Understanding the Right of Way Process

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

North Carolina is one of the fastest growing states in the nation. As the state grows, the need for transportation improvements grows as well. The N.C. Department of Transportation (NCDOT) is committed to providing a safe transportation system that ensures people and goods can get where they need to go, improve economic opportunities and protect the quality of our state.

Often this process involves the purchase of land so that North Carolina's highways and other public modes of transportation can expand and handle increased demands. If you own property near an existing or proposed highway, you may be interested in how NCDOT operates and how you, as a citizen, may be affected by a highway or other transportation project.

NOTICE REQUIREMENT

The notice requirement in 49 C.F.R (Code of Federal Regulations) 24.102(b) provides: ***"Notice to owner. As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part."***

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WHY IS NORTH CAROLINA'S TRANSPORTATION INFRASTRUCTURE SO IMPORTANT?

North Carolina maintains more than 80,000 miles of roads throughout the state. As North Carolina's population continues to grow, it is essential that transportation improves for citizens and visitors. For example, highways with improved accessibility improve the safety of travel for the public, emergency vehicles and school buses.

Not only do improved highways improve and ensure safety, but they also create jobs that grow North Carolina's economy. Tourism and recreation increase, the economy improves, and residential, commercial and industrial developments thrive.

STEPS IN A TRANSPORTATION PROJECT

A certain amount of private property must be acquired to provide North Carolinians with safer and modern transportation systems. This is a consideration that the department does not take lightly. Your land is one of your most valuable possessions and NCDOT will consider all reasonable options to avoid the purchase of private property where possible.

The coordinated efforts of planners, Right of Way agents, design engineers, traffic engineers and others are needed to determine the safest location and design that most benefits the public.

STEPS FOR A NCDOT TRANSPORTATION PROJECT

1. A transportation project is identified
2. Multiple elements related to the future project are studied *(traffic, property surveys, etc..)*
3. Public hearings and meetings take place; environmental studies are conducted
4. Project alignment (path of location) is approved
5. Project design is approved and property needs are identified
6. Right of way acquisition is authorized by the NCDOT Board of Transportation
7. Boundary surveys are prepared and right of way to be acquired is marked on the property
8. A written offer is made to the property owner
9. The property owner receives just compensation
10. Relocation assistance is provided to those who are eligible.
11. NCDOT certifies former property owners have moved from the property
12. NCDOT advertises for construction, bids are submitted and the construction contract is awarded
13. Construction begins
14. Project is complete and open to the public

INITIAL CONTACT WITH NCDOT

Once a transportation route is approved and the design is complete, detailed plans are developed which determine the amount of land needed for the construction of the transportation project. If you are identified through a title search as an owner of property needed for the project, a Right of Way agent will contact you to discuss the highway project and its impact on you.

Right of Way agents are trained to explain the project and answer any questions you have.

- The transportation project may require only a portion of your property (partial acquisition) or your entire property
- You will be shown highway right of way plans to see how your property may be affected
- You will be advised of your legal rights during the initial meeting

YOU HAVE THE LEGAL RIGHT TO:

1. Have your property appraised by a licensed appraiser
2. Accompany the appraiser on the inspection of all structures on your property
3. Have your property appraised for value without any appraiser conflict of interest and without undue influence or coercion reflected in the appraised value
4. Receive a written offer for compensation
5. Negotiate with NCDOT on your written offer
6. Be paid the full amount of compensation prior to being required to vacate your property
7. Receive an offer to purchase any small, remaining tracts left over from your acquisition at market value
8. Be informed of your rights and benefits under the Relocation Program if your dwelling or commercial building is in the path of the highway project
9. Be assured of your rights under Title VI, the Civil Rights Act of 1964, N.C. General Statutes, and 49 CFR Code of Federal Regulations
10. Have your compensation determined by a court of law if you cannot reach a settlement with NCDOT

THE APPRAISAL PROCESS

Following your initial meeting with the Right of Way agent, an appraiser will contact you to set up a meeting to assess fair market value. You are guaranteed to have your property appraised for value without any appraiser conflict of interest and without undue influence or coercion reflected in the appraised value.

If the impacts to your property are minimal, the agent may prepare a "value evaluation" in lieu of an appraisal. This evaluation will involve an analysis of recent sales of similar properties in the area. If you are unsatisfied with the value evaluation or prefer to have a complete appraisal analysis performed, you can always request to have your property appraised by a general licensed appraiser.

The appraiser may need to see the inside of your home or business and take measurements to ensure your appraisal is as accurate as possible. You have the right to accompany the appraiser on the inspection of all structures on your property and ask questions.

A review appraiser will review the completed appraisal to ensure all elements affecting your property values are considered and an accurate appraisal of value is set.

WRITTEN OFFER TO PURCHASE

You will receive a written offer for compensation for the fair market value of your impacted property. The offer will represent the full amount of the approved appraisal or value evaluation.

YOUR WRITTEN OFFER WILL INCLUDE:

1. The full amount offered as just compensation. If NCDOT does not need your entire property for the project, your written offer will state whether you are entitled to receive damages to your remaining property.
2. A description and location of your land to be acquired
3. Identification of buildings, structures and/or other items which are considered part of the property needed for the project. When appropriate, a statement will identify any separately held ownership interest in the property such as tenant-owned improvements.
4. An offer to purchase any small, remaining tracts, deemed as uneconomic by the Department, that has no utility or economic potential to the Department or property owner.

SETTLEMENT AND CLOSING

You have the right to negotiate with the department on your settlement. When you reach a settlement, you may expect payment within 2-6 weeks from the date documents are signed.

If you have an outstanding lien or mortgage on the property, it may take longer than normal to receive payment. Liens and mortgages must be paid off or NCDOT must receive a release from the mortgage or lien company allowing the department to proceed with payment to you while your lien or mortgage is active. NCDOT will hire a closing attorney, at no charge to you, to process any lien or mortgage information or payments on your behalf. The closing attorney will legally transfer the property to NCDOT at a formal closing, at no cost to you.

In some situations where the amount of land needed for the project is small, your Right of Way agent may be able to close the claim without the aid of an attorney. In such cases, the agent will record the deed between you and NCDOT and deliver payment to you.

TAX PRORATIONS

At closing, the amount of right of way you deed to NCDOT will be deducted from your county tax assessment. However, you may still be required to pay the full taxes of your property prior to this. You are eligible to be reimbursed for a portion of your current real estate property taxes which will be prorated at the time of closing by the closing attorney. You could be asked to provide tax receipts to the Right of Way agent to process this reimbursement.

IRS REPORTING

The sale of property for public purposes falls within the Internal Revenue Service classification of “Involuntary Conversion.” Your federal income taxes may be affected by the sale of your property. You will receive a 1099 at the end of the year by either NCDOT or the attorney who closed on your property.

WHAT HAPPENS IF YOU DON'T AGREE ON A PRICE WITH NCDOT FOR THE SALE OF YOUR PROPERTY?

The North Carolina Constitution permits the State to acquire your property for a transportation project, provided you are paid just compensation. There is no requirement that you reach a settlement with NCDOT for the sale of your property. To fully protect your rights, the laws of North Carolina allow you to have compensation determined by a court of law.

If you and the department do not reach an agreement on the value of your property, the Right of Way agent will request the Attorney's General office to initiate a lawsuit allowing NCDOT to acquire your property through the Clerk of Superior Court in the county where your property is located. This process is known as condemnation.

STEPS FOR CONDEMNATION:

STEP 1

NCDOT notifies you or your representative of an impending condemnation lawsuit action. The date of the filing of the lawsuit should be clearly stated to you in a written letter.

STEP 2

The Attorney General's office will file the condemnation action on the date stated to you.

STEP 3

The Attorney General's office will also deposit with the Clerk of Court in the county where your property is located, the amount which NCDOT has offered you as just compensation for your property. Just compensation is the fair market value indicated on your written offer letter.

STEP 4

Once NCDOT makes a deposit with the Clerk of Court, the department has the right to enter onto your property. If necessary, NCDOT will notify you of a date you need to vacate premises. We want to work with you to provide as much as time as possible to find and move to a new home while keeping the project on schedule.

STEP 5

You can apply to the Clerk of Court to withdraw the amount of the deposit. Your application to withdraw this money does not mean that you agree to settle. The judge who disperses this money may elect to withhold some, or all, money for taxes, mortgages, liens and assessments, and may pay those items out of your deposit money. Once the deposit is made available, interest on the amount of the deposit will NOT accrue, even if left on deposit with the court.

STEP 6

If you decide to contest the valuation of your property by NCDOT, you must file a response to the lawsuit as filed by the Attorney General's office. It is important that you or your representatives file in a timely manner. If an answer to the lawsuit is not filed within one calendar year, NCDOT can seek a default judgment which would allow the judge to award a settlement in the amount of the deposit amount filed.

STEP 7

The Clerk of Court will set a date for the trial where a jury will hear testimony from you and NCDOT. Negotiations can continue during the process. If an agreement is reached prior to the trial, both parties can petition the judge for settlement approval.

STEP 8

The court will require formal meditation prior to trial if both parties still have not reached a resolution. You or your representative will be contacted to select a certified mediator.

STEP 9

If a settlement with NCDOT is not reached at mediation or prior to trial, the judge will commence trial on this matter to determine fair market value of your property.

THE RELOCATION ASSISTANCE PROGRAM

If you are required to move, you will be informed of your rights and benefits under the Relocation Program. The Right of Way agent will provide you with relocation advisory services and assist you through the relocation process.

In some instances, you will receive replacement housing payments for moving as determined by State and Federal regulations. You will be paid the full amount of compensation before being required to vacate your property.

FREQUENTLY ASKED QUESTIONS

Why are Public Meetings Held?
A public meeting gives you and local officials the opportunity to have an open discussion regarding the need for and merits of the proposed transportation project. An official transcript is made of these comments and NCDOT will review and discuss them to determine if suggestions can be implemented into the plan.

Can a Survey or Soil Testing Crew Enter my Property Without my Permission?
Yes. North Carolina General Statute 136-120 permits survey or soil testing crews authorized by NCDOT to enter upon any lands to perform surveys or soil tests without permission from the property owner. However, as a matter of law, crews are required to notify you before doing so. The law also provides that compensation be paid to you for any damages or injury to the premises caused by these crews.

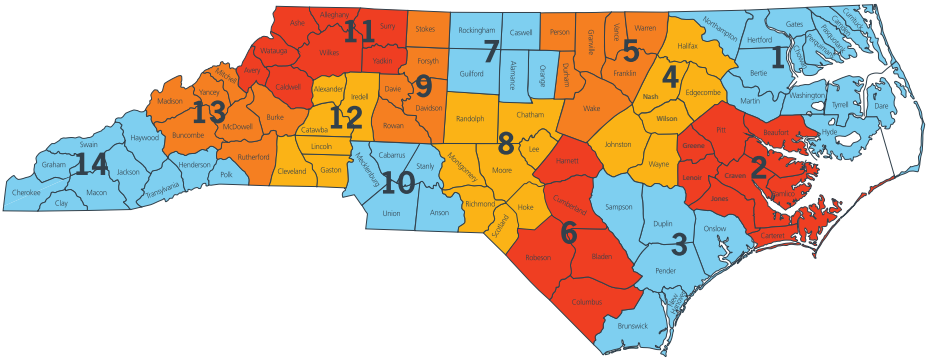
What if my Property is Being Affected by a Transportation Project, but the Date to Purchase my Property is Years in the Future? Can NCDOT Purchase my Property Now?
NCDOT cannot purchase your property until the project is authorized. However, the department does allow affected property owners to apply for the purchase of property early if you have a hardship. You must be able to prove that you can have a medical or financial hardship, or a safety concern for NCDOT to consider the purchase of your property in advance. You may request a hardship acquisition application from your local Division Right of Way office.

What if I Own Rental Property That is Affected by the Transportation Project and my Tenants Move out after Hearing how the Project will Affect the Property?
Until NCDOT acquires your rental property, your lease is still valid with the tenant. You have the right to enforce your lease until the Department acquires your property. If your tenant moves out and you are having difficulty leasing the property because of knowledge of the transportation project, you can request that NCDOT pay your rent on the property for up to six months.

If the department approves this payment, you cannot lease the property to anyone. Your request for protective rent will typically only be considered for projects where the Right of Way project acquisition start date is less than six months from anticipated Right of Way project authorization by the Board of Transportation.

May I Request a Meeting with Right of Way or Division Staff Before the Right of Way Acquisition Process Begins?
Absolutely! In fact, we encourage you to contact your local NCDOT Right of Way or Division Office to find out as much as possible about a transportation project. On the next few pages, you will find a roster of our local Right of Way and Division Offices.

How are my Rights Protected During the Acquisition of my Property?
When NCDOT decides to impact private lands, we do so with great care and study. We do not want to acquire any lands we do not absolutely need. You can learn more about your rights under Title VI, the Civil Acts Right of 1964, N.C. General Statutes, and 49 CFR Code of Federal Regulations.



DIVISION 1

Division Engineer's Office
113 Airport Drive, Suite 100
Ahoskie, N.C. 27910
(252) 482-1865

Right of Way Office
230 N.C. 42 West
Ahoskie, N.C. 27910
(252) 332-8182

DIVISION 2

Division Engineer's Office
2815 Rouse Rd. Extension
Kinston, N.C. 28504
(252) 775-6100

Right of Way Office
1430 East Arlington Blvd.
Greenville, N.C. 27858
(252) 364-9030

DIVISION 3

Division Engineer's Office
5501 Barbados Blvd.
Castle Hayne, N.C. 28429
(910) 341-2000

Right of Way Office
5501 Barbados Blvd.
Castle Hayne, N.C. 28429
(910) 341-2100

DIVISION 4

Division Engineer's Office
509 Ward Blvd.
P.O. Box 3165
Wilson, N.C. 27895
(252) 640-6400

Right of Way Office
490 Ward Blvd.
Wilson, N.C. 27985
(252) 640-6570

DIVISION 5

Division Engineer's Office
2612 N. Duke St.
Durham, N.C. 27704
(919) 220-4600

Right of Way Office
615 Stadium Dr.
Durham, N.C. 27704
(919) 220-4700

DIVISION 6

Division Engineer's Office
P.O. Box 1150
Fayetteville, N.C. 28302 *(mail)*
558 Gillespie St.
Fayetteville, N.C. 28301 *(physical)*
(910) 364-0600

Right of Way Office
Fayetteville, N.C. 28302 *(mail)*
455 Transportation Dr.
Fayetteville, N.C. 28301 *(physical)*
(910) 364-0605

DIVISION 7

Division Engineer's Office
P.O. Box 14996 *(mail)*
Greensboro, N.C. 27415-4996
1584 Yanceyville St. *(physical)*
Greensboro, N.C. 27415-4996
(336) 487-0000

Right of Way Office
1101 E. Wendover Ave., Suite 200
Greensboro, N.C. 27405
(336) 334-3515

DIVISION 8

Division Engineer's Office
121 DOT Drive
Carthage, N.C. 28327
(910) 773-8000

Right of Way Office
293 Olmsted Blvd., Suite 11A
Pinehurst, N.C. 28374
(910) 621-6100

DIVISION 9

Division Engineer's Office
375 Silas Creek Pkwy.
Winston-Salem, N.C. 27127
(336) 747-7800

Right of Way Office
1605 Westbrook Plaza Dr.,
Suite 201
Winston-Salem, N.C. 27103
(336) 760-8737

DIVISION 10

Division Engineer's Office
716 W. Main St.
Albemarle, N.C. 28001
(704) 983-4400

Right of Way Office
206 Charter Rd.
Albemarle, N.C. 28001
(704) 244-8900

DIVISION 11

Division Engineer's Office
801 Statesville Rd.
North Wilkesboro, N.C. 28659
(336) 903-9101

Right of Way Office
709 Statesville Ave. *(physical)*
North Wilkesboro, N.C. 28659
(336) 667-9114

DIVISION 12

Division Engineer's Office
P.O. Box 47 *(mail)*
Shelby, N.C. 28151-0047

1710 E. Marion St. *(physical)*
Shelby, N.C. 28151-0047
(980) 552-4200

Right of Way Office
840 Wallace Grove Dr.
Shelby, N.C. 28150
(704) 480-5472

DIVISION 13

Division Engineer's Office
55 Orange St.
Asheville, N.C. 28801
(828) 250-3000

Right of Way Office
6 Roberta Rd., Suite 102
Asheville, N.C. 28803
(828) 274-8435

DIVISION 14

Division Engineer's Office
253 Webster Rd.
Sylva, N.C. 28779
(828) 586-2141

Right of Way Office
1594 E. Main St.
Sylva, N.C. 28779
(828) 586-4040

ROW ACQUISITION PROCESS CHECKLIST

1. Initial contact date:

2. Appraisal/value evaluation inspection date:

3. Written offer date:

4. Settlement date:

5. Closing date:

6. If no settlement, condemnation filing date:

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