with additional questions, or to resolve issues that can occur prior to or during construction.



Agreement Components

In cases where a construction project requires acquisition of additional ROW or temporary easement for construction, or where there will be significant impact on individual properties, it is necessary to negotiate a written agreement between the County and the owner.

The agreement details:

1. What the County is acquiring or impacting,
2. What compensation is being paid to the owner for the additional ROW, or for loss or damage of trees, landscaping, and/or for temporary construction easement, etc.
3. What measures the County agrees to take to resolve issues such as driveway disturbance, loss of access, fencing replacement, drainage improvements, etc.
4. Deadlines or time limitations on compliance with terms of the Agreement.

In negotiating the terms of the agreement, it is the County's goal to be fair to the property owner as well as to the taxpayers who will be paying all of the costs associated with the project.

Determining Value

The process to determine the value of the acquisition can occur in a couple of ways:

For uncomplicated acquisitions with an estimated value of \$5,000 or less:

County staff will use County Assessor's records to determine recent sales data for vacant parcels of similar size in close proximity to the project area. Based upon these sales, a per square foot or per acre value will be determined. We welcome input from property owners regarding their knowledge of land values and recent sales in the area.

For acquisitions with an estimated fair market value greater than \$5,000:

The County will hire an independent qualified appraiser to determine the actual value. The appraiser will contact the owner and make an appointment to inspect the property. Owners are welcome to accompany the appraiser during the inspection, and to provide information regarding ownership, tenants, improvements, other land sales, etc.

The report prepared by the appraiser reviews sales of other properties and analyzes all elements that affect value. The report identifies the fair market value of the portion of the property being acquired as ROW, and other compensation that should be paid for damages or temporary easements.

Finally, if the property area that is involved (ROW being acquired) has an estimated value of \$5,000 or more, State Law requires the County to also pay the reasonable costs of an appraisal obtained by the property owner, if desired by the owner.

Compensation

Utilizing the staff research or the appraisal report, the County then determines the amount of “just compensation” that will be offered to the owner. This includes compensation for the actual ROW acquisition, and also values for temporary construction easements, slope easements, drainage easements, impact on landscaping and/or trees, damage to improvements, etc. In the rare case where the project requires removal of sheds, garages, pump houses, irrigation systems, or other structures, compensation will be paid for these as well.

Finalizing the Agreement

The negotiations that occur between the owner and the County’s representative are intended to be the basis for creating a formal

written “**Agreement**” that will be signed by the County and by the owner. As noted on page 3, this Agreement:

1. Indicates what is being acquired,
2. Clearly states what both parties have agreed to regarding compensation for the ROW, and for other items such as easements, trees, landscaping features, etc.
3. States what commitments have been made by the parties, such as reconstruction of driveways by the County, or removal of vehicles or other personal property by the owner.

In most cases, the owner agrees to provide to the County a signed **Deed of Dedication** by a certain date, which is the document that formally grants the ROW to the County. This document will be recorded with the County Clerk and Recorder.

If the County requires access to a portion of the property for a limited amount of time, the owner will also be asked to sign a **Temporary Construction Easement** which allows such access. Normally, the term of the temporary easement is one year, but the actual construction work is usually completed in a much shorter time.

Once the Agreement is signed by both parties, County staff requests that the Finance Department issue a check in the name of the owner(s), in the amount stated in the Agreement. Generally, it is four to six weeks before the owner receives the compensation.



Eminent Domain

Larimer County makes every effort to reach an agreement with each property owner during negotiations. County representatives are receptive to additional information that owners can provide while working towards a fair settlement.

In the unusual case that an agreement cannot be reached, the County has the authority to acquire the property by exercising its power of eminent domain. (It should be noted that it is extremely rare for the County to pursue eminent domain.)

If eminent domain is undertaken, the County institutes formal condemnation proceedings with the appropriate State court, in accordance with State Law. The court may initially authorize the County to gain “possession and use” of the needed ROW so the project can proceed in a timely manner. Subsequent court hearings would be held to determine the final amount of just compensation to be paid by the County. It is common for owners to obtain legal counsel when they receive notice that the County will be exercising eminent domain.



Project Construction

Once the project is under construction, County staff will continue to communicate with adjacent property owners as well as road users.

We will accommodate the needs of affected property owners to the extent possible while recognizing that construction scheduling and timing of work activities are often dictated by outside forces such as school schedules, irrigation ditch flow requirements, availability of alternative routes, weather, etc.



Owners are encouraged to track the project's progress on the County's website (larimer.org/engineering) or to call the Engineering Department (498-5700) with concerns or questions.

While we strive to minimize negative construction impacts, we acknowledge that area residents and the traveling public may be inconvenienced during construction, and we appreciate your patience.

A note about utility relocation/construction: Most projects require utility (water, sewer, electricity, phone, etc.) installation or relocations. In general, the utility companies have independent authority under the law to work on their facilities, and the County has little or no control over this part of the project. If / when questions or issues arise regarding utilities on a project, County staff can provide landowners with names and phone numbers of contact persons with the utility companies.



Finally, we value input, and may contact area residents after completion to determine how the improvements are perceived, and how we might do better.

Important Definitions

Acquisition

The process of acquiring real property (real estate) or some interest therein.

Appraisal

The act or process of estimating the monetary value of an interest in property. The appraisal is to be independent and impartial and prepared by a qualified appraiser. It must set forth an opinion of defined value for a specific described property. The value will be assigned as of a specific date and will be supported by the presentation and analysis of relevant market data. The term appraisal is also frequently used as a synonym for the written appraisal report.

Condemnation

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

Easement

In general, the right of a person or entity to use all or part of the property of another person or entity 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.

Eminent Domain

The right of a government to take private property for public use. In the United States, just compensation must be paid for private property acquired through eminent domain.

Fair Market Value

The sale price that a willing and informed seller and a willing and informed buyer can agree to for a particular property.

Interest

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 a public agency must pay to acquire real property. The price offered by the agency is considered to be fair and equitable to both the property owner and the public. The agency's offer to the owner is "just compensation" and may not be less than the amount established in the approved appraisal report as the fair market value for the property. If it becomes necessary for the acquiring agency to use the condemnation process, the amount paid through the court will be just compensation for the acquisition of the property.

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 taxes. Depending on the value of the lien relative to the value of the property, it may be required that the lien be paid in full when the property is acquired by the public agency.

Negotiations

The process used by acquiring agencies to reach amicable agreement with property owners 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

Any individual, partnership, corporation, or association.

Personal Property

In general, property that can be moved. It is not permanently attached to, or a part of, the real property.

Qualified Appraiser

A person who, by education, experience, ability, and licensing or certification requirements is capable of preparing an appraisal of a particular piece of real estate.

Real Property

The interest, rights, and benefits that go along with the ownership of real estate, which is land and the improvements thereon.

Right-of-Way ("ROW")

Land or property acquired for or devoted to transportation purposes.

More Information and County Contacts

Additional questions, request for more information, and/or comments can be directed to Land Agents in Larimer County Engineering Department:

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