

# **METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY**

## **POLICY AND PROCEDURES FOR RIGHT OF WAY ACQUISITION**

### **Capital Improvement Program**

#### **1.0 PURPOSE AND DEFINITIONS**

The purpose of this Policy is to establish procedures for the Metropolitan Sewerage District (the "District") to acquire easements in real property for constructing, operating, maintaining, repairing, rehabilitating and replacing, if necessary, interceptor and collector sewer lines in the District Sewerage System. It is the mission of the Right of Way Committee and Right of Way staff of the Metropolitan Sewerage District to acquire such easements in the most fair and cost-effective manner possible.

District Board - A twelve-member Board who sets and administers District policy. Three members are appointed by the Board of Commissioners for Buncombe County, three members are appointed by the City Council of the City of Asheville, and one member is appointed by each of the governing bodies of the Towns of Black Mountain, Biltmore Forest, Montreat, Weaverville, the Town of Woodfin and Woodfin Sanitary Water and Sewer District. The officers of the District Board are elected annually by the members of the District Board. Appointments are generally for a three year term and are staggered so there is continuity in the membership from year to year.

General Manager - Chief Executive Officer of the District.

Right of Way Committee - A committee of at least five District Board members appointed by the Chair of the Board which reviews right of way matters and makes recommendations regarding same to the District Board.

Right of Way Manager – Manager of the easement acquisition program for the District.

Right of Way Agent - Member of the District Right of Way Staff or Contract Agent responsible for securing signatures on easement documents.

Project Engineer – Engineer responsible for the design, bidding and administration of the sewer line project.

#### **2.0 RESPONSIBILITY**

2.1 The District Board of the Metropolitan Sewerage District hereinafter referred to as the "District Board", shall be responsible for selecting and approving sewer line projects requiring the acquisition of easements. The District Board shall have final approval concerning expenditures of any funds for the acquisition of easements.

2.2 The Right of Way Committee or such other Committee as determined by the Board Chairman to have responsibilities for Right of Way matters, hereinafter referred to as the "Right of Way Committee", shall be responsible for reviewing proposed easement acquisitions and shall make recommendations regarding easement acquisitions to the District Board. The General Manager shall serve as an ex-officio member of the Right of Way Committee.

2.3 The Right of Way Staff shall be composed of a Right of Way Manager, designated employees of the District and agents hired by the District pursuant to contract for easement acquisition, hereinafter referred to as the "Right of Way Agent".

2.4 The Right of Way Staff shall work under the direction of the Capital Improvements Program (CIP) Division and the General Manager, and shall be responsible, subject to the approval of the District Board, for acquiring easements according to the procedures set forth herein.

### **3.0 PROCEDURE FOR EASEMENT ACQUISITION BY THE DISTRICT**

The District will acquire easements for all new construction. With regard to existing lines, the policy is recited below:

The District claims an easement for existing sewer lines more than two years old with no recorded easement where the line was installed by the District or a governmental predecessor in interest or the line has been owned and operated by the District or a governmental predecessor in interest for more than two years. It is understood that the District only claims an easement for the sewer line in its current location and the easement extends in either direction from the center line of the existing sewer line to a width necessary to operate, maintain, repair and replace if necessary the existing sewer line together with a reasonable right of ingress and egress from the nearest public road.

The District may obtain and record easements in these situations to clarify public record.

#### **3.1 PRE-NEGOTIATION**

3.1.1 The Project Engineer shall notify the Right of Way Manager of upcoming Projects and provide a schedule for each project including preliminary design completion and easement plat completion. The Right of Way Manager shall then prepare a schedule for easement acquisition.

3.1.2 Upon completion of preliminary plans and easement plats, the Project Engineer shall provide the Right of Way Manager with two sets (or more) of plans, three sets (or more) of sealed easement plats and a complete description of the need for the project.

3.1.3 The Right of Way Manager will provide the District's attorney with two surveys and/or attachments as necessary. The attorney will perform a current owner or five year title search, and prepare Limited Ownership Data and Easement Agreement for each affected property owner.

3.1.4 The Right of Way Manager shall assign the project to a member of the Right of Way Staff for easement acquisition or determine that the project should be negotiated by a contract agent. If the latter is determined, the Right of Way Manager shall obtain a proposal or proposals for professional services for the General Manager's approval. The member of the Right of Way Staff or Contract Agent assigned to the project shall hereinafter be referred to as the "Right of Way Agent."

3.1.5 The Right of Way Manager shall mail notice of upcoming projects to affected neighborhood associations, when and where those neighborhood associations are known to actively exist. Notice shall describe the project and offer, if desired by the neighborhood, an open meeting conducted by District staff to present the preliminary project design.

3.1.6 Providing new and/or upgraded sewer lines to an area is a valuable service to the community. As public monies provide funding for system improvements, it is the District's policy to attempt to obtain easements for no compensation. MSD is not purchasing the property, only the rights to construct, operate, maintain and reconstruct lines through said area. This encumbers a property only to the extent that a structure can not be built and no trees can be planted on the easement; the Owner retains all other rights.

In cases where compensation becomes necessary, the following method may be used to establish a budget for each project and compensation with which Staff may negotiate. The current land value (excluding improvement values) established by the Buncombe County Tax Assessor shall be used as the base value for compensation. Permanent Easement areas shall be compensated at fifty percent (50%) of value for any net new square footage. Temporary Construction Easement areas shall be compensated at a ten percent (10%) annual rate of return on the value of any new square footage for the duration of the project. In determining compensation due under this policy the District Board may consider the fact that the property is already encumbered by an existing sewer line(s), the rehabilitation of which will not further burden the property .

A contingency shall be added to each project's compensation budget allowing for additional funds to finalize negotiations with owners in lieu of condemnation. The contingency shall be based on ten percent (10%) of the total number of parcels included in the project multiplied by \$5,000.00. Contingency funds may be used on any parcel within the project in order to avoid condemnation. An additional level of contingency funds, amounting to 100% of the budget contingency, shall be added to each project's compensation budget, requiring the General Manager's authority for use.

These limits shall then be presented to the Right of Way Committee and District Board for approval. Upon approval, the District Board shall authorize the General Manager to acquire at a maximum not to exceed these limits. Any amounts above these limits must be approved by the Right of Way Committee and District Board.

## 3.2 NEGOTIATION

3.2.1 The Right of Way Agent will send an introduction letter to each Affected Owner. The introduction letter will present the need for an easement, briefly explain negotiation procedures, state negotiation schedule and request an appointment with the Owner to discuss acquisition of the easement.

3.2.2 The Right of Way Agent will make all reasonable efforts to meet with the affected Owner or his representative to discuss (1) the District's acquisition policy and procedure, (2) review the Easement Agreement and attached easement plat, (3) to invite Owner input and (4) address specific concerns the Owner may have. A minimum of three documented, substantial meetings must occur between the Right of Way Agent and the Owner. A substantial meeting is defined as personal contact with the property owner, or their appointed agent, where all aspects of the project are reviewed, discussed, and understandings are reached. In the case of a non-local owner, where personal contact may not be possible, substantial meetings are defined as above using telephone conversations or letters where receipt is confirmed by the owner or their appointed agent. As many additional meetings as the Right of Way Agent deems necessary to reach agreement may be held within the confines of the project schedule.

3.2.3 Any special provisions for construction or restoration must be noted on a "Special Provisions Detail Sheet." A copy of the Special Provisions Detail Sheet shall be placed in the file and a copy provided to the Owner. A Special Provisions Summary Report with individual detail sheets attached will be provided to the Project Engineer for inclusion in the special conditions of the project specifications. The Right of Way Agent shall have the authority to offer in lieu of cash compensation, reasonable improvements, trees, plants or other reasonable provisions agreed upon with the Owner.

3.2.4 If the District and the affected Owner reach an agreement for acquisition of an easement the Right of Way Agent shall be authorized to obtain valid signatures on the Easement Agreement, request a check, deliver compensation to the Owner and secure, if applicable, a Substitute Form 1099S for reporting to the IRS.

3.2.5 Upon recordation of the Easement Agreement, the District's attorney will update the title, prepare Final Limited Ownership Data and return the recorded agreement and ownership data to the District for the file. The Right of Way Administrative Assistant shall send a copy of the recorded agreement, the Right of Way Use Policy and the Special Provisions Detail Sheet (if negotiated) to the Owner, have any remaining documentation completed and prepare the file for closing.

3.2.6 The responsibility to obtain CIP project encroachment agreements shall rest with the Project Engineer. Requests for encroachment upon the District's existing system shall be reviewed by appropriate CIP and District staff. All completed encroachment agreements shall be filed with the Right of Way project records.

### **3.3 CONDEMNATION**

3.3.1 If, after reasonable efforts by the Right of Way Agent an agreement cannot be reached, the Right of Way Agent may request authority for condemnation.

3.3.2 The decision as to whether or not to proceed with condemnation shall be made by recommendation of the Right of Way Committee to the full Board. If condemnation is authorized, the Right of Way Manager will arrange for an appraisal of the property.

3.3.3 Upon receipt and review of appraisal, the Right of Way Manager shall make a final offer to the affected Owner in the amount of damages determined by the appraisal. If the offer is accepted, the procedures outlined in 3.2.2 through 3.2.4 will be followed.

If the offer is not accepted, the Right of Way Manager will instruct the District's attorney to forward Notice of Condemnation to the Owner by registered or certified mail. A check will be issued for compensation funds as determined by the appraisal to be deposited with the Clerk of Court.

3.3.4 Thirty days after mailing to the Owner the Notice of Condemnation, the District's attorneys shall file the Complaint and Declaration of Taking and deposit compensation funds as determined by the appraisal with the Buncombe County Clerk of Superior Court. Upon filing of the Complaint the District has access to the easement area taken.

3.3.5 It is the District's policy to minimize court action and to utilize out of court settlements where possible. In mediation and trial settings where calling a Right of Way Committee/Board meeting is not feasible, the General Manager or his/her designee shall have authority to negotiate on behalf of MSD and to make a recommendation to the Right of Way Committee/Board.

### **ACCESS**

3.4.1 The Right of Way Manager shall advise the CIP Director and the Project Engineer upon the completion of access to all parcels. The project shall not be advertised for construction until this notice is provided by the Right of Way Manager.

- 8/91 approved - original policy produced
- 6/93 rev. allow other committees to consider issues
  - rev. acquisition on existing lines
  - rev. row agent to obtain estimate beyond const. scope
- 9/93 rev. compensation formula
  - rev. plans/specs to be reviewed/approved by Eng Div
  - rev. engineer to provide schedule plans/plats/form
- 4/95 rev. add row mission statement
  - rev. add contingency to compensation chart
- 2/96 rev. clarification of contingency guidelines
- 11/96 rev. policy/esmt. for existing line
- 6/97 rev. title search changed from 30 yr to 5 yr
- 6/98 rev. condemnation delegated to ROW Committee
- 6/98 rev. authorize an additional level of contingency funds
- 2/99 rev. delete use of subordination agreement
  - rev. delete construction and media notification by row staff
- 8/99 rev. update procedures and forms
- 1/02 rev. general clerical updates
- 6/02 rev to Compensation Policy
- 4/06 rev. update policy and procedures
- 2/07 rev. delegation of Condemnation authority back to Board
- 9/11 rev. grammar and nomenclature
  - rev. added "or" phrase to claimed esmts application
  - rev. remove specified width for claimed esmts
  - rev. proposals for contract agents approved by GM
  - rev. add GM/designee authority to negotiate in mediation/trial