

McKenzie County Right-of-Way and Easements Acquisition Policy

The McKenzie County Board of Commissioners authorizes the County Engineer to acquire right-of-way and easements from landowners on various public works projects. The following policy has been established to facilitate and standardize the acquisition process, for fair and just consideration of the interests and concerns of tax payers and property owners in McKenzie County. The County, when applicable, will follow the Uniform Relocation Assistance and Real Property Acquisition for Federal Assistance Program Act of 1970. Any variation from this right-of-way policy shall require full Board discussion and approval in a public meeting.

1. **Establishment of Right-of-Way Value:** Right-of-way valuations will be established and compiled by a ND licensed Certified General Appraiser and upon receipt final valuation will be set by the County Board of Commissioners. Said value will include earth material such as scoria, gravel and any other type of materials excavated during the construction process.
2. **Establishment of Temporary Easement Value:** Any and/or all temporary easements shall be compensated in the amount of 10% of the established land values, multiplied by 2 (years). Payment will include earth material such as scoria, gravel and any other type of materials excavated during the construction process. Incurred crop damages, if any, once verified will be negotiated accordingly.
3. **Fencing Removal and Installation:** If a County project impacts an owner's fence, the County will replace the fence as shown in the bidding documents. If the bidding documents call for the fence to be removed and replaced by the owner they shall be paid at a rate established by a recent county bid for typical road projects during the current year. When such a bid is not available the County can go back one year to use rates from the previous year. All fencing materials removed by the owner during the fencing process will become the owner's property.

If the bidding documents call for the fence to be replaced by the County's contractor, the County's contractor is responsible for removing and installing the fence. All materials removed by the contractor during the fencing process will become the contractor's property. In this case, no additional compensation for fencing will be made to the owner.

All new fences will be installed to meet the County's standard and will be installed using the same materials as the exiting fence (example: 3-wire barb with steel posts will be replaced with 3-wire barb with steel posts or electric fence will be electric fence). A higher grade fence may be requested by the owner. In the event a higher grade fence is to be installed as requested by the landowner, the landowner would be responsible to pay the difference in price (example: 3-wire barb with steel posts exists and landowner requests a 4-wire barb fence be installed instead). Such difference will be deducted from the offer amount and any remaining balance of the difference shall be paid to the County by the landowner prior to the fence being installed.

Temporary fences, when and where deemed necessary, will be installed as negotiated.

4. **Access Negotiation:** If a County project divides a pasture or a farm, access will be reestablished.
 - i) **Pasture Land:** If the project divides pasture land, the landowner may negotiate with the County on the location of a 5' X 7' precast cattle pass.
 - ii) **Farm Land:** If the project divides farm land, the landowner may negotiate with the County on the location for a new field approach.

Field access or driveway must comply with the County's access policy, including the limitation of four (4) accesses per mile and/or the minimum separations required for safety. County Engineer's office reserves the right to identify the location of an access in order to maintain compliance with the County's access policy while maintaining safety to the traveling public. The County Engineer has the right to add accesses or driveways in addition to the four (4) accesses per mile, in the event that the project divides a pasture or field, in which the division creates an uneconomic remnant. The County will not negotiate additional accesses if the landowner creates the remnant by their own actions.

5. **Third Party Indemnification:** As part of the acquisition process, the County will not indemnify any third party.
6. **Donation of Land:** Landowners have the right to donate right-of-way and easement. Landowners often do this as the improvements benefit them directly through better access to their property and other reasons.
7. **Notification of Entry for Survey/Field Studies:** In the event the County deems it necessary to enter private land outside of the statutory section line easement for survey and/or field studies for a public project that the County has deemed a public need; the County will notify the landowner 72 hours in advance. If there are any special requests the landowner has 72 hours to notify the County. If landowner has not responded to the County's notification the County will proceed with the survey and/or field studies required for the public project.

In the event the landowner refuses to allow the County entry, the County will follow the process set forth under NDCC 24-05-09 to enter upon any land for the purpose of making such survey, examination, or test, however in the event that damages are caused by the survey, examination, or test, the County will reimburse the landowner the amount of said damage. No compensation for survey and study will be paid to the landowner, interest holders or lease holders, except in the case of damages, as provided under NDCC 24-05-09 which states as follow:

24-05-09. Purchase or condemnation of right-of-way.

The board of county commissioners of any county of the state, by resolution or order, as part of the cost of constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining, any highway in said county, may purchase, acquire, take over, or, subject to section 32-15-01, condemn, under the right and power of eminent domain, for such county, any and all lands which it deems necessary for the present use, either temporary or permanent, and to provide adequate drainage in the improvement, constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining of any highways in said county, and by the same means it may acquire said lands notwithstanding the fact that the title thereto is vested in the state or any of its subdivisions. Whenever the board of county commissioners determines, by resolution or order, that the public necessity requires the taking of land as aforesaid, it shall cause said lands to be surveyed and described and a plat thereof prepared and recorded in the office of the recorder of the county wherein the same is located. The board of county commissioners, or its duly authorized agents and employees, may enter upon any land for the purpose of making such survey, examination, or test, but in case of damages to the premises the board of county commissioners forthwith shall pay to the owner of said premises the amount of such damages.

8. **County right to proceed with Construction:** The Right to Enter for Construction grants the County access to the right-of-way corridor from the proposed and/or existing centerline of the roadway in both directions. County reserves its right of eminent domain to obtain property needed when fair and just negotiations fail.