IOWA DOT

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LEARN ABOUT THE DEVELOPMENT OF YOUR Iowa TRANSPORTATION SYSTEM

HIGHWAYS AND YOUR LAND

a guide to our right of way procedures

IOWA DOT

RIGHT OF WAY

HIGHWAYS AND YOU

For most people, highway engineering, design, and right of way acquisition are not of immediate concern. However, when you own or rent property that will be affected by highway construction, you begin to consider road building from a different and personal viewpoint.

Right of way is the land on which highways are built. The amount of land needed depends on the engineering standards that must be met for the type of highway that will be built or improved.

This booklet will acquaint property owners, tenants, and the public with the procedures the Iowa Department of Transportation follows in acquiring right of way for a highway. It is not a source of technical definitions or legal advice. Further, it is not intended to establish a legal standard.

PLANNING, DESIGN, AND ACQUISITION OF LAND FOR A HIGHWAY PROJECT

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1. TRAFFIC SURVEYS

To help determine which highways need improvement, it is essential to know the number and types of vehicles using our highways. The Iowa Department of Transportation gathers this information throughout the state by using continuously operating automatic traffic recorders and by conducting manual counts. Later, engineers use this information, along with many other factors, to plan and design highway improvements.

2. PROGRAMMING

To "program" a proposed highway construction or improvement project means the Iowa Transportation Commission, the policymaking body for the Iowa DOT, must decide where highway work is needed, when it should be done, and when funds will be available for the work. The seven-member commission is composed of Iowans appointed by the governor. Iowa law requires that not more than half of the commissioners be from the same political party, and the commission must be gender balanced.

Every year the Iowa DOT's Planning, Programming and Modal Division recommends projects for programming to the commissioners. The projects the commissioners approve for programming are published annually in a publication titled the Iowa Transportation Improvement Program. It lists a five-year plan of projects, their locations, costs, and the years in which various phases of the projects are scheduled to be completed.

In making decisions about projects, the commissioners consider:

- What the public says at public hearings and through other communications.
- The condition of existing highways.
- The potential for economic growth resulting from highway improvements.
- The need to improve safety.
- Whether completing a specific project would be the best use of available funds.

3. PRELIMINARY ENGINEERING

In this phase of project development, the Iowa DOT's staff determines the most feasible and economical route for the highway. In making this determination, consideration is given to:

- Terrain.
- Whether replacement housing is available for those who might have to move because of the project.
- Effects on public and private institutions, parks and recreational facilities.
- What economic, social and environmental effects the highway will have on a community.

The Iowa DOT's offices of Right of Way; Bridges and Structures; Design; and Location and Environment compile cost estimates for various route proposals.

In addition, preliminary surveys are started to measure distances and elevations and to determine locations of buildings, drainage, and other features. Property owners may be contacted by an Iowa DOT surveyor collecting this type of information. Eventually, a design team will use the information to prepare final plans for a highway.

4. PUBLIC INFORMATION MEETINGS

Public information meetings are held at different stages of project development. The meeting is held as an open forum so attendees can see displays, ask questions and share concerns directly with Iowa DOT staff. Iowa DOT staff present the facts that have been gathered about a proposed project; explain the land acquisition and relocation assistance programs; and document the public's viewpoints about the project.

Public meetings also provide Iowa DOT staff and engineers with important information regarding the project. Iowa DOT staff considers all information citizens provide, or concerns they raise and often incorporate suggestions made by citizens at public meetings into the preliminary plans.

5. FINAL ROAD DESIGN

After a final improvement strategy for a project has been selected, the information is presented to the public and, when necessary, the Federal Highway Administration, before final design plans begin. The final design plans set out in detail how a contractor is to build a highway or improvement and specify materials to be used.

6. RIGHT OF WAY DESIGN

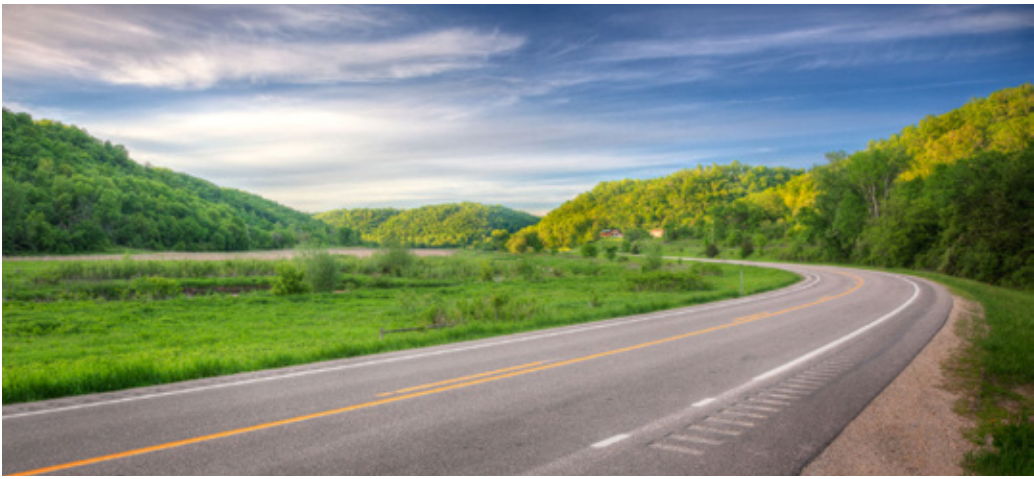
When the road design for the project is complete, the right of way process begins. The first step in the process is to design the right of way. Right of way designers determine how much land will be needed for right of way, keeping in mind present and future land use, and thereby establishing right of way lines.

Staff from the Iowa DOT's Office of Right of Way conduct a preliminary title search to determine the legal ownership of properties that will be affected by the highway project. Later, a complete search of all title records recorded in the courthouse is made and ownership of each property is determined. Finally, a licensed land surveyor prepares a plat and description for the portion of each property that must be acquired.

Throughout the process, the Office of Right of Way maintains a file for each property affected by the highway project. These properties are noted on right of way plans that show the area needed for right of way and such details as location of drainage structures, temporary construction easements, farms, roads, buildings, and driveways.

7. RIGHT OF WAY APPRAISAL

The amount of compensation or money the Iowa DOT offers to property owners for right of way is generally based on a written report prepared by professional certified appraisers, which is an appraisal. The appraisers have extensive experience in market analysis of real estate, including agricultural, residential, commercial, industrial, and other properties. The appraiser may be a certified staff appraiser from the Iowa DOT's Office of Right of Way or may be a private certified appraiser hired by the Iowa DOT.



The appraiser contacts the property owners, asks for permission to inspect the property, and invites the owner to accompany the appraiser during the inspection of the property. The appraiser also interviews the property owners, since the owners are generally the people most knowledgeable about the property. The interview gives owners the opportunity to inform appraisers about a property's use and operation and point out any adverse effects the highway project may have on their property.

In a written report, an appraiser includes the estimate of the amount of compensation due the property owner when right of way is acquired. This estimate includes payment for market value of land and improvements to be purchased by the state. When the state acquires only a portion of an owner's property, the value of the remaining property may be reduced because of construction of the project. The appraiser's estimate of compensation will include any reduction in the value of the remaining property.

Written reports are submitted to the Iowa DOT's Office of Right of Way for analysis by certified review appraisers before the property owners are contacted to acquire the right of way. The purpose of this review is to ensure all aspects of the acquisition affecting the value of the real estate have been fully and properly considered. Review appraisers may correct any irregularities before approval of the appraisal. The approved appraisal establishes the amount of compensation or money to be offered to the owner.

In some instances, a property owner may waive the right for an appraisal. In other instances where the effects of the proposed acquisition on the property are not complicated and relatively minor, an appraisal as explained above may not be required. In such cases, an estimate of compensation will be prepared by the acquisition agent, with administrative approval, and based on sales of similar properties.

8. RIGHT OF WAY ACQUISITION

A. Statement of property owner's rights: Just as the law grants certain entities the right to acquire private property, you as the owner of the property have certain rights. You have the right to:

   a. Receive just compensation for the taking of property. (Iowa Constitution, Article I, section 18)

   b. An offer to purchase, which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code 6B.45 and 6B.54)

   c. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based not less than 10 days before being contacted by the acquiring agency's acquisition agent. (Iowa Code 6B.45)

d. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Iowa Code 6B.54)

e. Participate in good faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (Iowa Code 6B.2B)

f. A determination of just compensation by an impartial compensation commission and the right to appeal its award to the district court if you cannot agree on a purchase price with the acquiring agency. (Iowa Code 6B.4, 6B.7, and 6B.18)

g. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (Iowa Code 6B.4A)

h. Payment of the agreed upon purchase price or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code 6B.25, 6B.26, and 6B.54(11))

i. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code 6B.33 and 6B.54(10))

j. Reimbursement of certain litigation expenses: (1) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (2) if the award on appeal in court is more than the compensation commissioners' award. (Iowa Code 6B.33)

k. At least a 90-day written notice to vacate occupied property. (Iowa Code 6B.54(4))

l. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of the payments. (Iowa Code 316.9 and 6B.42)

The rights set out in this statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code chapters 6A, 6B, and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

B. Just compensation: The Iowa Constitution requires the payment of just compensation when private property is acquired for public use. As interpreted by the courts, the normal measure of just compensation is fair market value. Fair market value means the cash price that would be arrived at between a voluntary seller that is willing, but not compelled, to sell and a voluntary purchaser that is willing, but not compelled, to

buy; both of whom are acting freely, intelligently, and at arm's length, bargaining in the open market.

The property owner is contacted by an acquisition agent from the Office of Right of Way. The amount the acquisition agent offers as just compensation for the property will not be less than the amount of the approved appraisal.

When an acquisition agent calls on a property owner, the agent can answer questions concerning the highway project and issues affecting the property.

C. Negotiated agreement: In most cases, an agreement on the purchase price is reached through negotiation. Although the state is not allowed to offer an amount less than fair market value for a property, there may be particular circumstances or conditions that warrant the state offering more.

After an agreement is reached, the property owner signs a purchase agreement. The director of the Iowa DOT's Office of Right of Way will accept the purchase agreement for the Iowa DOT after the terms have been approved.

Purchase agreements with the Iowa DOT shall be in writing and there shall be no agreement to perform or not perform any act except as specifically provided for in the written agreement.

D. Notice to move: If it is necessary for people to move from property the state acquires, they are given reasonable time to move. They are not required to move sooner than 90 days after either the state makes the offer to acquire the property or 90 days from the date comparable replacement housing is available, whichever is later. The Iowa DOT must give written notice specifying the date the property must be vacated at least 30 days before the required date the move must be completed. The 30-day written notice is not issued until the property owner has received payment from the state or the state has deposited the money as prescribed by law.

E. Timely payment: After the purchase agreement has been approved, a title and closing agent arranges to pay the property owner as soon as possible in accord with the terms of the approved purchase agreement. The owner may request early payment by contacting the title and closing unit of the Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010-6993.

9. DONATION OF REAL PROPERTY

Owners of land needed for a highway project are entitled to receive just compensation based on an approved appraisal. Even so, owners may waive the right to have the property appraised and may donate the land to the state for the highway project.

10. RELOCATION ASSISTANCE

The Iowa DOT's Office of Right of Way provides a Relocation Advisory Assistance Program to assist persons who are required to move because of highway projects. The program is staffed by relocation assistance advisors.

When negotiations begin between an acquisition agent and property owner, the displacee will also receive a written offer of relocation benefits. This amount is in addition to the amount offered for the purchase of the right of way.

A. Relocation payments: Relocation assistance payments are made to (legally present) residential displacees as well as, landowners, businesses, farm operations, and nonprofit organizations for actual, reasonable, and necessary moving expenses.

   If occupants must move from their home because of a highway project, a relocation assistance advisor can assist them with finding another home. Eligible relocation expenses are reimbursed on a receipt basis. To ensure that residents do not jeopardize their rights and benefits under the program, they should contact their relocation advisor before they move.

   When applicable, additional payments are made available to residential occupants to assist them in purchasing or renting decent, safe, and sanitary comparable housing.

B. Other reimbursements: Residential occupants may be eligible for reimbursement of certain incidental closing and transfer costs when purchasing replacement housing.

   Qualified displaced businesses, farms, and nonprofit organizations may also be eligible for reimbursement of actual, reasonable, and necessary costs incurred in moving and reestablishing their business to a new site, as well as searching cost reimbursement.

C. Fixed moving payment: Under certain circumstances, a displaced business or farm operator may choose to receive a fixed payment based on average annual net earnings, instead of all other reimbursements. Likewise, under certain circumstances, a nonprofit organization may choose to receive a fixed payment, based on average past revenues instead of other expenses.

D. Relocation appeals: Persons who are dissatisfied with a determination concerning eligibility for relocation assistance benefits or the amount of relocation assistance payment offered by the state may have their applications reviewed.

Additional information is available in the Relocation Assistance and Advisory Services brochure.

11. EMINENT DOMAIN (CONDEMNATION)

Eminent domain is the legal term used to describe the state's inherent right or authority to use private property for public purposes. The use of this authority is a delicate balance between the rights of the public as a whole and those of the private citizen. Federal and state laws and rules protect the interests of each citizen, as well as the interests of the state in serving the general public.

If the owner and the Iowa DOT do not reach an agreement for the purchase of property, the issue will go to a condemnation hearing. A court-appointed panel of six compensation commissioners view the property and hear both sides' opinions of its value. The commissioners then determine the amount to be paid by the state to the owner. This award is final unless either side appeals this decision to district court within 30 days.

The Iowa DOT has the right to possess the property when it deposits the awarded amount with the county sheriff. However, if the property owner's house, orchard, or garden is condemned and an appeal is made to district court, the state cannot take possession for 180 days from the condemnation hearing date or the date the amount to be paid the owner is finally determined and paid, whichever occurs first.

12. CONVEYANCE OF TITLE AND TRANSFER COSTS

A title and closing agent from the Iowa DOT's Office of Right of Way prepares the documents to convey title of property or property rights as provided by the terms of the approved purchase agreement. The state provides any land survey plat and description that may be necessary to convey the title. The owner can speed the payment process by quickly returning the executed documents.

A. Transfer costs: The Iowa DOT's Office of Right of Way pays actual and reasonable expenses incurred in transferring land to the state. These expenses include recording fees, mortgage release payments (except principal and interest), transfer taxes, abstract continuation costs, and similar expenses necessary and incidental to the transfer.

   Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith are considered costs incidental to transfer of land to the state. The state pays for or reimburses for all such costs.

B. Mortgage balances, liens: The state makes payments in the form of state comptroller's warrants (checks). The state may include the holders of mortgages, liens, encumbrances, and taxing bodies as payees on warrants. In the case of a mortgage that has not been paid off, arrangements can be made to have the state pay off the mortgage from the proceeds of the sale, if this is desired by the owner or required by the mortgage holder.

C. U.S. Department of Vetrans Affairs (VA) home loans: The VA recognizes that a sale of property for highways is not of one's own choosing; consequently, GI privileges can be restored and made available for coverage on the purchase of another property.

D. Real estate taxes: Real estate taxes are the property owner's responsibility until the actual date the owner relinquishes possession to the state.

13. BENEFITS AVAILABLE TO PERSONS TRANSFERRING LAND FOR A HIGHWAY PROJECT

A. Farm drain tile lines or outlets: Farm drain tile lines or outlets that are located within the area of the new highway will be protected or repaired if damaged.

B. Retention of buildings and improvements: Owners may negotiate to move their buildings onto the owner's remaining abutting property and to keep improvements and fixtures.

C. Uneconomic remnants: An uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Iowa DOT's Office of Right of Way has determined has little or no value to the owner. If the Office of Right of Way has determined an uneconomic remnant is created, the state will offer to purchase it.

When the owner sells an uneconomic remnant to the state, he or she also will receive just compensation for the uneconomic remnant. If an owner sells to the state only that part of the property that is needed for the highway project, the state pays for the part that is needed and for any damages caused to the remainder.

D. Income tax: The sale of land and improvements to the state is considered by the Internal Revenue Service to be an "involuntary conversion." A property owner who sells property to the state is not required to pay income tax or capital gains tax if the seller invests the money received from the sale in similar property within a specified period. For details about taxes, property owners should consult with their nearest Internal Revenue Service office, a tax adviser, or an attorney.

Relocation assistance benefit payments are not considered income for either state or federal income tax purposes.

The seller is required to complete an IRS Form W-9 at the time of negotiations. This will help expedite the closing process.

E. Fair housing: All replacement housing shall be open to all persons regardless of race, color, religion, sex, or national origin.

F. Certain litigation-cost appeals: If the state refuses to reimburse or pay all transfer costs, the seller may ask for a review.

If it is determined the state cannot acquire property or has abandoned a condemnation proceeding other than through an agreed settlement or is ordered by the court to acquire property, the state will pay reasonable litigation expenses. In these cases, if the state refuses to pay all litigation expenses, the decision may be reviewed by a review board.

14. CONSTRUCTION

The state acquires the needed right of way before bids for the highway construction are requested.

15. RIGHT TO RENEGOTIATE CONSTRUCTION OR MAINTENANCE DAMAGE SETTLEMENTS (IOWA CODE 6B.52)

According to Iowa Code 6B.52: Whenever property or an interest therein has been taken by condemnation or has been purchased for a public use and a settlement for construction or maintenance damages has been thereafter entered into pursuant to said condemnation or purchase, the owner shall have five years from the date of said settlement to renegotiate construction or maintenance damages not apparent at the time of said settlement. The condemner or purchaser shall give written notice to the owner of such right of renegotiation at the time said settlement is entered into.

Questions arising during the actual construction or maintenance of a highway project may be directed to the nearest Iowa DOT's district office.

IOWA DOT'S DISTRICT CONTACT INFORMATION

DISTRICT 1 Office

1020 S. Fourth St.,
Ames, Iowa 50010
Phone: 515-239-1635 or 800-899-0623
Fax: 515-239-1472

DISTRICT 2 Office

1420 Fourth St. S.E.,
Mason City, Iowa 50401
Phone: 641-423-7584 or 800-477-4368
Fax: 641-423-0246

DISTRICT 3 Office

2800 Gordon Drive, P.O. Box 987,
Sioux City, Iowa 51102-0987
Phone: 712-276-1451 or 800-284-4368
Fax: 712-276-2822

DISTRICT 4 Office

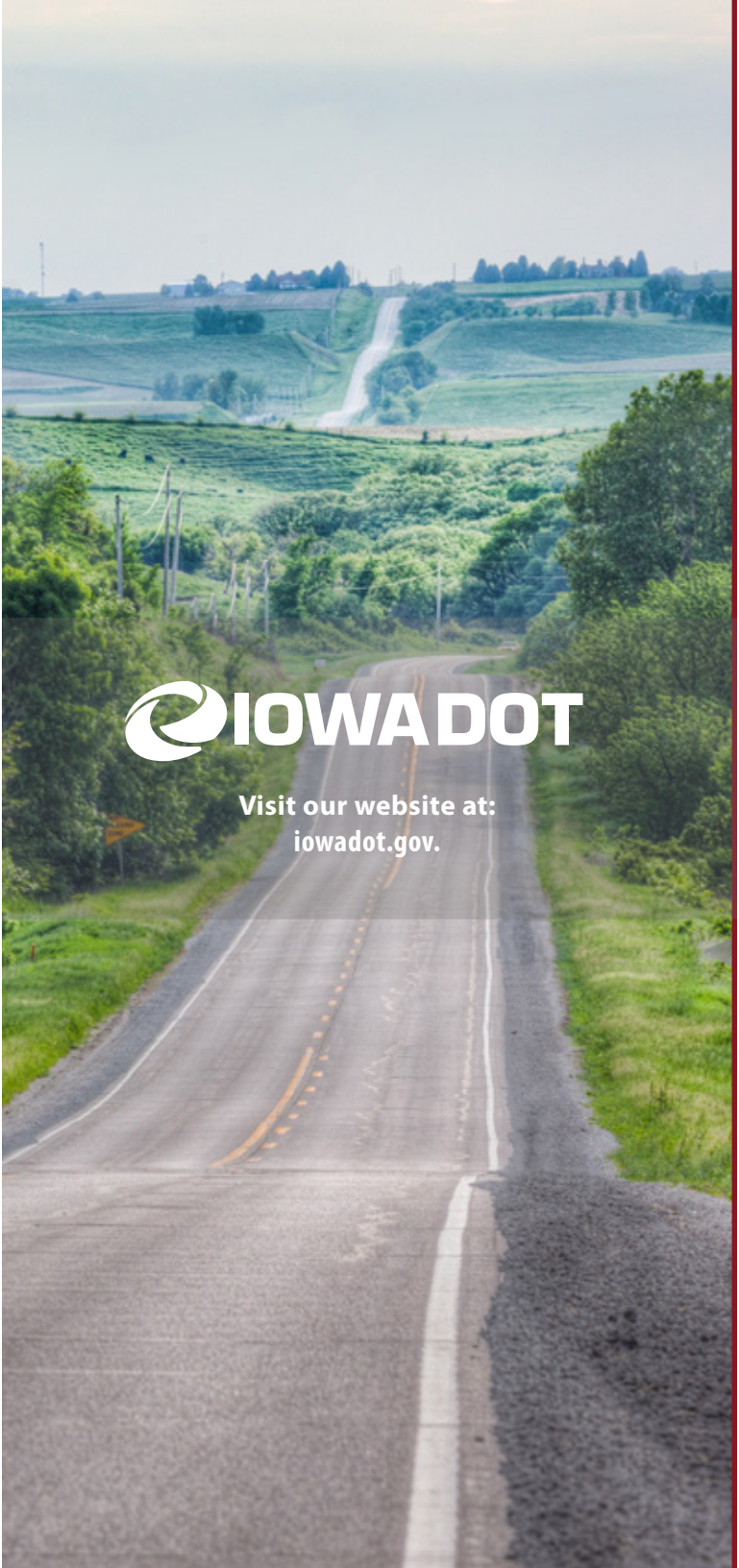
2210 E. Seventh St.,
Atlantic, Iowa 50022-0406
Phone: 712-243-3355 or 800-289-4368
Fax: 712-243-6788

DISTRICT 5 Office

307 W. Briggs, P.O. Box 587,
Fairfield, Iowa 52556-0587
Phone: 641-472-4171 or 800-766-4368
Fax: 641-472-3622

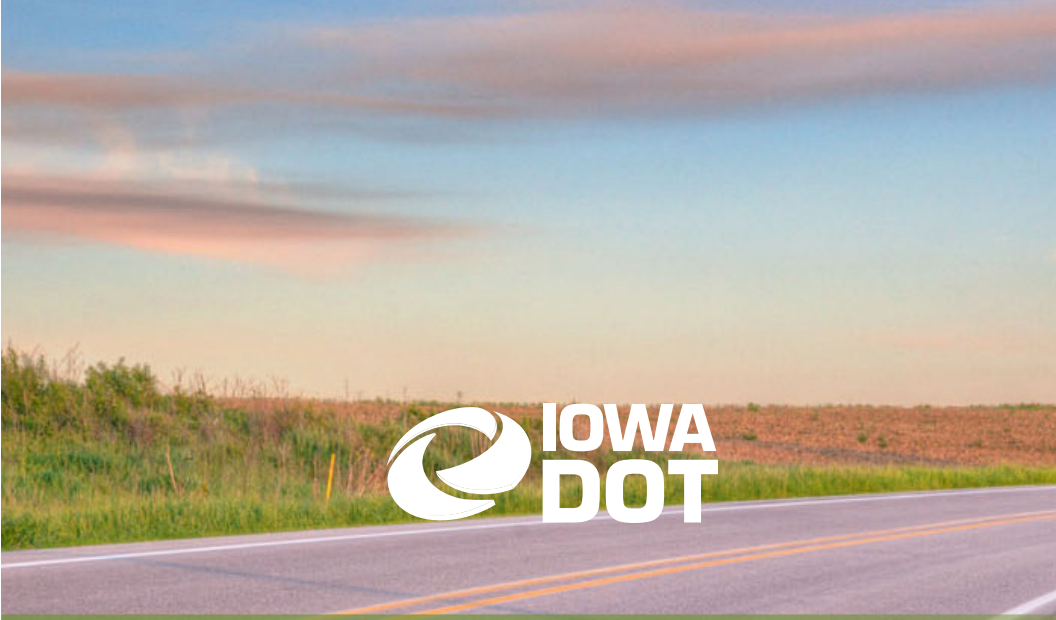
DISTRICT 6 Office

5455 Kirkwood Blvd, SW
Cedar Rapids, Iowa 52404
Phone: 319-364-0235 or 800-866-4368
Fax: 319-364-9614



HIGHWAYS AND YOUR LAND

a guide to our right of way procedures



Contact us

The Office of Right of Way
can be reached at:

Office of Right of Way
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010
515-239-1216

Visit our website at:
iowadot.gov.

Federal and state laws prohibit employment and/or public accommodation discrimination on the basis of age, color, creed, disability, gender identity, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran's status. If you believe you have been discriminated against, please contact the Iowa Civil Rights Commission at 800-457-4416 or Iowa Department of Transportation's affirmative action officer. If you need accommodations because of a disability to access the Iowa Department of Transportation's services, contact the agency's affirmative action officer at 800-262-0003.

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