

DEPARTMENT OF TRANSPORTATION
2400 Division of Transportation Solutions

2406 Policies and Procedures for Acquisition of Certain Real Property

1.0 Purpose

- 1.1 The Department of Transportation has limited statutory authority to acquire public or private property and property rights in connection with the Department's jurisdiction. Traditionally, the Department has acquired the necessary property rights upon final right-of-way plan approval for a project. In certain instances, the best interests of the state and individual property owners may be better served if such interests are either acquired or reserved by the Department prior to final right-of-way plan approval. The purpose of this regulation is to enumerate the specific policies and procedures governing the advanced acquisition of real property by the Department, as contemplated by 17 **Del.C.** §137(a)(2).
- 1.2 Property acquisitions pursued in accordance with an approved final right-of-way plan prepared for a Department project as defined herein are specifically exempt from this regulation.
- 1.3 The Department, when acting as the agent of the Delaware Transportation Authority for special property acquisitions in accordance with 2 **Del.C.** §1309(5), shall seek a consistency review from the Committee established under §137(a)(2) prior to settlement with owners to verify the transaction is in the public interest, unless otherwise subject to approval by another public body or federal agency.

22 DE Reg. 545 (12/01/18)

2.0 Definitions

"Advanced acquisition" means the acquisition by the Department of any interest in real property prior to approval of final right-of-way plans for the project for which such real property interest is being acquired. For purposes of this regulation and the Department's Real Estate Manual, "advanced acquisitions" shall include, without limitation, reservation agreements.

"Advanced Acquisition Committee" or **"Committee"** means the committee created and defined pursuant to 17 **Del.C.** §137(a)(2).

"Consistency review" shall mean the review by the Committee to determine the consistency of such action with the State's overall goals for land use planning pursuant to 17 **Del.C.** §137(a)(2).

"Corridor" means a particular route of one or more highways of this State, serving predominantly statewide and/or regional travel needs. By way of example and not limitation, State Routes 1, 2, and 141, and U.S. Routes 13, 113, and 202 are corridors under this definition.

"Department" means the Delaware Department of Transportation.

"Hardship acquisition" shall mean an advanced acquisition to resolve a specific hardship imposed upon the owner as a result of a project. Hardship acquisitions shall include situations in which an owner must demonstrate the need to relocate for personal reasons (e.g., job transfer, death in the family, retirement plans, or medical reasons) and is unable to sell his or her property as a result of a project.

"Owner" shall mean the owner of the real property interest which the Department seeks to acquire or reserve.

"Project" means an undertaking for a capital improvement by the Department acquisition of real property as part of the Corridor Capacity Preservation Program, or certain Special Property Acquisitions, and which uses state and/or federal funds.

"Protective acquisition" shall mean an advanced acquisition to allow the Department to protect from development real property within a project area, in instances where development would increase the eventual cost of property acquisition to taxpayers, or would limit location alternatives for the project. Protective acquisitions shall include, without limitation, long-term leases and reservations to allow the Department to protect from development real property within a project area.

"Reservation" means a commitment by the Department to compensate an owner of any interest in real property, in exchange for an agreement by the owner to refrain from further developing his or her property or designated portions thereof.

"Special Property Acquisitions" shall mean the acquisition of real property in fee simple or lesser interest pursuant to 2 **Del.C.** §1309(5).

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3.0 Hardship Acquisition

- 3.1 Depending upon the availability of funding, the Department may consider requests by owners for hardship acquisitions.
- 3.2 Written Request - The owner of the real property must submit to the Department a written request for a hardship acquisition. A request for hardship acquisition of property shall be submitted to the:
 - Delaware Department of Transportation
 - Right-of-Way Section
 - Chief of Right-of-Way
 - P.O. Box 778
 - Dover, DE 19903
- 3.3 Criteria. Upon receipt of a written request for a hardship acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria set forth herein. At a minimum, the request must demonstrate to the Department's satisfaction that:
 - 3.3.1 The property has been marketed for at least six (6) months; and
 - 3.3.2 The realtor, or owner in absence of a realtor, must certify and provide evidence that he or she is unable to sell the property at a reasonable price as a result of the proposed project; and
 - 3.3.3 The owner must be able to document a compelling reason for his or her move from the property, e.g., job transfer, death in the family, retirement plans or for medical reasons.
- 3.4 If an owner demonstrates to the Department's satisfaction that a hardship acquisition is appropriate, then such proposed acquisition shall be considered in accordance with the procedures set forth in Section 6.0.

22 DE Reg. 545 (12/01/18)**4.0 Protective Acquisition by Owner**

- 4.1 Depending upon the availability of funding, the Department may consider requests from owners to purchase all or a portion of their property. The Department will consider such requests when there is an anticipated need for the property as part of a planned project and acquiring it prior to final right-of-way plan approval would protect the availability of the property for use by the project.
- 4.2 Written Request - All requests for a protective acquisition by an owner must be in writing. A request for protective acquisition of property shall be submitted to the:
 - Delaware Department of Transportation
 - Right-of-Way Section
 - Chief of Right-of-Way
 - P.O. Box 778
 - Dover, DE 19903
- 4.3 Criteria. Upon receipt of a written request for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:
 - 4.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or
 - 4.3.2 Development would limit location alternatives for a project.

22 DE Reg. 545 (12/01/18)**5.0 Protective Acquisition Recommended by DeIDOT**

- 5.1 Depending upon the availability of funding, in instances where development would increase the eventual cost of property acquisition to taxpayers, or would limit location alternatives for the project, the Department may consider contacting property owners for possible protective acquisitions.
- 5.2 Recommendation. Prior to contacting owners of potential protective acquisition properties, the Chief Engineer must certify that all or part of the property will be required for a future project which complies with the purpose of this regulation as stated in Section 1.0 of this regulation.

5.3 Criteria. Upon the certification of need for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:

5.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or

5.3.2 Development would limit location alternatives for a project;

5.3.3 The request does not violate the National Environmental Policy Act (NEPA) or other Federal or State Regulations.

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6.0 Procedures for Review and Approval of Advanced Acquisitions

6.1 For advanced acquisitions satisfying the criteria set forth in subsection 3.3, 4.3 or 5.3 or for Special Property Acquisitions, as the case may be, the Department shall have an appraisal performed by an independent appraiser in accordance with the Department's Real Estate Manual.

6.2 Following receipt of the appraisal, the Department and its legal counsel shall discuss the potential terms of an agreement and the justifications therefor, including the nature of the interest to be acquired (i.e., acquisition, reservation, leasehold); the necessity of acquiring such interest and the existence of any alternative transactions; the fair market value of such interest; the amount of land required; the duration of the agreement; and such other factors as may be relevant. Following such discussion, counsel shall prepare a detailed term sheet reflecting the material terms of the proposed transaction.

6.3 The Department will present the term sheet to the Advanced Acquisition Committee at a scheduled meeting as soon as reasonably practicable. The Committee shall consider the terms of and rationale for the proposed transaction and may either approve, or reject such transaction. If the Committee approves the proposed transaction, the Department shall negotiate the final terms with the owner.

6.3.1 For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's review shall be considered an advisory opinion.

6.4 The material terms of all advanced acquisitions shall be reflected in an agreement prepared or reviewed by the Department's legal counsel and signed by the owner and an authorized representative of the Department.

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7.0 Consistency Review of Proposed Advanced Acquisitions

7.1 The Committee shall conduct a consistency review of proposed advanced acquisitions of real properties determined by the Department as necessary for its projects prior to approval of final right-of-way plans, real property acquisitions by the Corridor Capacity Preservation Program and for Special Property Acquisitions. This review shall be conducted prior to initiating any real property acquisitions with owners.

7.2 At the scheduled meeting for the consistency review, the Department shall present to the Committee such evidence as it deems necessary to demonstrate that the proposed acquisitions are consistent with state planning goals. This evidence shall include:

7.2.1 a detailed visual depiction of the proposed acquisitions;

7.2.2 the relevant project pages from the Capital Improvement Program adopted by the Council on Transportation, pursuant to 29 **Del.C.** §§8409 and 8419;

7.2.3 the relevant project authorizations as described in the relevant Bond and Capital Improvements Acts adopted by the General Assembly;

7.2.4 where applicable, the Department's Corridor Capacity Preservation plan for the corridor adopted in accordance with the procedures set forth in 17 **Del.C.** §145(d) for which the proposed acquisition would be made, along with other evidence showing how the acquisition furthers the Department's goals under that Program;

7.2.5 for Special Property Acquisitions, evidence showing how the proposed acquisition furthers the Department's goals for the particular project purpose, including a cost/benefit analysis and other relevant data;

7.2.6 a description of the State's Strategies for Policies and Spending, and how the project fits with those strategies.

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7.3 The Committee shall conclude its consistency review indicating its support or denial of the proposed acquisition by simple majority vote of its members. A quorum must be present. The vote shall be recorded in the meeting minutes.

7.3.1 For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's determination shall be considered an advisory opinion.

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8.0 Dispute Resolution Process

8.1 If after negotiations with the owner as identified above for advanced acquisitions satisfying the criteria set forth in subsection 3.3, 4.3 or 5.3 or for Special Property Acquisitions, the Department and the owner cannot reach an agreement upon the acquisition price or terms, the owner may request the following options:

8.1.1 Alternative Dispute Resolution

8.1.1.1 Upon notification from the Department that an impasse has been reached, the owner may request to follow the Alternative Dispute Resolution (ADR) process as identified in DelDOT Regulation 2407.

8.1.1.2 As per Regulation 2407, the owner and the Department will agree prior to commencing the ADR if the process shall be binding or non-binding. If the process is non-binding, the owner shall retain their rights under subsection 8.1.2.

8.1.2 Ceasing Advanced Acquisition

8.1.2.1 Upon notification from the Department that an impasse has been reached, the owner may notify the Department that they are no longer interested in an Advanced Acquisition and do not wish to continue with either negotiations or ADR. The Department at that time shall cease all acquisition activities and notify the Advanced Acquisition Committee.

8.1.2.2 If the Department ceases advanced acquisition activities at the request of the owner, advanced acquisition activities may not be re-initiated without first obtaining approval of the Advanced Acquisition Committee.

18 DE Reg. 733 (03/01/15)

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