

Chapter 35

Highways and Infrastructure – Acquiring Land for the Regina Bypass

1.0 MAIN POINTS

From time to time, the Ministry of Highways and Infrastructure acquires land for the construction of public improvement projects as part of its responsibility for highways, public improvements, transportation, and transportation systems.^{1, 2}

By August 2018, the Ministry of Highways and Infrastructure improved its processes to acquire land for public improvement projects by implementing all eight recommendations we made in 2016.

The Ministry acquired all land necessary for the Regina Bypass by January 1, 2017. For this audit work, we examined land acquisitions after January 1, 2017, made for other public improvement projects.

The Ministry adjusted its planning processes to determine planned routes for projects in a timelier manner, enabling it to identify land requirements earlier during the projects. We found the Ministry used a land protection technique to protect land it required for projects from being developed. The Ministry also developed a model to assist in determining the appropriate time for the Ministry to acquire land, including the consideration of changes to future land values.

In addition, Ministry staff responsible for acquiring land periodically documented conflicts of interest. The Ministry clearly documented its review of appraisal reports used to acquire land. It consistently followed its policy of paying permanent damages for partial takings of agricultural land, and kept sufficient supporting documentation for amounts paid. Also, it followed its delegation of authority for reviewing draft land purchase offers, and executing land purchase agreements.

Furthermore, the Ministry gave landowners additional information to help them understand their property rights and how it determines compensation when acquiring land.

2.0 INTRODUCTION

2.1 Background

Under *The Highways and Transportation Act, 1997*, the Ministry is responsible for all matters not by law assigned to any other minister, department, branch, or agency of the Government of Saskatchewan relating to highways, public improvements, transportation, and transportation systems. This includes acquiring or expropriating any land required for public improvement projects such as the Regina Bypass.

¹ *The Highways and Transportation Act, 1997*, s. 3.

² Public improvements include public highways, ditches, and land required for securing material in connection with road works (e.g., land used to obtain dirt for road construction).



The Ministry uses public money to acquire land needed to fulfill its mandate. As such, it must balance the needs of the taxpayer through financially responsible management of public resources while providing landowners with amounts reflecting fair value for the land being acquired.

Between January 1, 2017 and June 15, 2018, the Ministry made 53 land acquisitions for public improvement projects totalling just over \$1.1 million.³ None of these land acquisitions related to the Regina Bypass as the Ministry acquired all land necessary for the Regina Bypass prior to January 1, 2017.

2.2 Focus of Follow-up

This chapter describes the results of our first follow-up of the Ministry's actions to implement the eight recommendations we made in our *2016 Special Report: Land Acquisition Processes: Global Transportation Hub Authority and the Ministry of Highways and Infrastructure*, Chapter C. In 2016, we concluded that the Ministry of Highways and Infrastructure had, other than the matters reflected in those eight recommendations, effective processes to acquire land for the Regina Bypass in a fair manner at amounts reflecting fair value.

To conduct this audit engagement, we followed the standards for assurance engagements published in the *CPA Canada Handbook – Assurance (CSAE 3001)*. To evaluate the Ministry's progress towards meeting our recommendations, we used the relevant criteria from the original audit. The Ministry agreed with the criteria in the original audit.

In this follow-up audit, we interviewed Ministry officials responsible for acquiring land for public improvement projects, and reviewed key documents used in its land acquisition process (e.g., Land Standards and Guidelines). In addition, we tested a sample of land acquisitions for public improvement projects to assess whether the Ministry followed its land acquisition policies during our audit period.

3.0 STATUS OF RECOMMENDATIONS

This section sets out each recommendation including the date on which the Standing Committee on Public Accounts agreed to the recommendation, the status of the recommendation at August 31, 2018, and the Ministry's actions up to that date. We found that the Ministry had implemented all eight recommendations.

3.1 Alternative Approaches Now Used to Protect Land for Major Public Improvement Projects

We recommended that the Ministry of Highways and Infrastructure explore alternate approaches to optimize the timing of land acquisitions for major public improvement projects. (2016 Special Report – Chapter C; Public Accounts Committee agreement February 13, 2017)

Status – Implemented

³ Ministry of Highways and Infrastructure records.

Since 2016 (the timing of our initial audit), the Ministry adjusted its planning processes to finalize routes of major public improvement projects in a more timely manner. The adjusted processes allow the Ministry to consider acquiring land required for projects earlier.

Also, since 2016, the Ministry used a land protection technique (e.g., registering provincial interests) to protect land it expected to require for future projects. Lastly, the Ministry designed a model to help determine the optimal time to acquire land.

Revised Planning Process to Finalize Routes

In 2018, the Ministry started requiring staff to finalize the route location for major public improvement projects sooner than previously. For major projects, it will result in staff making this decision considerably sooner than previously.

The Ministry completes its process to plan for new major public improvement projects through three phases: a general location study, functional design study, and detailed design study. See **Figure 1** for a description of each phase.

Before it can consider acquiring land for a project, the Ministry must determine the final route location. Historically, the Ministry often waited to finalize the routes by completing the functional design study many years after the general location study. For example, for the Regina Bypass, the Ministry completed various planning studies over an 18-year period (1996 to 2014).⁴

Figure 1—Description of Three Planning Phases of Major Public Improvement Projects

1. **General location study:** The general location study incorporates public consultation and includes the Ministry's development of a broad plan for the location of the new infrastructure. This process involves the Ministry identifying an area of land, approximately 500 metres wide, for the planned location of the final route. This broad area is approximately five times greater than the requirement for a double-lane highway, providing the Ministry with flexibility when it finalizes the route.
2. **Functional design study:** During the functional design stage, the Ministry narrows down the location of the final route within the broad area identified in the general location study. It is in this stage where the Ministry also plans for other considerations such as access to the new route (e.g., intersections), whether service roads will be required, environmental requirements, and expected impact on existing utility infrastructure, etc.
3. **Detailed design study:** The detailed design study defines the exact location of the final route including survey plans and develops the design of the infrastructure (e.g., roads, bridges).

Source: Ministry of Highways and Infrastructure records

In 2018, the Ministry updated its functional planning policy to require completion of the functional design study directly following the general location study. This allows the Ministry to finalize the final route much earlier than before, thereby enabling it to consider acquiring land much earlier.

We observed that the Ministry planned to complete functional design directly following the general location study for projects it was working on in 2018, including the Saskatoon Freeway.⁵ The Ministry approved the Saskatoon Freeway general location study in February 2018. We observed documentation that the Ministry was working to initiate the

⁴ www.saskatchewan.ca/residents/transportation/regina-bypass/regina-bypass-project (11 September 2018).

⁵ www.saskatchewan.ca/government/public-consultations/past-consultations/saskatoon-freeway-consultation/about-the-saskatoon-freeway-project (20 April 2018).



functional design phase in January 2018, by planning to hire a consultant to complete this work.

Having processes that facilitate earlier decisions about land needed and the location of that land reduces the Ministry's risk of exposure to escalating land prices between the route planning and construction stages, which, for some projects, may be years after planning is completed.

Ministry Used Land Protection Technique to Protect Land for the Saskatoon Freeway

Starting in 2018, the Ministry uses a land protection technique to protect land identified as being necessary in a general location study for major projects requiring significant land acquisitions. For these types of projects, the Ministry uses this technique after it completes the general location study.

Since the Regina Bypass, the Saskatoon Freeway is the Ministry's only project requiring a significant acquisition of land.

We found that the Ministry worked with the Ministry of Government Relations and related municipalities to protect the land it expected to need for construction of the Saskatoon Freeway. In March 2018, the Ministry declared provincial interests on this land by requesting Government Relations and the related municipalities protect the future development of the land identified in its February 2018 general location study.

We observed the Ministry received written support from Government Relations and the municipalities involved for protecting the land identified by the Ministry. Further, we found that the municipalities added the expected route location for the Saskatoon Freeway into their official community plans and planning maps.⁶ This helps the municipalities consider the expected route when making future planning decisions (e.g., annexing land, issuing building permits).

As described in **Figure 2**, registering a provincial interest is a technique to keep the land in an undeveloped or minimally developed state. *The Planning and Development Act* provides the authority for registering provincial interests. This could potentially protect land from development that may be needed for future highway projects. Developed land has higher value.

Figure 2—Registering Provincial Interests

Under *The Planning and Development Act*, Saskatchewan municipalities must submit their official community plans to the Ministry of Government Relations.

The Ministry of Government Relations consults with the Ministry on the official community plans and determines whether potential issues that could influence the Ministry's highway plans exist.

If so, the Ministry of Government Relations works with municipalities to develop joint solutions, such as protecting land the Ministry needs from future development through a municipal bylaw amendment.

The Ministry shares its highway plans with the Ministry of Government Relations for its information and consideration.

Source: 2016 Special Report: Land Acquisition Processes, Chapter C.

⁶ www.saskatoon.ca/sites/default/files/documents/community-services/planning-development/mapping/wall-maps/projected_growth_concept_plan.pdf, and www.rm.cormanpark.ca/DocumentCenter/View/1357/General-RM-344-Map (28 August 2018).

Using land protection techniques such as registering provincial interests helps the Ministry acquire land for public improvement projects in a fiscally responsible manner.

Ministry Expects to Use New Model to Assess When to Acquire Land

In December 2016, the Ministry approved the use of a new model for deciding when to purchase land after completion of the functional design stage. We found this model to be reasonable.

While the Ministry had not yet used this model as of September 2018, it expects to use the model for new major public improvement projects, including the Saskatoon Freeway.

Ministry staff expect to use the information within the model to determine the risk of the project. When using the model, staff are to consider the stage of a project (e.g., general location study, functional design) and where the project ranks as compared to the Ministry's various other projects (e.g., whether it appears on the Ministry's five-year capital plan). For projects the Ministry determines to be high risk, it expects to delay its acquisition of land and reconsider the decision in the future.

The model also requires the Ministry to consider changes to future land values. Through the consideration of expected future land values and other economic factors (e.g., cost to keep the land until constructed, interest rates) the model estimates the most beneficial point in time for the Ministry to acquire land (i.e., economic benefits estimated to be greater than estimated costs).

3.2 Conflict of Interest Processes in Place and Followed

We recommended that the Ministry of Highways and Infrastructure require staff responsible for acquiring land for public improvement projects to periodically document conflict of interest. (2016 Special Report – Chapter C; Public Accounts Committee agreement February 13, 2017)

Status – Implemented

Ministry staff responsible for acquiring land consistently considered and documented potential conflicts of interest.

Since 2016, the Ministry requires all employees to document potential conflicts of interest on an annual basis. This includes staff responsible for acquiring land for public improvement projects.

For 10 land acquisitions files we tested, each documented conflict of interest declarations for all employees involved in these acquisitions. Where employees declared potential conflicts of interest, we found the Deputy Minister approved the remedial actions to address the identified potential conflicts. We found the remedial actions sufficient to mitigate the identified conflict.



3.3 Documented Review of Appraisal Reports Completed

We recommended that the Ministry of Highways and Infrastructure require staff to clearly document the results of review of appraisal reports used to acquire land for public improvement projects. (2016 Special Report – Chapter C; Public Accounts Committee agreement February 13, 2017)

Status – Implemented

The Ministry required employees to document their review of appraisal reports used to determine land values when acquiring land for public improvement projects.

In November 2016, the Ministry issued a technical bulletin requiring employees to complete a checklist when reviewing appraisal reports.⁷ This appraisal review checklist requires employees to assess various aspects of appraisal reports, including: scope, methodology, assumptions, highest and best use, reported value, comparable lands, appraisal timing, and other matters of fact relevant to the land acquisition.⁸

For each of the seven land acquisitions following the Ministry's implementation of the checklist that we tested, the Ministry used the checklist to document its review of appraisal reports for each of these acquisitions.

3.4 Compensation In Accordance with Policies

We recommended that the Ministry of Highways and Infrastructure clarify its policy for paying permanent damages for partial takings of agricultural land to landowners for public improvement projects. (2016 Special Report – Chapter C; Public Accounts Committee agreement February 13, 2017)

Status – Implemented

We recommended that the Ministry of Highways and Infrastructure follow written approved policies in effect related to determining compensation associated with land acquisitions for public improvement projects and keep related supporting documents. (2016 Special Report – Chapter C; Public Accounts Committee agreement February 13, 2017)

Status – Implemented

When acquiring land, the Ministry consistently followed its policies for determining compensation and paying landowners for permanent damages relating to partial takings of agricultural land.

⁷ From time to time, the Ministry issues technical bulletins to help it acquire land in a manner consistent with its legislation and case law.

⁸ Highest and best use is defined as the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and results in the highest value.

Following our 2016 audit, the Ministry reviewed its policy relating to permanent damages for partial takings of agricultural land.⁹ The 2016 audit had identified inconsistent application of its compensation policies—see **Figure 3** for summary of our 2016 audit findings. The Ministry determined that its policy remained appropriate. To have it applied consistently, it re-enforced the appropriate application of the existing policy with staff. For example, it did this through closer supervision including a new process to review draft property purchase offers as discussed in **Section 3.5**, and through discussions with staff in September 2016.

For each of the 10 land acquisition files we tested, the Ministry followed its approved policies for determining compensation for land acquisitions. This included the consistent application of a 15% premium on the purchase price for 8 of the acquisitions we tested. Also for these files, the Ministry kept sufficient and appropriate supporting documentation to support the purchase price paid for land acquisitions.

In December 2016, the Ministry eliminated its policy giving its staff authority to make payments above market value determined by appraisals in unique situations—called discretionary spending. Discretionary spending was rare. Consistent with this change, we found that none of the Ministry's 53 land acquisitions between January 1, 2017 and June 15, 2018, included payments for discretionary spending.

Figure 3—Summary of 2016 Audit Findings Related to Paying Permanent Damages for Partial Takings of Agricultural Land

For two land acquisition files we tested with purchase offers made before August 2015, the Ministry applied the 15% premium inconsistently. It paid the 15% premium to an ineligible landowner, and did not pay the 15% premium to an eligible landowner. In August 2015, the Ministry set its interpretation of the eligibility criteria for payment of the 15% premium in a technical bulletin. The bulletin established the Ministry was to pay the premium where land involved in the partial taking was zoned as agricultural at the time of purchase, and did not have a highest and best use higher than agriculture.

Source: 2016 Special Report: Land Acquisition Processes, Chapter C.

3.5 Delegated Signing Authority Consistently Followed

We recommended that the Ministry of Highways and Infrastructure provide for an internal review of compensation performed by a second person other than the preparer associated with land acquisitions for public improvement projects prior to making offers to landowners. (2016

Special Report – Chapter C; Public Accounts Committee agreement February 13, 2017)

Status – Implemented

We recommended that the Ministry of Highways and Infrastructure follow its delegated signing authority when acquiring land for public improvement projects. (2016 Special Report – Chapter C; Public Accounts Committee

agreement February 13, 2017)

Status – Implemented

⁹ The Ministry's policy for agricultural land is to pay a premium (permanent damage) in recognition of the disruption caused by a partial taking of agricultural land (i.e., resulting in increased fixed costs of agricultural operations). Per the policy, the premium in excess of appraised value is 15% for agricultural land.



The Ministry’s delegated signing authority policy for acquiring land for public improvement projects includes requiring an independent internal review of compensation before making offers to landowners.

As described in **Figure 4**, the Ministry’s delegated signing authority establishes approval limits based on dollar value for authorizing both the independent internal review of draft property purchase offers and for executing property purchases (i.e., executing agreements to purchase property from landowners).¹⁰ It requires a second person other than the preparer associated with land acquisitions for public improvement projects to review the compensation calculation prior to it granting approval to make an offer to a landowner.

Figure 4—Ministry of Highways and Infrastructure Delegation of Signing Authority for Authorizing Review of Draft Property Purchase Offers and Executing Property Purchase Agreements

Position	Maximum amount of dollar value of Purchase Agreement/Offer
Deputy Minister	Greater than \$1,000,000
Assistant Deputy Minister, Design and Construction	Less than or equal to \$1,000,000
Executive Director, Regional	Less than or equal to \$500,000
Director, Traffic Engineering and Development	Less than or equal to \$250,000
Manager, Land and Property	Less than or equal to \$50,000

Source: Ministry of Highways and Infrastructure Signing Authority Delegations 2016-17.

For all 10 land acquisitions we tested, the Ministry followed its delegated signing authority when acquiring land for public improvement projects and completed an independent internal review of compensation before making offers to landowners as expected.

3.6 Information on Landowner Property Rights and Compensation Determination Now Publicly Accessible

We recommended that the Ministry of Highways and Infrastructure publish information to help landowners understand their property rights and how it determines due compensation for land for public improvement projects. (2016 Special Report – Chapter C; Public Accounts Committee agreement February 13, 2017)

Status – Implemented

In February 2017, the Ministry published additional information on its website to help landowners understand their property rights and how the province determines compensation for land.¹¹

¹⁰ Delegated signing authority is an official record of signing authorities (e.g., approval limits) delegated to Ministry staff.

¹¹ www.saskatchewan.ca/business/transportation-and-road-construction/buying-land-for-highway-construction (12 July 2018).

We found the information published by the Ministry sufficient and consistent with information published by other Canadian jurisdictions (e.g., Manitoba Crown Lands and Property Agency), including information about:¹²

- The Ministry's process to acquire land, including the Ministry's consultation with landowners
- The Ministry's use of independent appraisals to determine the market value of land¹³
- Other eligible types of compensation, known as damages, determined using various accepted industry standards
- The expropriation process
- Landowners' entitlement to assistance from other professionals during the land acquisition process—they may seek advice from lawyers, appraisers, and other consultants
- Contact information for Ministry staff responsible for acquiring land, as well as for the court and Public and Private Rights Board to which landowners can raise concerns¹⁴

¹² <https://clpamb.ca/acquisitions/YourRights.aspx> (8 August 2018).

¹³ For example the fair market value of land is determined as of the date of acquisition. Potential future increases in value are not considered. Also, existing buildings on the land are valued separately at depreciated value, not replacement cost.

¹⁴ The Public and Private Rights Board conducts mediation for disputes between landowners and expropriating authorities (like the Ministry) when parties cannot agree on the route, situation or design of a public improvement or fair compensation for the required land or easement. The Board consist of one member appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly for the term of five years. www.saskatchewan.ca/government-structure/boards-commissions-and-agencies/public-and-private-rights-board (4 October 2018).

