

# **Various Means of Public Participation in Government Compulsory Acquisition of Land**

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## **I. Overview of the system of government compulsory acquisition of land and public participation**

According to current Chinese laws and regulations governing land use,<sup>1</sup> the procedures for compulsory land acquisition and mechanisms of public participation include the following:

**Issuance of land acquisition notice.** The county or municipal level of the Bureau of National Land and Resources issues a public notice of land acquisition in the village where the land is to be acquired, which provides the following information: the area of land to be acquired, its size, compensation methods, compensation standards, types of relocation arrangements and purpose of the land acquisition.

**Solicitation of villagers' opinions.** The county or municipal level Department of National Land and Resources, and the township government (or the sub-district office of the district government) where the land is located solicit opinions from the village's collective economic organizations and the villagers concerning the content of the land acquisition notice. Different opinions should be recorded and dealt with separately depending on whether they come from the village committee or the villagers. In the case of dissent on compensation standards, compensation methods, or relocation arrangements the "Rules for Hearings on National Land and Resources" (drafted by the Ministry of National Land and Resources), implemented on May 1, 2004, stipulates that the persons

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<sup>1</sup> "Land Management Law," "Methods for Planning and Managing Land for Development," "Disciplinary Measures for Violation of Land Management Regulations," "Norms for Land Use Index Projects," "Land Survey Regulations," "Rules for Implementation of the Land Management Law," "Rules for Public Hearings on National Land and Resources," and local ordinances such as "Methods to Manage Compulsory Land Acquisition."

from whom the land is to be acquired shall be informed of their right to ask for a hearing, and a hearing should be held in accordance with law. Villagers' opinions about the land acquisition and information related to any hearing should be kept on file by the Department of National Land and Resources, and must be submitted as part of the paperwork for approval.

**Land survey and registration of objects attached to land.** The county or municipal Department of National Land and Resources, the party that owns the land, and the party that holds the land use rights, conduct a field survey of the land borders, its usage, its area, the types of objects attached to the land and their numbers and specifications. Moreover, the Department of National Land and Resources must fill out three copies of the survey result form on site, and the Department's staff, the land owner and the party who has the right to use the land must sign the forms after confirming their accuracy. The Department of National Land and Resources keep the signed documents on file and submit them as part of the paperwork for approval.

**Preparation and submission of the "one booklet, four plans" portfolio.** Based on information obtained from the solicitation, hearing, survey, and registration processes, the county or municipal Department of National Land and Resources drafts "one booklet, four plans" in accordance with the submission requirements of the agency that reviews and approves the land acquisition. "One booklet" refers to the document describing the land that is to be developed. The "four plans" refer to the plan to change the use of the land from agricultural uses, the plan to make up for the loss of cultivated land due to the change, the plan for compulsory acquisition of the land, and the plan to provide the land to an entity for development. The Department puts all these documents together and submits them to the agency with the power of approval.

**Public notice of the land acquisition.** Within 10 working days of receiving the land acquisition approval document from the provincial government or the State Council, the municipal or county government that is acquiring the land must provide public notice of the land acquisition in the village from which the land is to be acquired. The notice

should contain the following information: name of the agency that approved the land acquisition; the number of the approval document, the time of approval, and the approved uses of the land; the name of the owner of the land to be acquired; the location, size and type of land; compensation standards for the land to be acquired; relocation arrangements for the affected agriculture population; and the deadline and location for registration for compensation.

**Public announcement of the compensation and relocation plan due to land**

**acquisition.** Once the “Land Acquisition Plan” is approved by the provincial government or the State Council (based on the land acquisition approval documents), the municipal or county level Department of National Land and Resources drafts a compensation and relocation arrangement plan for a village and publicly announces it within 45 days of the notice of land acquisition. The announcement includes the following information: the location, type and area of land to be acquired; the types and amount of objects attached to the land and any crops on the land; how many people from the agriculture population will need to be resettled; standards for land compensation, including the amount of compensation, to whom the amounts will be paid, and the method by which the amount be paid out; the standards for relocation subsidy, including the amount of such subsidy, to whom it will be paid out, and the methods of payment; standards of compensation for objects attached to the land and crops on the land, as well as how the compensation will be paid; specific methods for resettling the agricultural population; and other specific measures concerning compensation and relocation arrangements. If the affected village collective economic entity, villagers or other right holders do not agree with the compensation and relocation arrangement plan, or request that a hearing be held, their opinions or request should be presented to the municipal or county level Department of National Land and Resources within 10 working days from the date that the compensation and relocation arrangement plan is publicly announced. The Department will study any dissenting opinions and a hearing should be held if requested. If there is indeed a need to amend the compensation and relocation arrangement plan, changes should be made according to relevant laws and regulations and the approved land acquisition plan.

**Submission of the land acquisition, compensation and relocation plan.** The county or municipal Department of National Land and Resources submits the already publicly announced compensation and relocation arrangement plan, together with the opinions of those affected and information on how these opinions have been accommodated, to the county or municipal government for review and approval.

**Approval of the land acquisition, compensation and relocation plan.** After approving the compensation and relocation arrangement plan, the municipal or county government will submit it to the provincial Department of National Land and Resources to be put on file, and provide it to the municipal or county administrative agency in charge of national land and resources for implementation.

**Land compensation registration.** The collective economic organizations, the villagers or other right holders in the village where the land is to be acquired should, within the time frame set by the land acquisition notice, bring their land right ownership certificates (land contracts) to a designated place to complete the procedures for compensation registration. If any entity fails to complete the compensation registration paperwork within the set time frame, compensation will be based on the result of a survey conducted by the municipal or county administrative agency in charge of national land and resources.

**Implementation of the compensation and relocation arrangement plan and handing over the land.** Compensation funds will be paid out in accordance with relevant regulations, and land will be handed over on schedule by the entity or individual from whom it is acquired.

## **II. The East Garden Redevelopment Project**

The East Garden Redevelopment Project is a major project of the Xi'an's Lingtong District Government to redevelop the East Garden Hotel and its surrounding environment, beautify the East Mountain Scenic Zone, and improve the area for tourism.

The East Garden Hotel is located on the north side of the East Mountain, and to the east of the famous Huaqing Hot Springs. A state-owned entity, the well-known hotel was built in 1957 in a beautiful area. The hotel is made up of a group of Tang dynasty style buildings. However, because of lack of repairs and renovation over the years, the hotel did not have facilities that met the needs of tourists. To the west of the hotel was the Dongjiao villagers' group<sup>2</sup> of Xijie Village (hereafter referred to as the Dongjiao group), which had disorderly residential buildings and poor infrastructure. In addition, the villagers would randomly excavate dirt from the north side of the East Mountain for use in building structures on the sides of the road; they also set up stands for retail purposes. All these actions not only endangered the safety of the hotel and the East Mountain tourists' route, but also affected the tourist environment of the East Mountain Scenic Zone and the image of Lingtong as a place for tourists. During their tours of Lingtong district, provincial and municipal leaders on multiple occasions had given instructions to speed up the redevelopment of the surrounding areas of East Mountain Scenic Zone. In 2006, the district government initiated redevelopment efforts in the area.

### **III. Initiation of the Redevelopment Project and Participation of Villagers During Land Acquisition Process**

On January 15, 2006, the Lingtong District Planning Commission approved the East Mountain National Forest Park Management Office's project for environmental renewal and road development at East Mountain. The Lingtong District Construction Department then conducted planning and site selection for the land to be used for development and relocation of the Dongjiao group. On June 19, 2006, the Lingtong District Department of National Land and Resources submitted documents concerning the land needed for the relocation and resettlement of the entire Dongjiao group. The Land Management Department of Xi'an municipality, after

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<sup>2</sup> A villagers' group is a system of collective ownership by rural people that represents the group in its collective ownership of the land.

reviewing the documents, submitted them to the National Land and Resources Department of the Shaanxi provincial government, which in turn submitted them to the Ministry of National Land and Resources and then to the State Council. On October 22, 2007, the Shaanxi People's Government agreed that 33 *mu* (one mu equals about 1/6 of an acre) of the land owned collectively by the Dongjiao group and included in the city's comprehensive land use plan would be acquired in accordance with the law and become state-owned. It then granted the right to use the national land to the Lingtong District Forest Management Office for the purpose of environmental renewal and road development at East Mountain.

According to article 2, clause 1 of the Land Management Law, the People's Republic of China has a socialist system of land ownership, including ownership by all the people and ownership by collectives of workers. Land owned by all the people is considered state-owned land, and the ownership rights are exercised by the state, as represented by the State Council. Collectively owned land refers to land owned by rural people and consists of three types: land collectively owned by farmers in a township, collectively owned by farmers in a village, and collectively owned by the people in a villagers group. According to the Organizational Law for Village Committees, a village committee is the villagers' self-governing body, and its members are elected by the village council or the village representative assembly. This committee exercises the collective ownership rights on behalf of the villagers. However, as defined by law, many major issues should be decided by the village council or the village representative assembly.

According to the provisions of article 43 of the current Land Management Law, with proper approval land owned by farmers in a collective economic organization can only be used to start a new town or village enterprise, build residences for villagers, or build public infrastructure and facilities for the village or town. Any entity or individual who needs land for any other building or development purposes must apply, through procedures specified by law, for the use of state-owned land. This means that to turn collectively-owned land into land for development purposes, the land must first be acquired and changed into state-owned land. Article 2, clause 4 of the Land Management Law stipulates that the state, for the needs of public interests, can acquire farmers' collectively owned land on a compulsory basis, paying due compensation.

On December 20, 2007, the People's Government of Xi'an issued a notice of the land acquisition plan; the notice was posted at the Xijie Village Committee's Government Affairs Information bulletin board, informing the Dongjiao group of the area of land to be acquired, its size, methods of compensation, standards of compensation, relocation arrangements and the purpose of the land acquisition.

As a result of this public announcement, 49 households out of a total of 60 requested to engage in the new land arrangement and jointly presented the request in writing to the district government. The Lingtong District Government, in conjunction with the East Mountain Sub-district Office, held many meetings with the villagers during which they talked and negotiated with the villagers' representatives, and finally made the decision to accept the villagers' request. A decision was made to acquire 30 *mu* of land at the East 2<sup>nd</sup> ring area of Lingtong and transfer the land to the Dongjiao group of Xijie village for the purpose of their relocation and resettlement. This decision was submitted to the Xi'an municipal government.

On February 7, 2008, the People's Government of Xi'an forwarded the response from the provincial government and approved the compensation and relocation arrangement plan. On March 11, 2008, the Lingtong District People's Government forwarded the document allowing land acquisition to the EMFPMO, and started working on compensation for the villagers and their relocation arrangements.

#### **IV. Public Participation in the Demolition, Compensation, and Relocation Process**

The East Garden redevelopment project involves relocating 60 households (246 people) from the Dongjiao group at Xijie village. In order to better handle the relocation, the Lingtong District Government held its fifth special meeting on this topic on March 15, 2007. It decided to establish a small leadership group that would be in charge of demolition, relocation, and resettlement, and emphasized that "demolition, relocation, and resettlement work should be conducted in strict adherence with relevant laws and regulations. Procedures should be strictly

followed and the limits of policy well-understood in order to ensure implementation in accordance with the law.”

On April 20, 2007, the Lingtong District Construction Department issued the “Building Demolition Permit” to Jianqiang Demolition Co., Ltd (located in Lingtong district, Xi’an) authorizing it to carry out the demolition work related to the East Garden redevelopment project. On May 10, 2007, the small leadership group released “Methods of Implementation for Demolition and Relocation for the East Garden Redevelopment Project,” and on July 26 it issued “Supplementary Rules for Demolition and Relocation of Dongjiao Village.” These documents defined the principles of relocation, standards of compensation, types of relocation arrangements, and other relevant issues. The district government then gave the villagers committee “Notice of Hearing,” however, the Dongjiao group gave up the opportunity for a hearing through a document called “Explanation on Abstention from the Hearing.”

The East Mountain Sub-district Office formulated a specific relocation plan in conjunction with the demolition work. In Dongjiao, the Office held meetings with the village committee and the village representative assembly to discuss and study the issue of relocation. Consultation with villagers found that more than 2/3 of them chose the East 2<sup>nd</sup> Ring settlement site and the government agreed to this location. The district government, after some discussion, finally agreed to have the settlement site on the East 2<sup>nd</sup> Ring. The principle for settlement was that for every household to be settled there, .2 *mu* of land would be planned as residential and the rest of the land would be used for commercial development in order to provide the villagers ways of making a living. The district government would be responsible for the planning of the resettlement site, the building of residences for the villagers and the building of the necessary electricity, communication, tap water and cable facilities, as well as ensuring that the relocated households could move in during the first half of 2008. In the newly constructed village, land would still be collectively owned, and the villagers would have the right to use the land and have ownership of their own residences.

Based on consultation with the villagers, the new settlement site would be designed and planned as a unit by the district government. The new village would showcase local culture and

customs and this would allow households to engage in tourist-related business activities. Meanwhile, some small groups from the collective would be devoted to land development, building a commercial network, and strengthening the collective economy. For male villagers over the age of 60, and female villagers over 55, the district government would provide 50 RMB per month per person as a living subsidy. For those willing to go elsewhere to seek work, the district government would provide 300-500 RMB per person for technical training. Seniors would get medical insurance and social security.

Currently, 49 households (196 people) out of a total of 60 in Dongjiao have signed the demolition and relocation agreement and moved. The district government has already issued moving and relocation transitional assistance funds to each of these households in accordance with relevant regulations. The mood of the villagers who have not moved remains calm. Four households (18 people) have gone through the land measurement and assessment process, but have yet to sign the demolition and relocation agreement and move. Seven households (32 people) have not yet done the assessment, nor have they signed the agreement, mainly because they have asked for too much in terms of compensation and relocation arrangements, so their requests cannot be satisfied. According to article 25 of “Methods to Implement the Land Management Law,” “In the case of disagreement with the compensation standards, the people’s government above the county level will be responsible for mediation; and when agreement cannot be reached through mediation, the people’s government which approved the land acquisition will adjudicate.” In this case, the local government is managing the issue through mediation.

The small leadership group has held multiple meetings with the villagers who have not moved, and negotiated with them on specific issues. These villagers are not opposed to the district government’s implementation of the East Garden redevelopment project; they only wish to have their requests for compensation and relocation satisfied. In order to accomplish this task, the Lingtong District Government is using many forms of communication to connect with villagers, and is actively looking for ways to resolve the issues in a smooth and harmonious fashion. The construction of residences and the necessary electricity, water, communication and cable facilities has started.

## **V. The Progress of the Project on Land Acquired from Dongjiao**

After granting the 33 *mu* of national land acquired from the Dongjiao group to the East Mountain Forest Park Management Office (EMFPMO), the Lingtong District Government, towards the end of 2008, decided that the development of roads at East Mountain and the environmental renewal project would begin through attracting and recruiting businesses to invest in the project. The government also decided that the East Garden Redevelopment Project would be part of a unified development project. The project was divided into two parts. The first was road building and environmental renewal on the site of the Dongjiao land, which now belongs to the East Mountain Scenic Zone and falls under the jurisdiction of the EMFPMO; second was the redevelopment of the East Garden area under the management of the East Garden Hotel. According to the preliminary plan by the East Mountain National Forest Park Management office, a road leading into the East Mountain will be built on the 33 *mu* of land acquired from Dongjiao. This will solve the problem of East Mountain's lack of a front entrance, making it easier for tourists to enter the area. The road being planned is 240 meters long, with a 12-meter wide main car lane. The sidewalk on either side will be 5 meters wide, with a 15 meter wide green belt on both sides. The land area occupied by the road will be roughly 19 *mu*. The rest of the land will be used to build parking lots, a tourist center, public restrooms, and other tourist facilities.

The Lingtong District Government put out a bidding notice in the local newspaper, and five companies bid for the project. After the review process, Xi'an Gaoxin Scientific Group and Xi'an Tianyuan Land Development Co., Ltd emerged as the winners. On December 12, 2008, the Lingtong District Government and Xi'an Gaoxin Scientific Group signed the "East Garden Redevelopment Project Cooperation Agreement." Meanwhile, the EMFPMO and Xi'an Tianyuan Land Development Co., Ltd signed the "Funding Agreement," and jointly formed the Xi'an East Garden Investment Corporation, Ltd for the project.

On March 28, 2009, the Lingtong District Development Planning Commission approved the "Filing Application for the East Garden Redevelopment Project" submitted by the Xi'an East

Garden Investment Corporation. On March 30, 2009, the Xi'an Municipal Planning Commission issued the "Planning Permit for Land for Development Purpose" to the EMFPMO, the entity that filed the initial application for the use of the land. The permit allowed for the planning of the 33 *mu* of land to be acquired for the project. On April 22, 2009, the Lingtong District National Land and Resources Department issued a permit to the Xi'an East Mountain Tourism Development Co., Ltd to use state-owned land.

## **VI. Analysis: The Applicability of Traditional Methods of Participation and Public Hearings at the Grass-roots Level**

A. The public at the grass-roots level is accustomed to the Chinese traditional ways of public participation. This case demonstrates the continued efficacy of these traditions.

1. The sub-district office of the local government communicated with the villagers before the land acquisition by going to the village and talking directly to people.

In this case, the Lingtong government's sub-district office, which is responsible for direct communication with the villagers, sent its staff to the village even before the government made the land acquisition plan, to understand the villagers' intentions and to survey the villagers whose land might be acquired by the government, so that they could get a handle on the various opinions that villagers had about land acquisition. This format was a very effective way of understanding the life of the villagers, the economic production situation, and the villagers' opinions and requests concerning the future acquisition of the land. This process gave the villagers some forewarning and preparation and, to a certain extent, built the foundation for a smooth process of land acquisition.

2. Opinions of the village committee, village representative assembly and the government were collected.

At the beginning stage of the land acquisition and during the compensation and relocation process, the village committee held many meetings on the plan for issuing

compensation funds and compensation standards, and subsequently submitted the results of these discussions to the village representative assembly, which is mainly made up of the Dongjiao villagers, for further discussion. This currently is an effective way for people in rural China to participate in such decisions. The reason for this is that normally the villagers do not have much direct contact with the government. Instead, the villagers communicate through the village committee, which deals with the government on many issues. For example, according to “Land Management Law,” the compensation funds for the government’s acquisition of land are paid out to the villagers’ committee first; the committee then distributes the funds to each villager. Another effective way of collecting the opinions of villagers is when government representatives attend the villagers meetings or help the village committee deal with various specific issues.

3. The use of other formats.

When it came to specific issues such as how to solve medical care and social security problems for older villagers, how to address employment issues for younger villages, how the villagers would live during the transitional period during which old houses would be demolished and new residences built, the sub-district office adopted the format of forums to fully understand villagers’ concerns and to discuss specifics. This had some impact on public participation and the resolution of issues in a timely manner.

The case in this paper involved only 60 households. As the number of people was limited, the traditional ways of communication were sufficient to satisfy the needs of information exchange between the government and the villagers. Moreover, these ways of communication were more efficient, compared with the public hearing format, which the villagers were not familiar with and chose to abstain from, even though the law has given them the right to hearings and the government had informed them of that right.

B. The problems that the hearing system faces in compulsory land acquisition.

The public hearing system is a public participation system that has been widely adopted in many countries. Since coming to China in the mid-1990s, the hearing system has developed rapidly and the scope of its use has expanded. From the early stages, during which this system was used for price decisions and administrative disciplinary actions in China, it has expanded gradually into areas of legislation, important administrative approval decisions, major infrastructure construction projects, and other areas that affect the interests of the people. It has already begun to be used in the area of land acquisition, but often because the public at the grass-roots level is not yet familiar with it, they tend to be more comfortable with using the traditional ways of communicating with the government to protect their rights and interests. The case discussed in this paper is one from China's western region, where people are still not accustomed to the concept of a hearing. Even in the more developed southeast region in China, the same phenomenon also exists. For example, according to the result of the 2007 survey by the Guangzhou Social Information Public Opinion Research Center, the total number of people who believed that hearings "have no effect" or "have not much effect" on government decision-making or that hearings "are just formalism" was 62.5 percent (15.5 percent believed that hearings "are just formalism").

The Dongjiao group in our case gave up its right to a hearing. This may seem to suggest that they do not have a strong sense of their rights, but in reality they had already had various kinds of participation through the traditional ways (such as representatives from a government agency coming to them to listen to their opinions, organizing forums, or participating in the villagers' meetings). Of course, the fact that these citizens gave up the hearing also had to do with imperfection in implementation of the hearing system in China in recent years. This situation also demonstrates that further improvement is needed in the use of the hearing system in land acquisition.

1. Who should take charge of the hearings concerning compulsory land acquisition.

In China, the power of compulsory land acquisition is jointly exercised by a network of multiple agencies at multiple levels of government. A county government formulates the building and development program for the area under its jurisdiction in accordance

with the urban and rural development plan, and then submits it to the higher level of government for approval. This program, in actuality, has pretty much already decided the extent of the land to be acquired in the jurisdiction. In accordance with the municipality's needs, the building and development agencies determine the scope of the land to be used for construction. Land management agencies are responsible for surveying the land to be acquired, investigating land registration, and determining the land that will be used. The authority to approve compulsory land acquisition belongs to the levels of government above the county. If the size of the land to be acquired is rather large, approval has to come from the provincial government or even the State Council. Therefore, the final decision-maker of land acquisition and the entities which carry it out are not the same. The government agency that is responsible for organizing specific hearings actually does not have decision-making power; this fact contributes directly to citizen distrust of the hearing system.

2. The system of selecting representatives to attend the hearing is not well-designed.

It goes without saying that only when these representatives are sufficiently representative of the population can a hearing truly become the bridge that connects the government and the people in policy making. However, as of now, there is still a lack of rigorous operational rules as to what procedures the selection of hearing representatives should follow, how to ensure true representation and fairness, etc., which in turn makes it difficult to ensure that the voices of the stakeholders can truly be brought to the hearings.

3. There is no system that responds to the opinions of representatives at the hearing.

At some hearings, a representative will talk passionately and quote copiously from many sources to support his or her point. However, it is not clear to what extent these opinions have influenced the final decision, nor is there any mechanism to ensure that what is said at the hearings will carry influence. There is even less public information as to how decision-making bodies sift through these opinions and on what basis these opinions are used or not used. Oftentimes, the debates at the hearings are heated and loud,

while the decision-making afterwards is quiet. This, of course, has influenced the level of public trust in hearings.

The ultimate goal of a hearing system is to ensure that decisions of administrative agencies can, to the highest degree possible, reflect public opinions. To make the public hearing system in our country really useful, for it to achieve justice, fairness and openness in public decision making, we need further exploration of many issues and the public must become more familiar with the system and improvements of the system itself. People are the participants and creators of history, and human advancements have been built upon the foundation of participation by the general public. As long as we, in the principal of sharing information with the public and democratizing decision making, create a good platform for public participation, and give the public appropriate methods and an appropriate degree of public participation, progress towards the realization of a harmonious society in China will be even smoother.