



ITD

PROPERTY

ACQUISITION

Your Rights
as a
Property Owner

The Idaho Transportation Department (ITD) is committed to compliance with Title VI of the Civil Rights Act of 1964 and all related regulations and directives. ITD assures that no person shall on the grounds of race, color, national origin, gender, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any ITD service, program, or activity. The department also assures that every effort will be made to prevent discrimination through the impacts of its programs, policies, and activities on minority and low-income populations. In addition, the department will take reasonable steps to provide meaningful access to services for persons with Limited English Proficiency.

Costs associated with this publication are available from the transportation department in accordance with Idaho Code Section 60-202.

2500/05/2006

Introduction

All governments should serve the public welfare. To meet this responsibility, it is sometimes necessary for governments to acquire private lands in order to accommodate public projects. The authority to procure privately owned property for public use is an inherent power of government known as “eminent domain.”

The framers of the U.S. Constitution guarded against abusing this power with the 5th amendment which states “nor shall private property be taken for public use without just compensation.” Just compensation is usually defined as the amount of loss for which a property owner is compensated when property is taken.

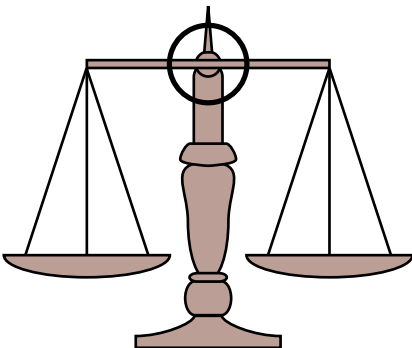


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What is the policy of the transportation department for acquiring property?

This brochure explains to you, as an individual affected by the acquisition of your property for a public improvement project, the policies and provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. This act protects your interests. In addition all actions taken by the transportation department must be in compliance with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964.

The following areas are covered in this brochure:

- what rights you have as a property owner under Idaho law;
- what the transportation department's policies and practices are for real property acquisition;
- how tenant-owned buildings, structures, and improvements are acquired;
- what incidental expenses are reimbursed prior to the transfer of the property title;
- what court costs could be reimbursed.

How are decisions made?

When a new roadway is being proposed or substantial improvements to an existing highway are needed, three distinct steps are taken.

First, the professional staff of the Idaho Transportation Department study the proposed improvements by evaluating:

- a) the physical characteristics of the roadway such as pavement conditions, roadway width, curves, hills, how far a driver can see down the highway;
- b) environmental concerns including impacts to wetlands, wildlife, schools, water and sewer services, air and water quality and noise pollution;
- c) current traffic and future traffic needs;
- d) accident records.



Vital role of public comment

Public comment is an especially critical step in reaching decisions. The transportation department actively seeks the public's advice throughout the planning, designing, construction and operation of a project through meetings, hearings and other efforts.

Who makes the final decision?

From this process, the professional staff of the transportation department make a recommendation for the route of a new highway or the extent of needed improvements to the Idaho Transportation Board.

The seven-member citizen Idaho Transportation Board meets once a month to oversee the operations of the department, establish policies and prioritize and fund transportation projects. The Idaho Transportation Board meets six times a year in Boise and six times across the state. The governor appoints the board members, who are confirmed by the Idaho Senate. Six members represent different geographical areas of the state and the seventh member is selected by the governor to serve as chairman.

Nine advisory boards and committees also make recommendations to the Idaho Transportation Board.

What are my rights if the state requires some or all of my property?

When the transportation department begins negotiations to acquire property, it will provide the owner a written summary of their rights. If the transportation department does not, there will be a presumption that any sale or contract entered into between it and the owner was not voluntary. The summary will provide essentially the following information:

1. The Idaho Transportation Department, as well as other state and local government entities, have the

power under the Constitution and the laws of the State of Idaho and the United States to take private property for public use. This power is referred to as the power of eminent domain or condemnation. The power can only be exercised when:

- the property is needed for a public use authorized by Idaho law;
- the taking of the property is necessary to such use;
- the taking must do the greatest public good and the least private injury.

2. The transportation department must negotiate with the owner in good faith to purchase the property or to settle with the owner for other damages that might result to the remainder of the property.

3. The owner is also entitled to be paid for any reduction in the value or use of the remaining property caused by the taking.



This compensation, called severance damages, is generally measured by comparing the value of the property before the taking and the value of the property after the taking. Damages are assessed according to Idaho Code.

4. The value of the property is based upon the highest and best use of the property.

5. If negotiations to purchase the property and settle damages are unsuccessful, the owner is entitled to an assessment of damages from a court, jury or referee as provided by Idaho law.

6. The owner has the right to consult with an appraiser of his/her choosing at any time during the acquisition process at the owner's cost and expense.

7. The transportation department must deliver to the owner, upon request, a copy of all appraisal reports obtained by it concerning the property. If a complaint for condemnation is filed, the Idaho rules of civil procedure control the disclosure of appraisals.



8. An owner has the right to consult with an attorney at any time during the acquisition process. In cases in which the transportation department

condemns property and the owner is able to establish that just compensation exceeds the last amount offered by 10 percent or more, the transportation department may be required to pay the owner's reasonable costs and attorney's fees. The court will make the determination whether costs and fees will be awarded.

9. The owner's rights form will be delivered by certified mail addressed to the person or persons shown in the official records of the county assessor as the owner of the property. A second copy will be attached to the appraisal at the time it is delivered to the owner.

10. An owner can take up to 30 days to respond to the initial offer given by the transportation department.

11. If a business has been in existence for five years or more and is owned by a party whose lands are being condemned and the business is located on those lands or upon adjoining lands owned or held by the same party, then the owner of the business may be entitled to damages to the business. (A tenant, business owner does not qualify and no business damage will be paid for a temporary interruption of business due to construction.) The business owner has the right to consult with an attorney and must file a claim with the Idaho Transportation Department to be eligible for this benefit.

Help with moving

If you have to move because your home was purchased, or if you must relocate your business or farm operation, you must be given at least 90 days notice. If you have to move from your home, a comparable home must be made available for you to move into.

You are not required to leave your property until:

- you have been paid the agreed purchase price;
- an amount at least equal to the transportation department's appraised value of your property is deposited with the court for your use; or the award resulting from a condemnation proceeding is deposited with the court.

After the transportation department has acquired your property, it may decide to rent it. The rent the transportation department may charge you or another tenant must not exceed the fair market value. The lease may also include a short termination notice.

How is the property appraisal performed?

An appraisal of your real property is to be made before negotiations start. (*Real property is defined as the rights and interests, possessed in land and generally whatever is erected, or growing upon, or affixed to, land*). You, or a representative you designate, must be given an opportunity to accompany the appraiser on his or her inspection. This allows you to point out any unusual or hidden features on the property. Instead of an appraisal a value estimate may be made on property where the portion required has an estimated value of less than \$10,000. You will be provided written notice a value estimate was made and given the opportunity to have an appraisal.

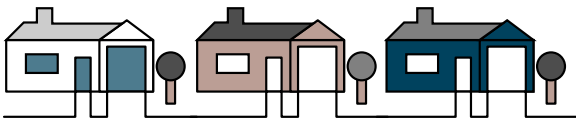
In preparing the appraisal, the appraiser may not consider an increase or decrease in the value of your property, prior to the date of valuation, which results from the highway project or the likelihood that your property will be acquired for the project. However, any physical deterioration within your reasonable control will be considered in the valuation of your property.

The completed appraisal(s) must be reviewed by the transportation department. Based on a review of the appraisals, the transportation department will establish the just compensation to be offered for the property.

How will negotiations for my property be conducted?

The transportation department must make a prompt offer to purchase the property for the full amount it has determined to be just compensation. At the initiation of negotiations, a written statement must be provided to you. This statement must include the amount offered and an explanation of the basis for determining this amount. In cases where only a part of the property is being purchased, the statement must separate the amount of compensation to be paid for the property being acquired and the amount (if any) for damages to the remainder. If the acquisition leaves you with an uneconomic remnant of property, the transportation department must offer to purchase it.

The transportation department may not take any action that would coerce you into accepting its offer. Prohibited actions include advancing the time of condemnation or postponing the deposit of funds in court for your use.



What if I can't reach an agreement with the transportation department?

Approximately 95 percent of the time, the transportation department and the property owner agree on a fair and equitable price for the land that must be acquired. But sometimes there are differences of opinion about how much a piece of property is worth.

When an agreement cannot be reached, the transportation department may acquire your property by condemning it through court proceedings. At the court proceedings, you would explain what you believe the property is worth and the transportation department will do the same. Then a judge or jury will determine what the property is worth and the amount to be paid to you.

What if I don't agree with the offered price, but don't want to hold up progress. What are my options?

If condemnation proceedings are necessary and you are willing to allow the transportation department to use the needed property, you would not have to wait for a payment. The transportation department will send you or deposit with the court 100 percent of the established fair market value of your property. You could have full use of this money while the judge or jury rules on the case.

What if I want to donate the needed land?

You can donate land to the transportation department. You must be informed of your right to just compensation for the property and waive that right.

What about tenant-owned buildings, structures and improvements?

The transportation department is required to pay for property as if it were in a single ownership, and the contributory value of the tenant's improvements will be paid to the tenant. In other words, if you are a tenant who owns the building on land required for public purposes, you will ordinarily be paid either the fair market value, which your building contributes to the real property, or the fair market value of the improvements for removal from the real property, whichever is greater.

However, no payment can be made unless the owner of the land involved disclaims all interest in tenant owned improvements. Also, in consideration for payment, you must assign, transfer and release to the acquiring agency all your rights, title and interest in and to such improvements.

No provision of this section deprives you of your right to reject payment under this Act and to obtain payment of just compensation of your property interests as otherwise defined by applicable law.

What expenses are reimbursable?

You can be reimbursed for the following expenses:

- recording fees, transfer taxes and similar expenses incidental to selling your property to the transportation department;
- penalty costs for prepayment of an existing mortgage encumbering your property;
- the proportionate share of property taxes you may have paid in advance of the purchase date of your property;

These costs will be paid to you as soon as possible after the property has been purchased or funds are deposited with the court.

Can I be reimbursed for legal costs?

If any of four conditions exist, the transportation department must reimburse you for your expenses including reasonable attorney, appraisal and engineering fees.

Legal fees are reimbursed only under these conditions:

- if the transportation department starts a condemnation action, but the court decides the department does not have the authority to acquire your property this way;
- if the transportation department starts a condemnation action and abandons it;
- if you successfully argue your property has been taken through inverse condemnation; (*Inverse condemnation is a legal process by which an owner brings suit against an agency to prove that the agency has taken compensable property rights without payment of just compensation*)
- if the court awards you costs and attorney fees.

Additional assistance with relocation

The Idaho Transportation Department realizes that the sale of a home or property to a public agency is often a difficult personal experience. The policies and provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 serve to greatly minimize the problems encountered in property transfers. Every effort will be made to reach an amicable settlement with you by offering as fair a price as you would receive on the open market, and by reimbursing you for your incidental expenses.

You may also be eligible for benefits under the Relocation Assistance Program created by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

These benefits are explained in a brochure entitled Relocation Services, which is available from the transportation department.



When will I know something definite?

It is often difficult to give immediate and definite answers to how long the process might take. Each highway project is unique. You may be certain of these things, however:

- you will have an opportunity for input while the project is being developed;
- you will not be approached to discuss the sale of your property until the project has been thoroughly analyzed and approved by the Idaho Transportation Board;
- an appraisal will be completed to establish the compensation for your interests.

You may use your property as you wish until the sale or transfer to the transportation department.

Where should I call if I have questions?

You can always determine the progress that is being made by contacting the Idaho Transportation Department District Office responsible for the highway construction in your area.

If you have any further questions, you can contact or write our District Engineer or the District Right of Way Supervisor in your area.

District No. One

600 West Prairie

Coeur d'Alene, ID

83815-8767

Phone: (208) 772-1200

District No. Two

PO Box 837

(2600 North and South Highway)

Lewiston, ID

83501-0837

Phone: (208) 799-5090

District No. Three

PO Box 8028

(8150 Chinden Blvd.)

Boise, ID

83707-2028

Phone: (208) 334-8300

District No. Four

PO Box 2-A

(216 Date Street)

Shoshone, ID

83352-0820

Phone: (208) 886-7800

District No. Five

PO Box 4700

(5151 South 5th Street)

Pocatello, ID

83205-4700

Phone: (208) 239-3300

District No. Six

PO Box 97

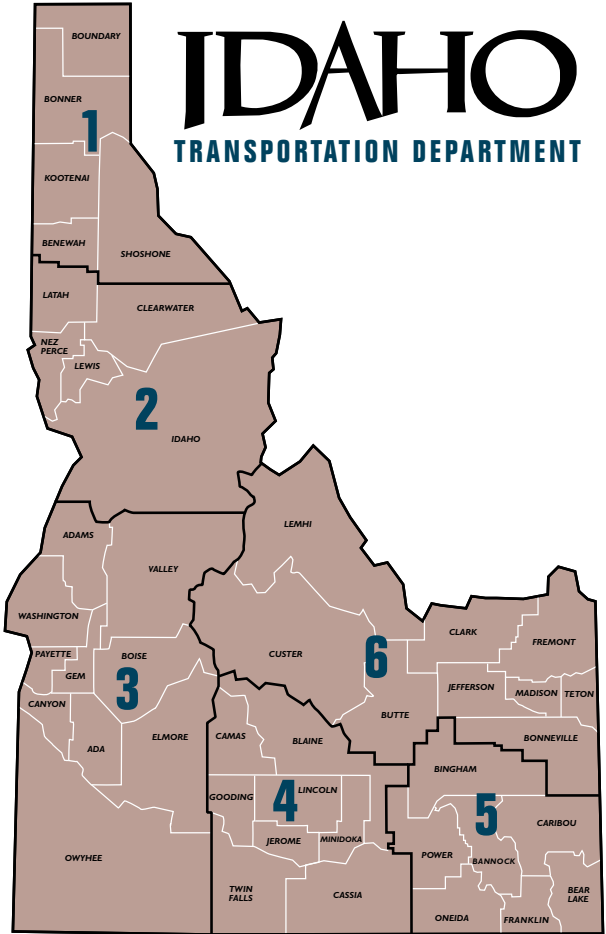
(206 North Yellowstone)

Rigby, ID

83442-0097

Phone: (208) 745-7781

Administrative District Boundaries



For more information on the
Idaho Transportation Department,
Right of Way Section, visit our web site at:
<http://itd.idaho.gov/row/new>

