
**AUGUSTA COUNTY SERVICE AUTHORITY
OPERATING PROCEDURES AND POLICY MANUAL**

Approved By: Board of Directors
Effective Date: March 9, 2015
Revised: April 8, 2019

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Policy No. 13.1
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Easement Acquisition

1.0 Process

The Augusta County Service Authority (“Authority”) staff will identify specific easements required for a project based upon an initial review of preliminary construction plans. Authority staff shall verify that the construction plans show the property lines and proposed easements. In addition, Authority staff will identify and review the following: current property owner(s), tax map numbers, and zoning. If easements owned by other utilities are located within the proposed easements, Authority staff shall coordinate with those utilities to obtain permission to co-locate, if needed. When property is owned in whole or in part by a person who is legally incapacitated, or any property owner is unknown or cannot be located, staff should consult with the Authority’s legal counsel about proper procedure.

2.0 Donations

Property owner(s) may donate an easement after being informed in writing of the right to receive just compensation.

3.0 Easement Options

Authority staff will decide whether to proceed by contacting property owner(s) in an effort to obtain easement options on the terms set out in the Authority’s then-current easement option form or whether to follow the remainder of this Policy to obtain easements. In any case in which property owner(s) does/do not agree to grant an easement option, the remainder of this Policy will apply, and Authority staff should consult with the Authority’s legal counsel to confirm that the requirements of Title 25.1, Eminent Domain, are followed in applying the remaining provisions of this Policy.

4.0 Determination of Assessed-Based Offer

Authority staff will perform an initial determination of the value for the proposed easement based upon the then-current Augusta County assessed value of the parcel of land, not including improvements, upon which the proposed easement will be located. Authority staff will determine an assessed easement value for the portion of land comprising the proposed easement proportionate to the assessed value of the full parcel of land. An Assessed-Based Offer will be determined by multiplying the assessed easement value by the following applicable percentages based upon potential benefit provided by the proposed easement to the parcel of land upon which the proposed easement will be located:

Water/Sewer That Does Not Benefit Property

(Where water and/or sewer services are already available to a parcel of land upon which the proposed easement will be located or the parcel of land upon which the proposed easement will be located will not be serviced by the facilities to be constructed within the proposed easement (i.e., raw water line or force main):

1. When the proposed easement will encumber land that is then-currently useable (i.e., land that is located outside existing easements, setbacks, flood plain, other areas restricted by local ordinances or covenants): 100%

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2. When the proposed easement will encumber land not then-currently usable (i.e., land that is located within an existing non-Authority easement, setback area, flood plain, or other areas restricted by local ordinances or covenants): 75%
3. When the proposed easement will replace an existing Authority easement, or portion thereof, located on the same parcel of land upon which the proposed easement is to be located, which existing easement, or portion thereof, will be abandoned by the Authority, and the proposed easement will encumber land that is not then-currently useable (i.e., land that is located outside existing easements, setbacks, flood plain, other areas restricted by local ordinances or covenants), or the proposed easement benefits the property with better placement of the facilities to be constructed within the proposed easement: 50%
4. When the proposed easement will replace an existing Authority easement, or portion thereof, located on the same parcel of land upon which the proposed easement will be located, which existing easement, or portion thereof, will be abandoned by the Authority, and the proposed easement will encumber land that is useable (i.e., land that is located outside of existing easements, setbacks, flood plain, or other areas restricted by local ordinances or covenants): 100%

Water/Sewer to Property That Does Benefit Property

(Property That Previously Did Not Have Service)

1. When the proposed easement encumbers land that is useable and the facilities located within the proposed easement may provide water and/or sewer services upon completion of construction or in the future to the parcel of land upon which the proposed easement will be located: 50%
2. When the proposed easement will encumber land already encumbered by one or more existing non-Authority easements or land located within areas restricted by setbacks, flood plains, or other areas restricted by local ordinances or covenants and the remaining portion of the land is not impacted and remains usable: 25%

If the initially determined assessed easement value is greater than \$10,000¹, the Authority at its expense will obtain a licensed general appraiser to appraise the proposed easement. An appraisal of the proposed easement will not be further adjusted by the factors and percentages applied to an Assessed-Based Offer because such factors will be considered by the appraiser in determining the fair market value of the proposed easement.

Authority staff shall separately establish the value of damages, if any, to remaining property outside of the proposed easement.

¹ VA Code §25.1-417(2) specifies a limit of \$25,000 before appraisal is required, but the Authority has elected to set a lower limit.

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Temporary or construction easements will be compensated depending upon the nature of the project and the potential for damage to personal property.

Minimum Compensation for Permanent Easements

The minimum determined assessed easement value shall be \$100.

5.0 Written Offer

The Authority will provide a *bona fide* written offer to the property owner(s) to acquire the proposed easement, which will include an explanation of the basis for the offer including the public use that provides the basis for the acquisition of the proposed easement. The written offer will include a copy of the Augusta County assessment (or the appraisal, if acquired), a proposed plat/exhibit showing the easement area, a copy of the Authority's deed of easement form, contact information for the Authority, and a deadline for a response from the property owner(s).

The written offer will be delivered to the property owner(s) in person, by e-mail and/or by certified, return-receipt mail (or any combination of each delivery method reasonable under the circumstances) followed by reasonable and documented attempts to contact the property owner either in person or by telephone.

In the event this written offer is not accepted by the property owner(s), Authority staff will follow Section 7.0. No response by the property owner will be considered a rejection of the written offer by the Authority.

6.0 Finalizing Easement

Upon acceptance of the written offer by the property owner(s), the Authority will prepare and transmit to the property owner(s) a plat/exhibit verifying the location of the easement and a proposed deed of easement. The Authority will also provide the property owner(s) with a Form W-9. The property owner(s) must return the executed and notarized deed of easement and the completed Form W-9 prior to the release of payment from the Authority.

When the Authority confirms that the executed and notarized deed of easement and the completed Form W-9 form are in proper order, Authority staff will record the easement document and release payment to the property owner(s) as identified on the Form W-9.

7.0 Refusal to Grant Easement (ASSESSED-BASED OFFER)

In the event the property owner(s) will not grant an easement in response to an Assessed-Based Offer, the Authority shall obtain at its expense a fair market value appraisal by a licensed general appraiser selected at the sole discretion of the Authority. The appraised fair market value of the proposed easement shall be the basis of a second offer ("Appraisal-Based Offer"). The Appraisal-Based Offer will supersede the Assessed-Based Offer.

A second *bona fide* written offer based on the appraisal, which references the first letter, will be sent by the Authority to the property owner(s) by certified mail, return receipt requested. This second written offer will include a copy of the appraisal, a plat/exhibit of the easement area, a final deed of easement, and a deadline for a response from the property owner(s).

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In the event the second written offer is not accepted by the property owner(s), Authority staff will follow Section 8.0. No response by the property owner(s) will be considered a rejection of the second written offer by the Authority.

8.0 Refusal to Grant Easement (APPRAISAL BASED OFFER)

In the event the property owner(s) will not grant an easement in response to an Appraisal-Based Offer, the Authority's Land and Water Committee or the Board of Directors, as appropriate, shall direct the Authority's legal counsel to deliver a final written offer to the property owner(s), or designee, by certified mail, return receipt requested. This final written offer will include the appraisal, a plat/exhibit of the easement area, a final deed of easement and a deadline for a response from the property owner(s) or designee.

In the event this final written offer is not accepted by the property owner(s), Authority staff will follow Section 9.0. No response by the property owner will be considered a rejection of the final written offer by the Authority.

9.0 Eminent Domain

Procedures and requirements for eminent domain are established under the Code of Virginia, and Authority staff will coordinate closely with the Authority's legal counsel before initiating the process to initiate eminent domain proceedings.

Threshold Requirements:

1. Authority staff will deliver a letter to the member of the Authority's Board of Directors representing the Magisterial District in which the property which is to be encumbered by the easement is located by which letter the member is notified of the Authority staff's recommendation to the Authority's Land and Water Committee or the Board of Directors, as appropriate, that the Authority initiate eminent domain proceedings to acquire the proposed easement.
2. Authority staff will follow Authority procedures for obtaining approval from the Authority's Land and Water Committee or the Board of Directors, as appropriate, for initiating eminent domain proceedings.
3. If the property which is to be encumbered by the proposed easement is owned by another entity having the power of eminent domain, § 25.1-102, Code of Virginia, will apply, and Authority staff will review with Authority legal counsel the particulars of the easement being acquired under such circumstances before proceeding.
4. The Authority must have made a bona fide but ineffectual effort to purchase the easement from the property owner(s). This means that offers have been determined in good faith, that the Authority has taken reasonable actions to deliver all good faith offers to the property owner(s) and that efforts to negotiate have proceeded far enough to indicate reasonably as determined by the Authority's Land and Water Committee or the Board of Directors, as appropriate, that agreement will be substantially impossible.

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5. When a final written offer has been made to the property owner(s) and the Authority has been unable to negotiate an agreement with the property owner(s) under the provision of this Policy or the property owner has not made a timely response to the final written offer, the Authority's Land and Water Committee or the Board of Directors, as appropriate, shall direct the Authority's legal counsel to deliver to the property owner(s), or designee, a final notification letter by certified mail, return receipt, providing the property owner(s) with a further period no less than ten (10) days to respond to the final written offer or the Authority will proceed with eminent domain proceedings.

Prior to initiating eminent domain proceedings, the Authority must obtain a title examination and deliver a copy of the title report to the property owner(s).

Special procedures may be applicable to condemnation of property within agricultural or forestal districts in accordance with § 15.2-4312 and § 15.2-4313, Code of Virginia.

10.0 Quick Take

In order to limit construction delay, the Authority is permitted statutorily to avail itself of the so-called "quick take" procedures pursuant to Title 25.1, Chapter 3, Code of Virginia. Authority staff must consult Authority legal counsel prior to initiating quick take procedures to confirm that proper procedures are being followed in accordance with the Code of Virginia.

In general, the Authority may pay into the court the sum estimated to be the fair market value based on the appraisal, or, in the alternative, file with the court a certificate of deposit for such sum. The applicable statutes provide specific requirements for recording the certificate, as applicable, and for providing notice to the property owner(s). Upon recordation of the certificate, as applicable, title in the easement vests in the Authority, and the Authority may take possession of the easement and move forward with its construction project. The Authority may also apply to the court for right of entry onto a proposed easement pursuant to § 15.2-223, Code of Virginia.

11.0 Additional Considerations

Water and/or sewer connection fees cannot be waived in exchange for an easement.

The Authority may request the property owner(s) allow the Authority the right of entry onto a proposed easement prior to the Authority initiating an eminent domain proceeding and/or quick take procedures.