

# RIGHT OF WAY DEFINITIONS

March, 2021

**Access Rights** - Power of Government to restrict/control a property owner's right to create entrances and exists on a public road. After a roadway is designed, built, and in use, there will be instances in which someone will request permission to create a driveway or entrance onto the roadway. These requests require consideration of local access control regulations, potential impacts to the roadway, and safety and capacity that a new entrance will create. Access rights cannot be denied or unreasonably be restricted unless other access is available. If it is not, compensation is paid for this restriction of access.

**Acquisition** - The process of obtaining right of way necessary to construct or support your project.

**Bundle of Rights** - Ownership of real property includes a great many rights, such as the right of occupancy and use, the right to sell it in whole or in part, the right to bequeath, and the right of transfer by contract for a specific period of time. It is also referred to as the benefits to be derived by the occupancy and use of the real estate.

**Certification of Right of Way Control Letter** - A written statement summarizing the status of all right of way related matters with respect to a proposed construction project.

**Damages** - The loss in the value of the remainder in a partial acquisition of a property. When the LPA acquires a part of an owner's property, the acquisition, planned use, or construction may cause a loss in value of the remaining property. Damages may also extend to adjoining properties in which the property owner has an interest. Normally, the value of the damage is based on a before and after appraisal or on the cost to cure. A property owner is entitled to payment of damages and receives this payment as a part of the payment of just compensation.

**Dedication** - Pursuant to the "police power" of government, this involves the setting aside of property for public use without compensation as a condition precedent to the granting of a permit, license, or zoning variance by a LPA. The property owner must initiate contact with the LPA for a request to develop before the LPA can proceed with dedication requirements.

**Donation** - The voluntary conveyance of real property without compensation which may be utilized for an improvement project. Donations of future right of way can only be accepted if the offer to donate is done voluntarily by the property owner who is advised of the right to receive an appraisal but signs a written waiver of the rights to be compensated. Right of way that is donated must also receive an environmental clearance even if no other right of way or rights in real property are required for the project.

**Easement** - The right of privilege to use real property (including access rights) distinct from the ownership of real property. There are a number of types as follows:

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**Highway Easement** - A right of rights granted or taken for the construction, maintenance and operation of a highway which does not transfer fee title.

**Slope, Drainage or utility Easement** - Easements for these purposes, covering areas which will either remain permanently under the acquiring LPA control, or be relinquished, or conveyed to utility owner by agreement.

**Temporary Easement** - An easement covering an area which is required for a limited period. On a specific date, all of the acquiring LPA's interest in the area is terminated. An example is a temporary (construction) easement which is used when the LPA must enter a property for temporary use during construction of the project. There must be a specified time period for which the temporary rights exists which is sufficient to allow for delays in advertisement of the project and for the anticipated construction order of work.

**Eminent Domain** - The inherent power reserved by government to acquire private property rights by due process of law when the necessity arises. When exercising this right, two basis requirements must be met: the use must be public and just compensation must be paid to the owner prior to taking possession of property.

**Encroachments** - A situation which usually occurs when items such as a house, sign or well are discovered to be on the owner's property illegally or without permission.

**Environmental Mitigation** - The act of lessening the damages to the surrounding area and its inhabitants which are attributable to the proposed project. These damages can be lessened by acquiring alternate sites to replace wildlife habitat or wetlands, or by building sound walls for noise attenuation.

**Fair Market Value (FMV)** - Generally held to be the measure of just compensation, and hence the need for an appraisal. The owner must be compensated for property which has been taken as well as damages incurred to what is left of the property. Market value is typically an estimate of the price a property would most likely sell for in the market between knowledgeable parties acting without duress.

**Fee Simple** - An absolute ownership without limitations or restrictions but subject to the inherent powers of government, i.e., eminent domain, escheat, police power and taxation.

**Hazardous Materials/Waste** - A material is hazardous if it poses a threat to human health or the environment. The term "hazardous waste" is applicable to storage, deposit, contamination, etc., involving a hazardous material which has escaped, or has been abandoned. It can be defined in general terms as flammable, reactive (subject to spontaneous explosion of fire) substances, corrosive, and toxic. Regulations require all toxic substances be removed in accordance with local laws prior to a public project proceeding to construction.

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**Inverse Condemnation** - The legal process initiated by a property owner to claim compensation for the taking of, or damages, to his property as a result of a public project.

**Just Compensation** - The payment made to a property owner in order to acquire property. The payment includes the value of the real estate acquired and any damages caused to the remainder of the property by the acquisition and /or construction.

**Negotiation** - The process of communication whereby an agreement is arrived at for the voluntary transfer of ownership at terms mutually acceptable to all parties of interest. This is the primary method for acquiring property for a project. It involves explaining items such as details of construction and just compensation, listening to the property owner, and determining the best way to reach an agreement for the sale of property.

**Partial Acquisition** - The taking of only a part of a property for public use under the power of eminent domain and for which just compensation must be paid, offsetting the damages and/or special benefits to the remaining property.

**Permit to Enter and/or Construction Permit** - Used when temporary rights are needed to perform work solely for the owner's benefit. These documents provide no permanent rights to the State (and the rights would not be condemned). Permits to Enter would also be used to collect data for hazardous waste or soil analysis and for environmental evaluation. It is possible to make payment for a Permit to Enter, when appropriate.

**Real Estate** - Refers to the physical land and appurtenances including structures affixed thereto.

**Relocation Assistance** - The process by which a government LPA meets the legal requirements for providing relocation services, moving cost payments, increased costs to find and acquire replacement property, for all eligible individuals, families, and business displaced by a project.

**Remainder** - Property remaining in possession of the owner after a partial acquisition in eminent domain.

**Right of Entry** - A document used to obtain permission to enter and perform some activity prior to the effective date of a Right of Way contract or an Order for Possession. It may be used to certify control of right of way in rare instances such as emergency situations. Solicitation of Rights of Entry prior to the appraisal process should be restricted to circumstances which are exceptional or emergency in nature. Ordinarily, the Right of Entry will not dislocate people or impact improvements of a significant nature. In all instances when a Right of Entry is secured, the document must explain the provisions for use, disposal, amount, and the time period.

**Uneconomic Remnant** - A remainder of land that has little or no value or utility to the owner as determined by the LPA.

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