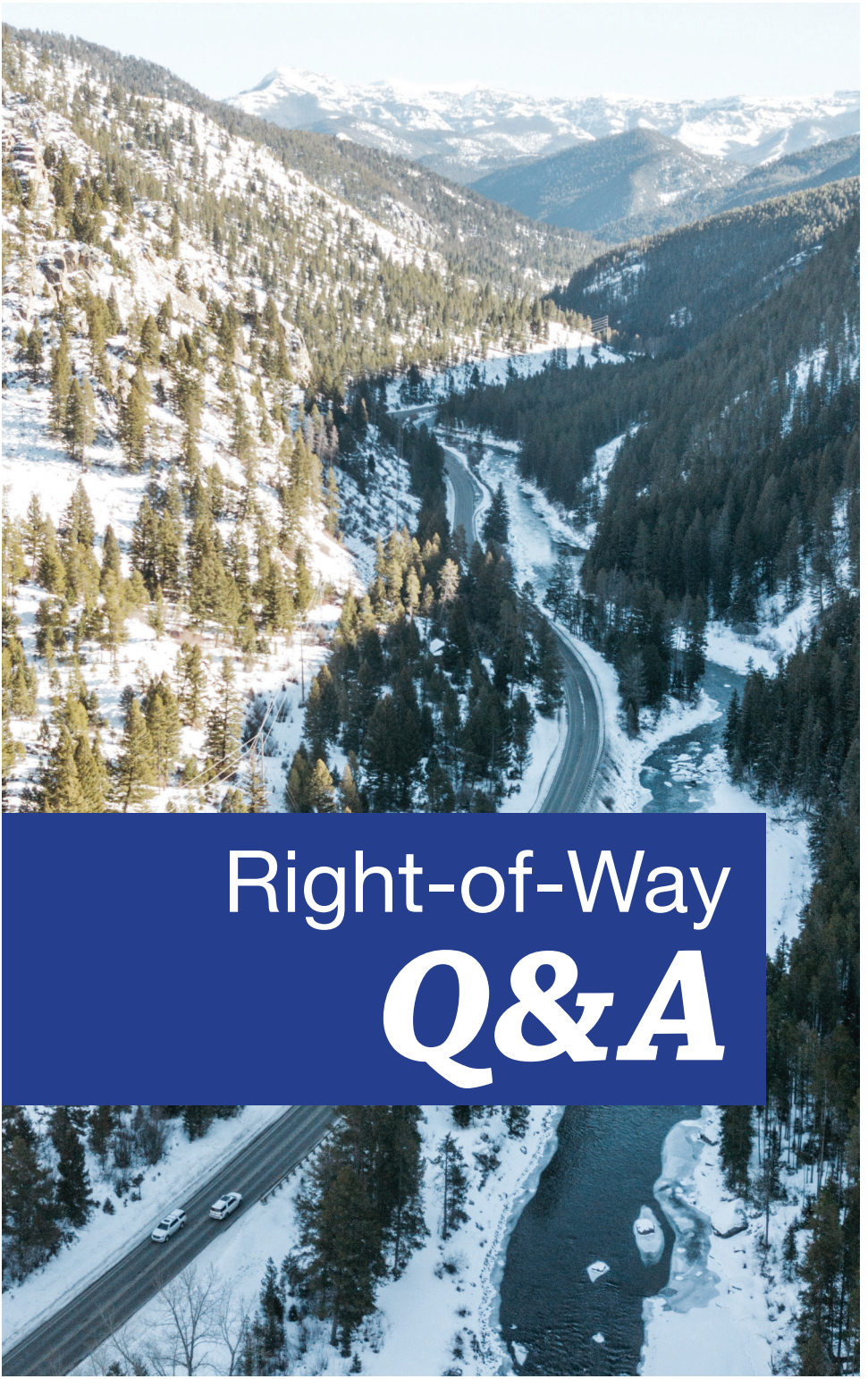


Right-of-Way Q&A

Table of Contents

Introduction..... 2

Important Terms Used in this Brochure..... 3

Property Appraisal and Just Compensation..... 6

Exceptions To the Appraisal Requirement 7

The Written Offer..... 8

What is a Partial Acquisition?..... 9

The Agreement between You and the Agency.....9

When Will I Get Paid and When Will I Have to Give Possession?.....10

Settlement and Condemnation.....12

Litigation Expenses.....12

Introduction

As Montana's population and transportation demands grow, so must the state's highway system. The Montana Department of Transportation (MDT) is continually planning and designing safety improvements to meet these growing needs in order to provide efficient and safe roads for the traveling public.

Years of planning, research, engineering, and designing have gone into each highway project to ensure it will best meet current and future needs of travelers. Often, projects require the purchase of land from private owners.

MDT Right of Way staff are available to answer questions and help affected property owners through this acquisition process. These appraisers and acquiring agents are experienced professionals trained to assist in every way they can. They will provide uniform and equitable treatment. In turn, they will rely on property owners' help to conduct their work intelligently and fairly, and to arrive at a conclusion which is mutually beneficial.

Read on to find the answers to some of the most frequently asked questions regarding property owner rights and benefits. Additional acquisition and relocation information can be found on the Montana Department of Transportation website:

https://www.mdt.mt.gov

Important Terms

ACQUISITION

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

APPRAISAL

The act or process of estimating the monetary value of an interest in property. The appraisal is to be independent, impartial, and prepared by a qualified appraiser. It must set forth an opinion of defined value of an adequately 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 the acquisition process have failed. MDT may find it necessary to file an action in court to acquire the needed property.

EASEMENT

In general, 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.

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 for federally funded programs or projects.

FAIR MARKET VALUE

Fair Market Value is defined in MCA 70-30-313 as "…the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) The highest and best reasonably available use and its value for such use, provided current use may not be presumed to be the highest and best use;

(2) The machinery, equipment, and fixtures forming part of the real estate taken; and

(3) Any other relevant factors as to which evidence is offered."

Important Terms (cont.)

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 an agency must pay to acquire real property. The price offered by MDT must be considered to be fair and equitable to both the property owner and the public. MDT's offer to the owner is our estimate of "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 MDT to use the eminent domain 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. Customarily, liens must be paid in full when the property is sold.

ACQUISITION PROCESS
The process used by MDT to reach amicable agreements 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. Personal property is not to be considered in the appraisal of real property.

FEDERAL-AID PROJECT
Any activity or series of activities undertaken by a federal agency, state agency, local agency, or individual where federal financial assistance is used in any phase of the activity.

QUALIFIED APPRAISER
A person who, by education, experience, ability and/or 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.

RELOCATION
Under state and federal laws, all persons who are required to move or relocate their family or business as a result of a federal-aid project are entitled to certain additional rights and compensations. These are explained in detail in another brochure that will be provided to all persons required to relocate.

UNECONOMIC REMNANT
The portion of an owner's property that remains after MDT acquires the property needed for a project, that MDT determines has little or no identifiable value or utility to the owner. MDT must offer to purchase the remnant, but the owner may opt to refuse the MDT offer and retain ownership of it.

UNIFORM ACT
Title 49, Part 24. Code of Federal Regulations (CFR). All federal, state, and local government agencies, as well as others receiving federal financial assistance for public programs and projects, that require the acquisition of real property, must comply with the policies and provisions set forth in the Uniform Act and state law.

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

How is my property appraised?

You will be contacted by an appraiser who has the assignment to appraise your property. This may be a qualified employee of MDT or a private contract appraiser. You or your designated representative will be offered the opportunity to accompany the appraiser during the property inspection. During this inspection, the appraiser will collect data regarding the site and any improvements.

You can assist the process by providing the appraiser with information on ownership and improvements to your property, including the location of underground facilities such as wells, septic systems and under ground storage tanks. This is your opportunity to tell the appraiser about anything relevant to your property.

The appraiser will evaluate the effects of the project on your property. To determine the value of the property to be purchased, the property is compared to other similar properties, which have sold recently. The appraiser must consider normal depreciation and physical deterioration that has taken place. By law, the appraiser must disregard the influence of the future public project on the value of the property. This requirement may contribute to any difference in the fair market value and any anticipated future value of the property. In Montana, compensation is based on the part acquired and any identifiable depreciation to the remainder parcel. Depreciation to the remainder can be offset by special benefits as a result of increased value of the remainder.

Finally, the appraiser prepares a complete and written appraisal report of the property describing in detail the basis for the determination of fair market value. The completed appraisal is then submitted to a review appraiser for a final review. The review appraiser may also view your property to verify data as presented in the appraisal. The review appraiser assures that the appraisal is accurate and complete and is in compliance with the laws as well as the principles and practices of acceptable appraisal methods. The review appraiser will provide a reviewed and 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.

Exception to the Appraisal Process

The Uniform Act requires that all real property to be acquired must be appraised but it also authorizes waiving that requirement for low value acquisitions. Regulations provide that 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 agency (MDT) believed that acquisition of your property is uncomplicated and review of the available data supports a fair market value likely to be $10, 000 or less. In these cases, the agency (MDT) may prepare a waiver valuation, rather than an appraisal report, to estimate the value of the parcel.

If the agency (MDT) 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 may prepare a waiver valuation with your written permission rather than an appraisal to estimate your fair market value. In this case, if you elect to have the agency appraise your property, an appraisal will be obtained.

The Written Offer

The next step of the acquisition process is the presentation of the written offer of just compensation to you or your designated representative. If practical, this offer will be delivered in person by a MDT acquisition agent. Otherwise, the written offer will be made by mail, with a follow-up contact in person or by telephone. All owners of the property with known addresses will be contacted unless they collectively have designated one person to represent their interests. MDT's written offer will consist of a written summary statement that includes all of the following information:

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

The offer may also list items of real property that you may retain and remove from the property and their retention value. If you decided 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. MDT may elect to withhold a portion of the remaining offer until the retained items are removed from the property.

MDT will also explain its acquisition policies and procedures in writing or in person. Any separately held ownership interests in the property, such as tenant occupancies or tenant owned improvements, will be identified.

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 rights, titles, 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.

Under the law, improvements can only be compensated for once. Duplication of payments is not in accordance with federal rules and applicable state laws.

For an improvement, just compensation is the amount that the improvement contributes to the fair market value of the whole property, or its reasonable value for removal from the property (salvage value), whichever is the greater. If improvements are considered personal property under state law, the tenant-owner may be reimbursed for moving them under the Relocation Assistance Program.

What is a partial acquisition?

Often MDT does not require or need all of the property you own. MDT only purchases what property is required for the project. If MDT intends to acquire only a portion of the property, the amount to be paid for the part acquired will be stated. In addition, an amount will be stated separately for depreciation, if any, to the portion of the property you will be keeping.

If MDT determines that the remainder property will have little or no value or use to you, the remainder is considered to be an uneconomic remnant, and MDT will offer to purchase it. You will have the option of accepting the offer for purchase of the uneconomic remnant or of keeping the property.

The Agreement Between You and the Agency

When you reach agreement with MDT on the offer, you will be asked to sign an option to buy, Right of Way Agreement, an easement, or some form of deed.
If you do not reach an agreement with MDT because of some important point connected with the acquisition offer and MDT has exhausted all its options to reach a settlement with you, MDT will initiate Eminent Domain proceedings.
MDT may not force you into accepting its offer by taking any of the following actions:

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

When will I get paid and when will I have to give possession?

PAYMENT

The next step in the acquisition process is payment for your property. MDT will prepare or have the necessary documents prepared for transferring title and will handle most details throughout the process.

MDT may find it necessary to address any outstanding loans or liens including property taxes prorated to the time of closing. In this case, MDT will request that these items be satisfied by the owner before or at the time the title is transferred.

Depending on the value of the acquisition, MDT may secure appropriate releases of mortgages and reconveyances of Trust Deeds.
Incidental expenses may also be paid or reimbursed. Incidental expenses are all those expenses incurred as a result of transferring title to MDT such as:

- Recording fees
- Release fees
- Title search fees
- Similar expenses necessary to convey the property to MDT
- Penalty costs and other charges for prepaying any preexisting recorded mortgage entered into in good faith encumbering the real property.
- The pro rata share of any prepaid real property taxes that can be allocated to the period after MDT obtains title to the property or takes possession of it.

If possible, MDT will pay these costs directly so that you will not need to pay the costs and then claim reimbursement. MDT is not required to pay costs required solely to perfect your title (that is, to assure that the title to the real property is entirely without fault or defect).

POSSESSION

MDT may not take possession of your property unless both of these conditions have been met:

- You have been paid the agreed purchase price or voluntarily granted a right of entry for construction purposes. In the case of condemnation, MDT must have deposited with the court an amount for your benefit that is at least MDT's approved appraisal of the fair market value of the property.
- All persons occupying the property have received a written notice to move at least 90 days in advance of the required move. In this context, the term "persons" includes residential occupants (both homeowners and tenants), businesses (including 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 ready for occupancy. Only in unusual circumstances (such as when continued occupancy would constitute a substantial danger to the health or safety of the occupants) could vacation of the property be required in less than 90 days.

Settlements and Condemnation • • •

MDT will make every effort to reach an agreement with you during the acquisition process. You may provide additional information and make reasonable counter offers and proposals for MDT to consider.

When it is in the public's best interest, MDT may use all the information provided as a basis to justify an administrative or legal settlement, as appropriate.

CONDEMNATION

On rare occasions, 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.

In Montana, a board of commissioners will initially determine the amount of compensation you are due for the property. You and MDT will be allowed to present information to the value commission during these proceedings.

If you or MDT are dissatisfied with the value commission's determination of compensation, a trial by a judge or a jury may be scheduled. The court will set the final amount of just compensation after it has heard all arguments.

ACQUISITIONS WHERE CONDEMNATION WILL NOT BE USED

MDT may elect not to use its power of eminent domain for a project. If this is the case, you will be informed in writing before the acquisition process begins that MDT will not condemn your property if you and the agency fail to reach an agreement.

Before making you an offer, MDT will inform you in writing of what it believes to be the fair market value of the property it would like to acquire.
An owner, in this situation, is not eligible for relocation assistance benefits. Tenants on the property may be eligible for relocation benefits.

LITIGATION EXPENSES

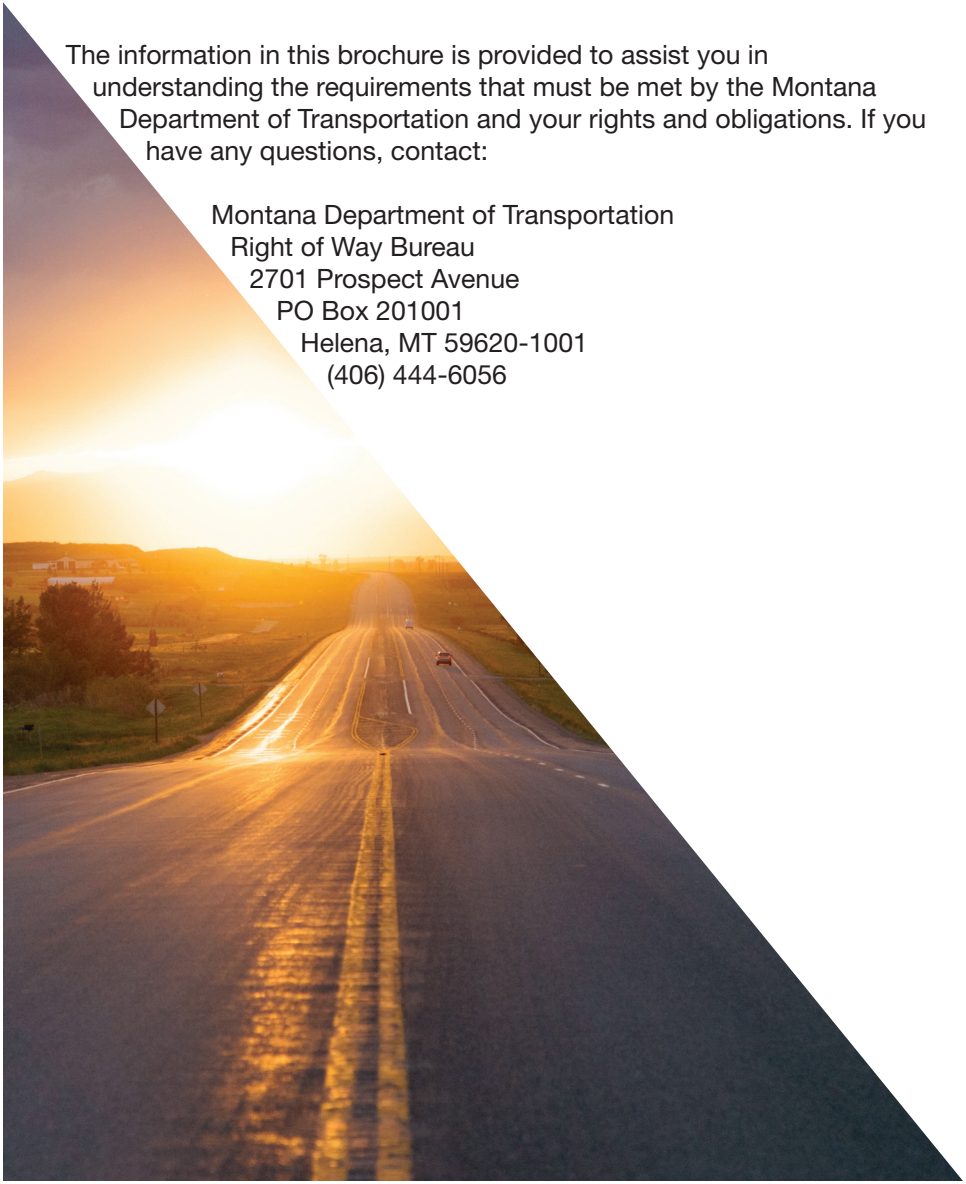
In the event a settlement is not reached by and between you and MDT, and MDT has to go to condemnation for resolution, MDT is not required to reimburse you for costs incurred as a result of condemnation proceedings unless the final award exceeds MDT's last offer of settlement.
MDT will reimburse your litigation costs if the court determines that MDT cannot acquire your property by condemnation, or

- The condemnation proceedings are abandoned by MDT without an agreed upon settlement.

- You initiate an inverse condemnation action and the court agrees with you that MDT has taken your real property rights without the payment of just compensation, or MDT elects to settle the case without further legal action.
- MDT may also be subject to State laws that require reimbursement of these or other condemnation costs.

The information in this brochure is provided to assist you in understanding the requirements that must be met by the Montana Department of Transportation and your rights and obligations. If you have any questions, contact:

Montana Department of Transportation
Right of Way Bureau
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001
(406) 444-6056



MONTANA
Department of Transportation

Alternative accessible formats of this document will be provided on request. Persons who need an alternative format should contact the Office of Civil Rights, Montana Department of Transportation, 2701 Prospect Avenue, PO Box 201001, Helena, MT 59620. Telephone 406-444-5416 or Montana Relay Service at 711.

This document is printed at state expense. Information on the cost of producing this publication may be obtained by contacting the Department of Administration.