Your Property,

Your Transportation Project



© 1990 California Department of Transportation. All rights reserved.

© 1990 California Department of Transportation. All rights reserved.

INTRODUCTION

This booklet was prepared for you as a person who may potentially be affected by a proposed public transportation project. If it is your property that is affected, you may have wondered what will happen. Who will contact you? What will you be paid for your property? Who will pay your moving costs? Will the State Department of Transportation (Department) help you find a new place to live? Important questions like these require specific answers.

We hope this booklet will answer some of your questions and present a better picture of our overall procedures.

© 1990 California Department of Transportation. All rights reserved.

WHY DOES A PUBLIC AGENCY HAVE THE RIGHT TO BUY MY PROPERTY?

Our State and Federal constitutions recognize the need for public agencies to purchase private property for public use, and provide appropriate safeguards to accomplish this purpose. State and Federal constitutions and the Uniform Relocation Assistance and Real Property Acquisition Policies Act authorize the purchase of private property for public use and assure full protection of the rights of each citizen. The responsibility for studying potential sites for a transportation project rests with a team of specially trained individuals selected to do this important job. Many months or even years are spent in preliminary study and investigation to consider possible locations for a project.

Consideration of the environmental and social impacts is as much a part of location determination as engineering and cost. Participation by private citizens and public agencies is actively sought so that various views can be considered in the study process. The process may include public hearings and/or workshops, which give persons an opportunity to express their views on the locations being considered.

© 1990 California Department of Transportation. All rights reserved.

The California Department of Transportation is composed of many specialists. Among these are:

Transportation Planners
These individuals determine methods and routes for the traveling public. This includes studies of existing traffic patterns, "origin-destination" surveys, and user benefits. They also determine whether the proposed project location is economically sound. They research and analyze the effects produced by similar projects upon other communities.

Environmental Planners
These individuals evaluate the socio-economic and/or environmental impacts, including traffic, noise, and visual impacts of the proposed project.

Design Engineers
These individuals recommend the type of transportation project which will be of the most benefit to the public. They prepare design plans which determine the properties needed for the project.

© 1990 California Department of Transportation. All rights reserved.

Relocation Specialists

These individuals perform early studies of the general needs of persons who may need to be relocated and the kind of replacement properties which may be required. A relocation impact analysis will be completed before the Department requires anyone to move from their property.

As a result of this team effort, the best possible location for a transportation facility is selected after thorough social, economic, engineering, and environmental analyses, as well as consideration of expressed public concerns and desires. The goal is that the project provide the greatest public good and the least private injury or inconvenience while rendering the best possible service.

Transportation Surveyors

These individuals perform field surveys and monument property lines to delineate and map the Department's right of way needs. They are also authorized by law to enter real property to perform such tasks. It is the Department's policy that owners and tenants of property will be notified prior to such surveys.

© 1990 California Department of Transportation. All rights reserved.

WHO WILL CONTACT ME?

One of the first persons you will meet is a Right of Way Agent performing the staff appraisal. You will be afforded the opportunity to accompany the appraiser on the inspection of your property. At the time of the inspection, the appraiser will also provide you with general project information. The appraiser will analyze your property and examine all of the features which contribute to its market value. Information about improvements you have made and any other special features that you believe may affect the market value of your property should be given to the appraiser to ensure he/she has all the information you feel is relevant.

It is the duty of the Department to ensure that you receive fair market value as if you sold your property privately in the open market. The Department cannot buy your property for more than it is worth, but it **can** and **will** assure you that you do not have to sell your property for less than its fair market value. California law provides that the owner shall receive a copy of the appraisal or a summary of the valuation upon which the Department's offer is based.

At the time the offer is made to purchase your property, you may obtain your own appraisal and the Department will reimburse you up to $5,000 for the actual, reasonable costs of obtaining an independent appraisal. A licensed State appraiser must perform your appraisal. Your Right of Way Agent will provide more information concerning this reimbursement at the time of the offer.

© 1990 California Department of Transportation. All rights reserved.

WHAT ADVANTAGE IS THERE IN SELLING YOUR PROPERTY TO THE DEPARTMENT?

A real estate purchase by the Department of Transportation is handled in the same way as any private sale of property. However, there can be financial advantages in selling to the Department.

The Department will pay fair market value for your property. The Department will also pay for the preparation of all documents, all title and escrow fees, a policy of title insurance, recording fees, and such other fees as may be required for the conveyance of title to the Department. Since this is a direct conveyance of real property from the property owner to the Department, there are no real estate commissions involved, and the Department will not recognize or pay any such real estate commissions.

A private sale will usually cost thousands of dollars in sales expenses. There are no seller's expenses in a purchase by the Department.

Additionally, depending on your specific circumstances, you may be eligible for relocation payments and benefits when you move. These benefits are described in supplemental booklets that will be provided to you, should the Department's acquisition actually cause you to be displaced from your property.

© 1990 California Department of Transportation. All rights reserved.

WILL I BE PAID FOR LOSS IN VALUE TO MY REMAINING PROPERTY?

When only a part of your property is needed for a project, every reasonable effort is made to ensure that you do not suffer damages to the remainder of your property. The total payment by the Department will be for the property the Department actually purchases and for any loss in market value to your remaining property.

The determination of any loss in market value is an appraisal analysis involving many variables. When this situation occurs, the Right of Way Agent will explain the effect of a partial acquisition on your remaining property.

© 1990 California Department of Transportation. All rights reserved.

MAY I RETAIN AND MOVE MY HOME, BUSINESS BUILDING, MACHINERY, OR EQUIPMENT?

If your house is movable and you wish to make such an arrangement, the Department will pay you based on the market value of your present lot including landscaping, plus the reasonable cost of moving the building. There are cases where, because of age, size, or condition of the house, the cost of moving it would exceed its present market value, less its salvage value. In such a case, payment of moving costs would, of course, be an unwise expenditure of public funds.

If you operate a farm or business, you may wish to keep and move fixed machinery and equipment. Additionally, as an owner of a business conducted on the property to be purchased, you may be entitled to compensation for a loss of business goodwill. Your specific circumstances will need to be analyzed on a case-by-case basis.

If any of these concepts apply to your situation, they will be explained by the Right of Way Agent assigned to purchase your property.

© 1990 California Department of Transportation. All rights reserved.

WILL I HAVE TIME TO SELECT ANOTHER HOME AFTER THE DEPARTMENT MAKES ITS PURCHASE?

The Department starts to appraise properties early enough so that you will have ample time to move prior to project construction. Like any other real estate transaction, it requires time to close an escrow after a right of way contract and deed have been signed. You will not be required to move until reasonable, decent, safe, and sanitary replacement housing is available.

Once you have received the written offer to purchase your property from the Department, it is in your best interest to look for a new place to live as soon as possible. Finding a home early that best suits your needs before you are required to move will minimize your personal inconvenience and will avoid having to make a choice of housing under pressure. In some instances, you may be able to sell your property to the Department and rent back temporarily pending construction.

The Department also offers to provide you with assistance in finding a new place in which to live. The Department will give you at least 90 days' notice in writing before you are required to move.

© 1990 California Department of Transportation. All rights reserved.

WHAT HAPPENS TO THE LOAN ON MY PROPERTY?

After you and the Department have agreed upon a price, a Right of Way Agent and/or a title company will contact all other parties having an interest in the property. Payment to satisfy outstanding loans or liens will be made through a title company escrow, as in the case of any real estate transaction.

WHAT WILL HAPPEN TO MY GI OR CAL-VET LOAN?

The Veterans Administration and the California Department of Veterans Affairs allow your veteran loan privileges to be transferred and to become available for coverage on another property.

Your Right of Way Agent will assist you in the transfer. However, it is to your benefit and your responsibility to check with the Veterans Administration or the California Department of Veterans Affairs for procedural instructions.

© 1990 California Department of Transportation. All rights reserved.

IF THE VALUE OF MY PROPERTY IS HIGHER TODAY THAN WHEN I PURCHASED IT, DO I HAVE TO PAY INCOME OR CAPITAL GAINS TAX ON THIS DIFFERENCE WHEN SELL/ CONVEY TO THE DEPARTMENT?

According to the Internal Revenue Service, the sale of property to a governmental agency for public purposes comes under the definition of an "involuntary conversion." In these cases, it is not necessary to pay income tax or capital gains tax if the money you receive is used to buy a similar property within a limited period of time. In every case, however, you should check with your local Internal Revenue Service office and/or accountant.

WILL I LOSE THE FAVORABLE PROPERTY TAX BASIS THAT I NOW HAVE UNDER THE PROVISIONS OF PROPOSITION 13?

Section 2(d) of Article XIII-A of the California Constitution and Section 68 of the Revenue and Taxation Code generally provide that property tax relief shall be granted to any real property owner who acquires comparable replacement property after having been displaced by governmental acquisition or eminent domain proceedings.

You will be given a copy of this information with an attached page showing examples of how to calculate estimates of the tax relief you may be eligible for. These are only approximations. You must see your county Tax Assessor for a final determination.

© 1990 California Department of Transportation. All rights reserved.

THE DEPARTMENT'S RIGHT OF EMINENT DOMAIN

An owner's rights are guaranteed by the federal and State constitutions and applicable federal and State laws. The principal right is that "Just Compensation" must be paid.

The vast majority of our transactions are settled by contract. However, if the owner and the Department cannot agree on the terms of sale, the Department may resort to the eminent domain process to avoid delaying the project and will ultimately initiate condemnation proceedings.

The Department will request authority from the California Transportation Commission (Commission) to file a condemnation action in court. You will be given an opportunity to appear before the Commission to question whether public interest, necessity, planning, and location require the proposed project and your property. The Commission does not hear arguments regarding valuation or just compensation.

Condemnation lawsuit documents are prepared by the Department and filed with the court in the county where the property is located. The Summons and Complaint will then be served on all persons having a property interest in the parcel. The persons served must file an Answer to the lawsuit within 30 days.

Counsel for the parties will then prepare for trial, and the court will set dates for preliminary motions and the trial.

© 1990 California Department of Transportation. All rights reserved.

WHAT HAPPENS IN A CONDEMNATION TRIAL?

The purpose of the trial is to determine the amount of Just Compensation. Usually, the trial is conducted before a judge and jury. Both the property owner and the Department will have the opportunity to present evidence of value. The jury will determine the amount of compensation after being instructed as to the law by the judge. In those cases where the parties choose not to have a jury, the judge will decide the amount of compensation.

The Judgment is then prepared by counsel and signed by the judge. It will state that, upon payment of the amount of the verdict for the benefit of the property owner, title will be transferred to public ownership.

When the Department makes the payment as required by the Judgment, the Final Order of Condemnation is signed by the judge and recorded with the County Recorder's office. This finalizes the actual transfer of title.

© 1990 California Department of Transportation. All rights reserved.

WHO PAYS THE CONDEMNATION TRIAL COSTS?

The Department pays the costs of its attorney and its engineering and appraisal witnesses. It will also pay the jury fees and your recoverable costs allowed by law. The fee for filing your Answer with the court is an example of such costs.

If the judge determines that the Department's offer of settlement was unreasonable, while the demand of the property owner was reasonable as viewed in light of the evidence admitted at trial and the verdict, the property owner may receive litigation expenses such as their attorney's fees. The Judgment is then prepared by counsel and signed by the judge.

IF I WANT A TRIAL, MUST I HAVE AN ATTORNEY AND EXPERT WITNESSES?

Most property owners will be represented by an attorney, although they have the right to represent themselves.

You may wish to consult your family attorney. If you do not have one, in many communities the yellow pages of the telephone directory will refer you to an attorney reference service. The local bar association may also provide a list of attorneys who may offer services in eminent domain proceedings.

You and your attorney must decide what type of case you will present and what witnesses will be needed.

© 1990 California Department of Transportation. All rights reserved.

WILL I BE PAID ANY RELOCATION ASSISTANCE BENEFITS EVEN THOUGH I GO TO COURT?

A decision to go to court has no effect on your right to relocation benefits. Payment of relocation benefits is administered separately from the condemnation action. You will be provided details of additional assistance to help displaced persons, businesses, farms or nonprofit organizations in finding, purchasing or renting, and moving to a new location. These are explained in various booklets prepared for homeowners, tenants, and business and farm operators and are made available by the Department of Transportation.

© 1990 California Department of Transportation. All rights reserved.

HOW LONG CAN I KEEP MY PROPERTY?

Continued use of your property usually depends on when construction must begin, including utility relocations, and the demolition and/or clearance of buildings. If construction must begin before the trial, the Department will seek a court order for early possession of your property.

In this regard, the Department will be required to deposit with the State Treasurer the probable amount of just compensation, as determined by an appraisal, as security for the value of the property rights it is seeking. The court will determine if the amount of money deposited is adequate. Once the deposit is made, the owner may withdraw all or a portion of it at any time during the condemnation proceedings.

The court may then grant to the Department an order for early possession allowing the Department to use the property for construction of the project.

To obtain an Order for Possession, the Department will file a motion with the court and schedule a hearing 90 days after you and all occupants of the property are served with the motion papers (60 days if the property is unoccupied). You and the occupants, if any, will have 30 days to oppose the motion. Once the court grants an Order for Possession of the property, the Department may obtain possession of the property 30 days after the owner and any occupants are served with the Order.

© 1990 California Department of Transportation. All rights reserved.

Subject to the rights of any other persons having an interest in the property, you may withdraw all or part of the pre-Judgement deposit.

If you do not make a withdrawal, the Department will pay interest on the eventual court award, or agreed settlement sum from the time it legally occupied your property until the date of final payment to you. Interest will accrue at the applicable statutory rate until paid at the time of final settlement.

The Department's Right of Way Agent assigned to purchase your property will assist you in the transaction and will be available to answer any additional questions you may have.

© 1990 California Department of Transportation. All rights reserved.

DEFINITIONS

The language used in relation to eminent domain proceedings may be new to you. These are some terms you may hear and their general meaning.

Acquire
To purchase.

Answer
The property owner's written reply, in appropriate legal form, filed with the court in response to the eminent domain complaint and as requested by the summons.

Compensation
The amount of money to which a property owner is entitled under the law for the purchase of their property and any related damages.

Complaint
The document filed with the court by the Department that initiates an eminent domain proceeding.

Condemnation
The legal process by which a proceeding in eminent domain is accomplished.

Counsel
An attorney or attorneys.

Department
The State of California acting through the Department of Transportation.

© 1990 California Department of Transportation. All rights reserved.

Eminent Domain
The right of government to purchase private property for public use.

Fair Market Value
The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

Final Order of Condemnation
The instrument which, when recorded, transfers title to public ownership.

Judgment
The court's formal decision based on applicable law and the verdict.

Just Compensation
The measure of Just Compensation is Fair Market Value.

Loss of Business Goodwill
A loss in the value of a business caused by the Department's acquisition of property that cannot be reasonably prevented by relocation of the business or the owner adopting prudent or reasonable steps that preserve the value of the business goodwill.

© 1990 California Department of Transportation. All rights reserved.

Parcel
Usually means the property that is being acquired.

Plaintiff
The public agency that desires to purchase the property.

Possession
Legal control; to have the right to use.

Property
The right or interest which an individual has in land, including the rights to use or possess. Property is ownership; the exclusive right to use, possess or dispose of a thing.

Right of Entry
An agreement between an owner and the Department that allows the Department to utilize the property while continuing to negotiate the terms of settlement. Interest, calculated at the statutory rate, is included in the settlement upon conclusion of the transaction.

Summons
Notification of filing of a lawsuit in eminent domain and of the necessity to file an answer or other responsive pleading.

Title
Legal ownership.

Trial
The hearing of the facts from a plaintiff and defendant in court of law, either with or without a jury.

© 1990 California Department of Transportation. All rights reserved.

Verdict

The amount of just compensation to be paid for a property, including any damages to the remainder, if applicable.

© 1990 California Department of Transportation. All rights reserved.

NOTES

© 1990 California Department of Transportation. All rights reserved.

NOTES

© 1990 California Department of Transportation. All rights reserved.

NOTES

© 1990 California Department of Transportation. All rights reserved.

© 1990 California Department of Transportation. All rights reserved.

STATE OF CALIFORNIA

CALIFORNIA STATE TRANSPORTATION AGENCY

DEPARTMENT OF TRANSPORTATION

DIVISION OF RIGHT OF WAY AND LAND SURVEYS

OCTOBER 2020

This is an informational pamphlet only. It is not intended to give a complete statement of all State or federal laws and regulations pertaining to the purchase of your property for a public use, the Relocation Assistance Program, technical legal definitions, or any form of legal advice.

© 1990 California Department of Transportation. All rights reserved.