

# Acquiring Right of Way

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The Complex Job of acquiring rights-of-way for highways and utilities can result in costly delays when many contractors and public agencies are involved — especially if right-of-way acquisition is not treated with the same importance as design and construction management.

- Using a team of consultants and staff, with day-to-day coordination responsibilities given to a consultant.
- Conducting frequent team meetings to monitor progress on each parcel being acquired.
- Selecting acquisition agents with specialized skills.
- Contacting property owners early and maintaining lines of communication.

EBDA is a joint powers agency established in 1974 by the cities of San Leandro and Hayward and sanitary districts of Ora Loma, Castro Valley and Union City. Its purpose was to construct and operate a \$140-million water pollution control project along the eastern shore of San Francisco Bay, serving a population of about a half-million.

The project involved upgrading three existing sewage treatment plants, constructing one new treatment plant, connecting the four plants with 25 miles (40 km) of interceptors, and installing a 7-mile (11 km) outfall pipe for discharge into

central San Francisco Bay. EPA and state grants covered 87.5% of construction costs. Costs associated with right-of-way acquisition, including temporary construction easements, were not grant eligible.

From the beginning, right-of-way acquisition was considered a critical part of the construction program. A four-year period of pipeline construction was scheduled to begin a year after funding was approved, with most of the 13 construction contracts requiring right-of-way to be awarded in the first year. EBDA was determined not to let delays in acquisition slow down the entire process.

The job ahead was complex. The pipeline route traversed more than 100 public and private ownerships. It crossed public streets, freeways, and the main line of the Southern Pacific railroad. It passed through operating farms, auto junk yards, regional parks, salt harvesting ponds, and bay tidelands. Clearly, skillful coordination and careful scheduling would be needed to get the job done on time.

To manage the right-of-way acquisition, the Authority decided to retain a consultant, rather than add to the workload of its small staff. The contract was awarded to East Bay Consultants (EBC), a joint venture of the Foster City, California, office of Wilsey & Ham, engineers, plan-

ners, surveyors, and landscape architects, and M&M Consultants, an engineering and survey firm located in Oakland, California.

**Team organized with frequent meetings.**

EBDA and EBC decided on a team management approach, with the EBDA general manager retaining overall decision-making responsibility. A principal of Wilsey & Ham was delegated responsibility for day-to-day management of all survey and acquisition activities, assisted by a principal of M&M Consultants. Two independent right-of-way agents were selected: one experienced in negotiating with owners of large public and private properties, and one skilled in work with small property owners.

Other team members were EBDA assisted managers for engineering and administration; EBDA legal counsel; a representative from the project design consultant, Kennedy/Jenks Engineers; special condemnation counsel; and a liaison with the two appraisers and the title companies.

Throughout the acquisition period, this team met every two weeks and sometimes once a week. For each meeting, EBC updated a status report, listing the deadline for deciding whether or not to initiate con-

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demnation proceedings on each of over 300 parcels. Discussion centered on parcels whose deadline was approaching, so that problems could be resolved and the right-of-way could be assured in time to meet the bidding and construction schedule.

EBC also prepared an agenda for each meeting and followed up with minutes summarizing policy decisions and listing due dates for action items to be completed by various team members.

### Key policies established early.

Early in the process, several key policies were established by EBDA to guide the right-of-way team:

**Acquisition philosophy.** Every attempt would be made to negotiate a contract at the appraised value, without resorting to condemnation procedures. However, the power of eminent domain would be used if necessary to keep the project on schedule.

**Existing utility corridors.** Pipeline routing would follow existing utility corridors wherever possible to avoid additional severance and minimize encumbrance of privately owned lands.

**Relocation.** Relocation of residents and industries would be minimized.

**Fee title.** Fee title would be acquired only for above-ground structures such as treatment plants and pump stations.

**Permanent easements.** A 40-foot (14-m) permanent easement would be acquired for pipelines over 48 inches (309 cm) in diameter and 30 feet (9 m) easements for smaller mains.

**Temporary easements.** For the convenience of property owners and contractors, temporary construction easements would be acquired by EBDA and made part of the bid documents.

### Procedures set up in advance.

Several procedures followed by the acquisition team were also essential to the program's success:

**Determination of right-of-way requirements.** After the preliminary route was planned, major property owners were contacted and a final route was established using information they provided.

**Subsurface easements.** For the underground easements, EBDA acquired only subsurface rights and paid between 25% and 40% of fee value. The contract agreement prohibited any structures within the easement and limited the amount of fill that could be added, but otherwise did not restrict surface use of the easement by the utility.

**Acquisition agreements.** Standard agreement forms were prepared in advance and used by the acquisition agents in their initial meetings with property owners.

**Coordination with construction documents.** Care was taken to assure that each contract document alerted the contractor to requirements which had been negotiated with the landowners.

**Title insurance.** Title insurance was obtained for almost all parcels to protect EBDA's and successors' interests. Title search was necessary to make sure the right-of-way was being acquired from the current legal owner; obtaining title insurance added insignificantly to the cost of title search.

### Challenges tested policies and procedures.

These policies and procedures proved invaluable with "routine" acquisitions as well as the many challenging situations created by various physical, legal, and ownership factors. Some of these challenges are described below.

The Bay outfall traversed an 8-inch (52-cm) oil pipeline and terminated just short of two other oil transmission lines which could have been affected by pipe-laying equipment. East Bay Consultants were retained by the pipeline owners to determine the exact location of their

respective underwater pipes so the outfall sewer line could be designed accordingly.

Unique temporary relocation agreements were required with the owners of several automobile junk yards to minimize the cost and disruption of moving their wrecked cars from the easement during the construction period.

In one case, the sole owner of a parcel died, so the agent had to deal with the Probate Court to obtain the necessary rights.

One structure had to be located on land purchased by a local municipality for open space. EBDA had to purchase another parcel comparable in value and function and negotiate a land swap with the U.S. Department of Housing and Urban Development (HUD).

Relocation assistance was needed for one person, the resident of a publicly owned dwelling that was being removed for construction of a treatment plant. Maximum relocation payments were made in this instance because replacement housing was considerably more costly than the rent charged by the public agency.

#### Results exceeded expectations.

At the end of the two-and-a-half year acquisition program, EBDA had acquired right-of-way for 32 miles (51 km) of pipeline, including permanent easements 30 to 40 feet (9 to 12 m) wide, temporary construction easements 80 to 100 feet (24 to 30 m) wide, lateral access, and four fee parcels for above-ground structures. Eighty percent of the right-of-way had been acquired within the first year.

Over 300 parcels were acquired, involving more than 100 owner-ships: 32 private individuals, 22 private companies, 37 public agencies, and 10 holding companies or railroads. Eleven consent to common use agreements were negotiated. Only one relocation was required for a residential tenant. Thirteen condemnation actions were filed, and only one was tried in court.

The cost of the total right-of-way was \$1.4 million, one percent of total project cost.

#### Ingredients for Success.

The experience of the East Bay Discharge Authority demonstrated the importance of these eight ingredients to a successful right-of-way acquisition program:

- Strong central decision-making and direction by the owner agency.
- Delegation of day-to-day management and coordination to a competent consultant.
- Frequent team meetings involving all participants.
- Commitment of resources to

maintain the right-of-way schedule and avoid higher costs due to delayed construction.

- Acquisition of temporary construction easements as part of the right-of-way acquisition budget.
- Early involvement of the design engineers in route selection to determine the least disruptive and most easily obtained rights-of-way.
- Selection of acquisition agents with specialized skills.
- Early and continuing contact with property owners to explain the project and determine their concerns and constraints.

