

Table of Contents

SECTION B		NON CERTIFIED AGENCY . 2
Chapter 6	Right of Way Procedures.....	2
A. OVERVIEW		2
B. KEY RIGHT OF WAY REQUIREMENTS		3
1. ODOT Services.....		3
2. Consultant Services.....		4
3. Another Local Agency.....		4
C. RIGHT OF WAY ACQUISITION PROCEDURES		4
1. Acquiring Right of Way.....		4
2. No Right of Way Acquisition		5
D. VOLUNTARY RIGHT OF WAY ACQUISITION		5
E. FUNDS FOR RIGHT OF WAY ACQUISITION		5
1. Acquisition With Federal Funds		5
2. Acquisition With Local Agency Funds.....		7
a. Local Agency Acquisition for STIP Projects.....		7
b. Historical Acquisitions of Right of Way		7
3. Acquisition In Advance of NEPA Clearance.....		7
F. APPRAISAL.....		8
1. Appraisal Waiver Valuation		9
2. Appraisal Review / Establishing Just Compensation.....		10
G. TITLE.....		12
H. NEGOTIATIONS		12
1. Negotiations By Mail.....		13
2. Acquisition of Contaminated Properties		14
I. DONATED PROPERTY		14
1. Credit For Real Property		15
J. ADMINISTRATIVE SETTLEMENTS		15
K. RELOCATION		16
L. CONDEMNATION		17
M. RIGHT OF WAY CERTIFICATION.....		17
N. PROPERTY MANAGEMENT.....		19
O. DOCUMENT RETENTION.....		20

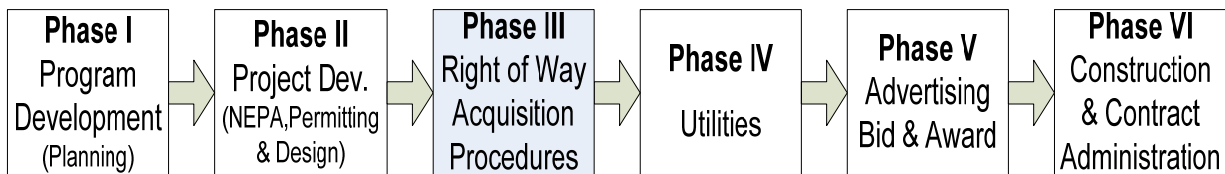
SECTION B

NON CERTIFIED AGENCY

Chapter 6

Right of Way Procedures

This chapter outlines project development requirements for any local agency operating as a non-certified local agency and is applicable to any federal-aid local agency project. Local agencies may proceed with their own right of way procedures that lead up to final right of way project certification* by ODOT provided they comply with the *Uniform Act, State's Right of Way Manual*, and the requirements shown below. Right of way issues have statutory timeframes built into the process, so working the issues as early as feasible in the project delivery process is recommended.



ODOT has overall responsibility to FHWA for project right of way acquisition. Federal regulations require that ODOT performs the final right of way project certification and acceptance of the process used to acquire right of way.

The local agency shall advise ODOT's [Regional Local Agency Liaison](#), of the local agency's need for assistance. The [Regional Local Agency Liaison](#) shall coordinate with the region right of way staff and the local agency. Any communication directly from the local agency to ODOT staff must be copied to the [Regional Local Agency Liaison](#).

Also note that the term right of way is a broad area involving all real property interests, such as temporary construction easements, for a public use.

A. OVERVIEW

The acquisition process is regulated by ODOT's [Right of Way Manual](#) to assure compliance with the federal and state laws, assure fair and equitable treatment of any persons whose property rights are impacted by the project and encourage and expedite acquisitions by negotiations.

In the case of a conflict between ODOT's [Right of Way Manual](#) and this *LAG Manual*, ODOT's [Right of Way Manual](#) shall prevail.

**NOTE: In this context “right of way project certification” involves a project specific review of the right of way documentation and procedures used to secure rights of way for a particular project. As a part of that review, the local agency submits a [Right of Way Certification Form](#) to ODOT for review and approval. This process is independent of a local agency becoming “certified” in right of way procedures as depicted in Section C, Chapter 7, Right of Way Procedures.*

LOCAL AGENCY ACQUISITION OF RIGHT OF WAY

Counties, municipalities, or other state or local governmental agencies may, by written agreement with ODOT, perform right of way acquisition for federally funded projects. Agencies must meet the following criteria:

- The agency is adequately staffed, equipped and organized to provide right of way acquisition services. A listing of these staff positions and their biographies must be provided to ODOT;
- The agency, or its consultant, is qualified to do such work, as determined by ODOT’s Right of Way Section;
- Prior approval from ODOT’s [Region Technical Center Right of Way Office](#) to do such work has been obtained;
- Right of way activities shall be performed in accordance with state and federal law, including but not limited to the [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended, Title 49 Part 24](#), [ORS Chapter 35](#), [Federal-Aid Policy Guide \(FAPG\)](#), [Code of Federal Regulations](#), the [ODOT Right of Way Manual](#), and [Title 23 CFR Part 710](#); and
- Right of way activities are subject to periodic review or oversight by ODOT’s Right of Way Section and its designees.

B. KEY RIGHT OF WAY REQUIREMENTS

1. ODOT Services

ODOT is committed to an ongoing program which will provide effective assistance and guidance to local agencies acquiring right of way. To this end, ODOT has a Right of Way Manager in each region to provide information and establish appropriate state staff contacts and provide mutually acceptable technical and advisory services as necessary to accomplish the acquisition program.

If local agencies wish to request right of way acquisition services to be performed by ODOT’s Right of Way Section, the local agency shall request this as early as possible in the project development phase. If ODOT’s Right of Way Section is experiencing heavy workloads, it may not be able to perform acquisition activities on the local agency’s project. In these cases, the local agency should reconsider whether the local agency will conduct their own acquisition activities or retain a consultant for such acquisition services, with ODOT approval. The local agency shall advise ODOT’s [Regional Local Agency Liaison](#), of the local agency’s need for assistance. When ODOT is to perform the right of way project acquisition services, the [Regional Local Agency Liaison](#) shall coordinate with the Region Right of Way Manager and the local agency to assure right of way acquisition services are included in the [Intergovernmental Right of](#)

2. No Right of Way Acquisition

After determining that right of way acquisition will not be required for the current project, local agencies must complete the [Right of Way Certification Form](#) and submit it to the [Regional Local Agency Liaison](#). Local agencies should exercise caution before determining that right of way acquisition is not required. If a local agency determines right of way acquisition is not necessary and subsequently determines there is a need, the project will likely be delayed. In this situation, a [Right of Way Project Funding Estimate](#) must be prepared and the [Regional Local Agency Liaison](#) and the Region Right of Way Manager must be notified.

D. VOLUNTARY RIGHT OF WAY ACQUISITION

Voluntary acquisition differs from the donation process (see [Donated Property](#)). Voluntary acquisition typically occurs when property is already available for purchase, independent of any current project and the local agency acquires the property through a real property sales transaction.

Local agencies acquiring property using the voluntary acquisition process must follow all requirements set forth in [49 CFR 24.101\(B\)\(1\)](#). The decision to proceed on the basis of voluntary acquisition and not use the agency's eminent domain authority must be made prior to commencing other right of way activities. Voluntary acquisitions must meet all of the following conditions:

- a. The property to be acquired is not part of an intended, planned or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- b. The agency will not acquire the property in the event negotiations fail to result in a voluntary agreement and the owner is so informed in writing.
- c. The agency will provide the owner with what it believes to be the fair market value of the property, by the process set forth in the [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended, Title 49 Part 24](#).

If these circumstances appear to apply to a project, the voluntary acquisition process may apply, but it must be coordinated through the ODOT [Regional Local Agency Liaison](#) and the Region Right of Way Manager.

E. FUNDS FOR RIGHT OF WAY ACQUISITION

1. Acquisition With Federal Funds

If federal funds are to be used in any part of the project, federal guidelines for acquisition of the right of way as identified in the [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended](#) and further explained in the [ODOT Right of Way Manual](#) must

be followed. Additionally, authorization of federal funds for right of way requires FHWA approval of environmental documents and the submittal of the following documents to the [Regional Local Agency Liaison](#):

- [Intergovernmental Agreement for Right of Way Services](#);
- Estimate of probable project costs and expenses broken down by parcel. The right of way cost estimate shall include dollar amounts for the following items:
 - Land improvements;
 - Damages/cost to cure;
 - Relocation;
 - Demolition;
 - Personnel and administration;
 - Miscellaneous costs;
 - Legal and contingencies and totals for all Items. ([Right of Way Project Funding Estimate](#)).
- Right of way drawings; and
- Relocation plan (if required - contact the [Regional Local Agency Liaison](#) for assistance).

The right of way drawings should at least show the following information:

- Survey line or centerline for the alignment;
- The old and new right of way limits with sufficient ties to the survey line to allow for legal descriptions of the areas to be acquired;
- Show all rights to be acquired, for example, easements and permits;
- Show the ownership boundaries of the parcels with rights to be acquired;
- Parcel identification numbers should be shown;
- Dual units if the project utilizes metric units;
- Show the area of the parcel to be acquired;
- Show the area of the remainder.

All drawings shall carry the seal and signature of a registered Professional Engineer or a Professional Land Surveyor. If the plan makes a land boundary determination, it must carry the seal and signature of a Professional Land Surveyor.

Once FHWA approval has been obtained, the [Regional Local Agency Liaison](#) will notify the local agency of authorization to acquire right of way. No acquisition costs are eligible for reimbursement prior to this authorization.

2. Acquisition With Local Agency Funds

a. Local Agency Acquisition for STIP Projects

After consultation with the [Regional Local Agency Liaison](#), a local agency using its own funding for right of way acquisition can start its process without waiting for FHWA authorization provided the following documents are available for review and agreement by ODOT's Region Right of Way Manager:

- Right of way drawings (see prior section Acquisition with Federal Funds for minimum requirements;
- Relocation plan if relocation is required.

All other rules and regulations pertaining to right of way acquisition and project certification shall apply.

NOTE: When a state DOT or Agency proceeds with early acquisition using its own money and with no intention of seeking federal-aid credit or reimbursement, the FHWA must make certain that the Agency's actions do not affect the environmental analysis or review of the project, or bias the FHWA's decisions on the project. An Agency undertaking state-funded early acquisitions is doing so subject to the risk that the Agency may purchase right of way that is subsequently not used in a federally-assisted project which could be a result of the NEPA process yielding a different decision than that which motivated the Agency to engage in the early acquisition in the first place. For additional information refer to letter issued by [FHWA-HEPR](#).

b. Historical Acquisitions of Right of Way

Local agencies that have previously acquired property and wish to use such property as right of way for a federal-aid project must provide documentation that the property had been acquired in accordance with state and federal law, including but not limited to the [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended](#), [Title 49 Part 24](#), [ORS Chapter 35](#), [Federal-Aid Policy Guide \(FAPG\)](#), [Code of Federal Regulations](#), the [ODOT Right of Way Manual](#), and [Title 23 CFR Part 710](#).

3. Acquisition In Advance of NEPA Clearance

The following circumstances outline methods under which right of way can be acquired in advance of [National Environmental Policy Act \(NEPA\)](#) clearance:

- a. An agency may use its own funds to purchase right of way prior to [NEPA](#) clearance as long as they meet the requirements of [23 CFR 710.501\(b\)](#).
- b. An agency may purchase right of way prior to [NEPA](#) clearance under the protective

buying and hardship acquisition provisions, as per [23 CFR 710.503](#). These provisions are further explained in the [Right of Way Manual, Sections 5.360 – 5.370](#). Note, that while these purchases are in advance of formal [NEPA](#) clearance of the project, individual clearance via a Categorical Exclusion is required. Consequently, although the project has not yet been cleared, the individual parcels have been cleared.

NOTE: Under each of these methods, the local agency cannot be reimbursed for these project costs, however they may apply the purchase price (or if donated, the fair market value) as credit toward their share of project costs.

If a local agency chooses to use one of the options above, the local agency must first contact the [Regional Local Agency Liaison](#) who will coordinate with ODOT's right of way staff.

F. APPRAISAL

Federal and state regulations require a public agency to appraise real property prior to its initiation of negotiation in right of way acquisition. The requirements pertaining to appraisal of property to be acquired are identified in ODOT's [Right of Way Manual, Chapter 4](#). If desired, a listing of ODOT approved fee appraisers and appraisal reviewers is available from the Region Right of Way Manager.

The appraiser shall have the following minimum qualifications:

- A college degree in business administration, engineering, agriculture, education, or a related field;
- Five years of active experience leading to a basic knowledge of real property valuation;
- Any five year combination of such experience and college study;
- Two years experience in real estate property appraisal;
- Be a state licensed or certified appraiser.

An appraiser who is qualified under ODOT criteria will be considered qualified for FHWA projects. The appraiser shall prepare an appraisal report which is a written document containing at least the following:

- The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised;
- Identification of the property and its ownership;
- A statement of appropriate contingent and limiting conditions, if any;
- An adequate description of the neighborhood, the property, the portion of the property or interest therein being acquired and the remainder(s) if any;

- Identified photographs of the property including all principal above-ground improvements or unusual features affecting the value of the property;
- A listing or identification of the buildings, structures, fixtures and other improvements which the appraiser considered part of the real property to be acquired;
- The estimate of just compensation for the acquisition. Just compensation is the market value of the land and improvements acquired plus compensable economic damages to the remainder property. Damages may be offset by quantified special benefits if any. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages and/or special benefits to the remaining property;
- The data and analyses (or reference to same) to explain, substantiate and document the estimate of just compensation;
- The date to which the estimate of just compensation applies;
- The certification, signature and date of signature of the appraiser;
- Other descriptive material (maps, charts, plans, photographs);
- The federal-aid project number and parcel identification;
- Report of appraiser contact with owner. A statement of known and/or observed encumbrances, if any.

ODOT appraisal report forms can be found on-line at ODOT's [Right of Way Section](#) website.

1. Appraisal Waiver Valuation

Local agencies that have staff experienced in eminent domain appraisals may be authorized by ODOT to administratively establish just compensation for given properties. The administrative process is called an Appraisal Waiver Valuation, or an Administrative Determination of Just Compensation. This process is allowed under [49 CFR Part B 24.102\(c\) \(2\)](#) and is detailed in the ODOT's [Right of Way Manual, Section 4.545-4.550](#). It can only be completed and approved by qualified agency staff who are knowledgeable in real property valuation. Any request by a local agency for use of the Appraisal Waiver Valuation must be made in writing to the Right of Way Administration Manager. Under current law it cannot be used by a consultant under contract with the agency.

The Appraisal Waiver Valuation process can only be used for uncomplicated takings that have a valuation not exceeding \$2,500 and that do not involve complex valuation problems such as potential damages to the remainder property or unique improvements within the taking area that require special analysis. An agency may request approval from ODOT to use this process up to a \$10,000 limit. (ODOT's [Right of Way Manual, Section 4.550](#)) The request must be in writing to ODOT's Right of Way Project Administration Manager at headquarters. The request should show that the agency has adequately experienced staff, explain the need for the increased authority over \$2,500 and identify agency's planned procedures for using the Waiver process.

See ODOT's [Appraisal Waiver Valuation Form](#).

In instances where the Appraisal Waiver Valuation process is used, just compensation should be based on comparable sales. All data used to arrive at just compensation must be included in the project file. When the Waiver Valuation is used, it is essential that the local agency have an experienced staff person with authority to determine that the just compensation estimate arrived at is fair and equitable and approve it. See ODOT's [Right of Way Manual, Chapter 4](#), for a complete discussion of the Waiver Valuation procedure.

2. Appraisal Review / Establishing Just Compensation

The local agency shall establish an amount which it believes to be just compensation for the acquisition of real property before the initiation of negotiations with an owner. The requirements pertaining to appraisal review of the property to be acquired are available in the *ODOT's Right of Way Manual, Chapter 4*. Also, refer to ODOT's [Appraisal Review Form](#) which contains [Instructions to Consultant Reviewers](#). The appraiser and the reviewer working on same property shall not be the same person.

The reviewing appraiser should be knowledgeable of the property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The reviewing appraiser must be either an ODOT Review Appraiser, on the approved list of contract review appraisers maintained by ODOT or a permanent employee of the acquiring agency who is qualified under the agency's right of way procedures to review appraisals. These right of way procedures must have ODOT approval. For agency staff to qualify as a review appraiser, the following qualifications are recommended:

- A minimum of five years of experience in appraising land, commercial and residential property for market value; or managing complex property transactions for the purchase or sale of property; or managing a large property portfolio for a complex organization; or relocating displaced individuals or businesses;
- A bachelor's degree in business or public administration, forestry, agriculture, civil engineering, geology, geography, real estate, communications or related degree may substitute for three years of the required experience;
- Experience working with a public or other body covered by the policies of the [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended](#) and subsequent revisions;
- Experience and knowledge of eminent domain appraisal, principles of real estate appraising and the ability to read and interpret engineering drawings and maps.

The reviewing appraiser should field inspect the property appraised as well as the comparable sales which the appraiser(s) considered in arriving at the fair market value of the whole property and of the remainder(s), if any. If a field inspection is not made, the file shall contain the

reason(s) why it was not made.

The reviewing appraiser shall examine the Appraisal Reports to determine that they:

- Are complete in accordance with this manual and contain the criteria required by the ODOT's [Right of Way Manual, Chapter 4](#);
- Follow accepted appraisal principles and techniques in the valuation of real property in accordance with existing state law;
- Arrive at an estimate of just compensation which includes consideration of compensable items, damages and benefits, but does not include compensation for items non-compensable under state law.

Prior to finalizing the estimate of just compensation, the reviewing appraiser shall obtain corrections or revisions of Appraisal Reports which do not substantially meet the requirements set forth in this manual. These shall be documented and retained in the parcel file.

The reviewing appraiser may supplement an Appraisal Report with corrections of minor mathematical errors as long as such errors do not affect the final value conclusion. The review appraiser may also supplement omitted factual data, (e.g. project and/or parcel number) and notify the appraiser of all corrections or factual data supplements prior to finishing the review. The reviewing appraiser shall initial and date corrections and/or factual data supplements to the Appraisal Report.

The reviewing appraiser may conclude a value other than that concluded in the appraisal, only if the conclusion is supported by relevant market data and analysis in the review document.

The reviewing appraiser shall place in the parcel file a signed and dated ODOT's [Appraisal Review Form](#) setting forth the following:

- An estimate of just compensation including, where appropriate, the allocation of compensation for the property acquired and for damages to remaining property;
- A listing of the buildings, structures, fixtures and other improvements on the land which were considered part of the property to be acquired;
- A statement that the reviewing appraiser has no direct or indirect present or future interest in such property or in any monetary benefit from its acquisition;
- A statement that the estimate has been reached independently, without collaboration or direction and is based on appraisals and other factual data.

It is the responsibility of the local agency to estimate and approve just compensation. The agency may not delegate the function of approving the estimate of just compensation to be offered to the property owner to someone outside the agency – including a contract review appraiser. The agency may empower a qualified staff appraiser reviewer to approve the just compensation

estimate with their signature at the bottom of the Appraisal Review form. If a non-staff reviewer is utilized, a line can be added following the reviewer's signature on the Appraisal Review form for the signature of the agency staff person authorized to approve the just compensation amount.

G. TITLE

The local agency will acquire evidence of the condition of title for all properties from which rights are to be acquired. It is suggested that a title report be ordered from a title company and the title to the property acquired cleared so that a policy of title insurance can be issued showing title vested in the agency subject only to those exceptions which can reasonably be accepted. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

In general, the elements necessary to acquire the needed interest are the following:

- Acquisition instruments signed by all parties with an interest in the fee title;
- Releases from mortgages and deeds of trust as local agency determines to be reasonable, if the property will be for the local agency's use. If a local agency is buying property and intends to deed it to ODOT (e.g. property along a state highway), then ODOT needs to be consulted. In short, it is prudent for all property interests be cleared to avoid encumbering any roadway or highway with any interest that is detrimental to the agency;
- Releases of encumbrances, such as easements, which adversely impact the rights being acquired;
- Releases of priority liens, such as material liens, judgments, state tax liens and federal tax liens;
- Property to be clear of hazardous materials. Property owners may be required to sign an exhibit to relieve agency's responsibility for clean up of any hazardous materials subsequently found.

H. NEGOTIATIONS

According to State statute, a public agency must adopt a resolution or ordinance of necessity to acquire any real property prior to the initiation of negotiations with the owner of the property.

Various requirements in negotiating an acquisition of property are found in *ODOT's [Right of Way Manual, Chapter 5](#)*. A local agency, or its consultant, may not make any attempt to compel an agreement with a property owner to acquire right of way by deferring negotiations, advancing or deferring condemnation, or by utilizing any other coercive action.

If a local agency uses a consultant fee negotiator, the negotiator must meet the applicable state

real estate licensing requirements. *ODOT's [Right of Way & Utility Coordination Contractor Service Guide \(2005\)](#)* provides a good model for utilizing consultants for negotiations and other right of way functions.

For local agency staff to be approved by the Region Right of Way Manager to acquire property, they must have either an associate degree in real estate or a bachelor degree or equivalent experience and provide appropriate documentation supporting such degree(s) or experience. In addition, they must have two years full time experience in real estate acquisition, sales leasing, appraisal, title, escrow, or property management.

A separation of functions maintains the integrity of the acquiring local agency's transactions. Thus, the appraisal, appraisal review and negotiations for a parcel are performed by three different persons. Recognizing the fact that the use of two separate individuals as appraiser and negotiator on a low-value taking can be both difficult and expensive, the use of a single individual to both appraise and negotiate a parcel is permitted where the value of the acquisition is \$2,500 or less. It should be noted that the appraisal shall be reviewed prior to negotiations and the review appraiser shall be neither the appraiser nor the negotiator.

Before initiating negotiations for real property, the agency shall establish the just compensation which shall not be less than the reviewed appraisal of the property and shall make a written offer to acquire in that amount. The owner may donate the property and may also waive the appraisal requirement after being informed in writing of their right to receive just compensation based on an appraisal. If the owner chooses to donate but requires an appraisal say, for tax reporting purpose, then the agency must provide one accordingly. See "[Donated Property](#)" later in this document.

Right of way obtained through normal zoning, subdivision or building permit procedures may be incorporated into a federal-aid project without jeopardizing participation in other project costs.

When negotiations are complete, the negotiator shall keep in the project file a signed statement for each parcel that:

- The written agreement embodies all considerations agreed to by the negotiator and the property owner;
- The negotiator understands that the acquired property is for use in connection with a federal-aid transportation project;
- The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future;
- The agreement has been reached without any type of coercion.

1. Negotiations By Mail

If no relocation is involved and constraints on right of way staff resources and/or travel funds so dictate, the local agency may initiate right of way negotiations by mail. The following packet of items should be sent to the owner (certified mail is required to establish the date of receipt of the

offer):

- a. A Letter of Offer which states the just compensation established by the agency for the acquisition;
- b. Summary Statement of just compensation which explains the basis for the offer and provides information necessary for the owner to make a reasonable judgment concerning the amount of the offer - nature of the acquisition, conditions affecting the remainder after construction and other pertinent details which would have been explained in a face-to-face meeting with owner;
- c. A copy of the appraisal or the Appraisal Waiver Valuation used to establish the just compensation ([see ORS 35](#));
- d. The document of acquisition (deed, easement, or other document required for signature);
- e. A copy of the right of way map, property plat or sketch showing the acquisition and the effects on the remainder; and
- f. A copy of the local agency's acquisition brochure, if one exists.

Federal law provides that grantors must be given reasonable time to consider the offer of just compensation. State law further specifies that a minimum of 40-day period is required to be given to grantors before they must respond to the offer. This means no condemnation action can be initiated before the expiration of the said period ([see ORS 35.346](#)).

Within a reasonable period of time, the local agency will make a follow-up phone call (documented in file), answer questions, or if owner requests - make an appointment for personal contact. Thereafter the local agency will follow normal procedures for further negotiations.

2. Acquisition of Contaminated Properties

The local agency should take reasonable care to determine if properties needed for a project are contaminated. Appropriate levels of care are detailed in *ODOT's HazMat Program Guide* available at: <ftp://ftp.odot.state.or.us/techserv/Geo-Environmental/Environmental/Procedural%20Manuals/HazMat/HazMatProgramProcedures1.doc>
In the case where properties being acquired by the local agency will become part of a state highway the local agency must involve ODOT in the acquisition process as early as possible to ensure that the property will be in an acceptable condition for ODOT to accept the transfer of ownership. In some cases, grantors will be required to sign an exhibit, obligating their liability to clean up any hazardous materials if discovered at a later time and remediation is required.

I. DONATED PROPERTY

A donation of right of way is an acquisition of a property right and can be accepted only after the owners have been notified in writing by the local agency of their right to receive just compensation based on appraisal. The property owners must sign a [Donation Agreement Form](#) waiving their right to just compensation and releasing the agency from its appraisal obligation. If they require an appraisal, (e.g. for tax purposes) then the local agency must provide an appraisal accordingly. Donations from other government agencies are exempt from these requirements.

A signed Donation Agreement must be included in each parcel file. See *ODOT's Right of Way Manual, Chapter 5* for more details on donations. The local agency must take great care to make certain there is no real or perceived coercion involved in getting property owners to agree to a donation. ODOT recommends that the local agency contact the [Regional Local Agency Liaison](#) to coordinate with ODOT Right of Way, in the event an owner wishes to donate right of way.

1. Credit For Real Property

The local agency may be credited an amount equal to the fair market value of that portion of the land, or easements donated, that will be used in the project. If real property is used as credit against the local agency's share of the match, the local agency must apply to ODOT at the onset of the project and provide at a minimum that the acquisition has been:

- a. lawfully obtained;
- b. incorporated into the project;
- c. not land described in [23 USC 138](#), i.e. park lands;
- d. acquired in accordance with the provisions of [49 CFR Part 24](#);
- e. in compliance the requirements of Title VI of the Civil Rights Act of 1964 (see [ODOT's Title VI](#) website for details); and
- f. determined by ODOT, with FHWA's concurrence, that the acquisition/ownership of the land did not influence the environmental assessment of the project, including:
 - The decision as to the need to construct the project;
 - The consideration of alternatives;
 - The selection of a specific location.

The fair market value shall not include any increase or decrease in the value of donated property caused by the project and the fair market value of donated land shall be established on the earliest occurrence of the following two dates:

- The effective date of the donation; or
- The date on which equitable title to the land vests in the state or local agency.

J. ADMINISTRATIVE SETTLEMENTS

An administrative settlement, or stipulated settlement, is a negotiated settlement of a right of way acquisition that is typically in excess of the local agency's approved offer of just compensation. FHWA and ODOT encourage local agencies to carefully consider and maximize the use of administrative settlements in appropriate situations.

The local agency shall document the following and make it available for review by ODOT if it is not already part of the local agency's approved procedures:

- Identify the responsible official who has the authority to approve administrative settlements;
- Describe the procedure for handling administrative settlements.

Any administrative settlement which exceeds the local agency's approved just compensation value must be documented and thoroughly justified in order to be eligible for federal-aid funds. The rationale for the settlement shall be set forth in writing. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from ODOT through the Region Right of Way Manager.

The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information. At minimum, the information to be considered is:

- All appraisals, including the owner's and the probable range of testimony in a condemnation trial;
- The ability of the local agency to acquire the property and gain possession through the condemnation process to meet the construction schedule; the risk and impact of any potential construction delay pending acquisition and possession;
- The negotiator's recorded information, including parcel details and the owner's rationale for increased compensation;
- Recent court awards in cases involving similar acquisition and appraisal problems;
- The likelihood of obtaining an impartial jury in the local jurisdiction and the opinion of legal counsel where appropriate;
- The estimate of trial costs weighed against other factors.

K. RELOCATION

The regulations governing relocation assistance are covered in [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended](#), and *ODOT's Right of Way Manual, Chapter 6*.

The majority of local agencies will find that it is not economically feasible to maintain staff to perform the relocation function. Local agencies that have qualified staff with appropriate training, education, licensing and experience, may be approved by ODOT through the procedures process to provide relocation services. Local agencies may contact the [Regional Local Agency Liaison](#) for help in having ODOT contract to provide relocation services or for advice on contracting with private consultants. ODOT does not maintain a list of qualified relocation consultants.

If a project includes relocation, the local agency should submit a relocation plan prior to right of way funding authorization. Local agencies should contact the [Regional Local Agency Liaison](#) who will coordinate with the Region Right of Way Manager for assistance in preparing relocation plans and carrying out relocation activities.

L. CONDEMNATION

The local agency must carry out the condemnation process under its own authority if the project right of way acquisition takes place on a non-ODOT facility. The local agency will be responsible for securing its own authorization resolution to acquire and condemn. The condemnation process shall be carried out in conformance to the [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended](#) and other applicable federal and state laws and regulations. The local agency shall not advance the time of condemnation, nor defer negotiations or the deposit of funds into court for the use of an owner, nor take any other action coercive in nature to compel an agreement on the price to be paid for a property. No owner shall be required to surrender possession of real property until the local agency has paid the agreed purchase price or has deposited into court, for the benefit of the owner, an amount not less than the local agency's reviewed fair market value of the property.

If the local agency's project occurs on an ODOT facility, prior to the commencement of right of way acquisition activities, the local agency should coordinate with the [Regional Local Agency Liaison](#) to establish an [Intergovernmental Agreement for Right of Way Services](#) to identify the condemnation procedures.

M. RIGHT OF WAY CERTIFICATION

The local agency must certify that the project right of way was obtained in compliance with federal and state regulations. Prior to advertising for construction bids for the project, the local agency must complete the [Right of Way Certification Form](#) developed by ODOT and approved by FHWA for right of way certification. (See ODOT's [Right of Way Manual, Chapter 3](#) and ODOT's [Right of Way Manual, Chapter 3, Appendix B](#) for more detailed information). The purpose of the certification is to:

1. identify and affirm that no additional right of way and relocation assistance is required for construction of the project; or

2. provide assurance that the acquisition of additional right of way and relocation assistance for displaced persons and/or businesses has been completed and in compliance with the federal requirements of the [Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended](#), its current federal regulations and Oregon state law;
3. ensure that clearance of the acquired right of way is so coordinated with the physical construction that no unnecessary delays or costs for physical construction will occur; and
4. identify whether hazardous waste exists in the subject right of way and define the status of any hazardous waste present, prior to acquisition of the subject right of way.

The right of way certification must be co-signed by the local agency and by ODOT's Region Right of Way Manager. If ODOT is letting the construction contract, the timing of the certification should be coordinated with the [Regional Local Agency Liaison](#) and the Region Right of Way Manager. The typical submittal target date for right of way certification on three week advertisements, is about 12 weeks prior to the planned bid letting date on full federal oversight projects and 10 weeks on state administered projects.

The completed certification form identifies the condition of the right of way at the date of certification (See: ODOT's [Right of Way Manual, Chapter 3, Appendix B](#) for more details).

Box 2 – This is the primary declaration which either identifies that no additional right of way was needed for the project or confirms that the local agency has legal and physical possession of the acquired right of way and that the acquisitions and relocations if any, were completed in compliance with federal and state law.

Box 3 – This is used to identify any property acquisition or relocation work that is not done as of the date of the certification but will be completed prior to the contract bid letting date.

NOTE: Exceptions are what the name says – exceptions to the normal process. They should be done only in unusual circumstances and must never become the norm. See ODOT's [Right of Way Manual, Chapter 3, Appendix B](#) for a more detailed discussion of the potential risks and dangers for misapplication of the Certification Exception process.

Box 4 – This is used to identify Exceptions to Certification (a.k.a. “Holdouts). These are properties that will not be under local agency possession and use by the contract bid letting date.

Box 5 – This box is used to address issues related to hazardous materials in the acquired right of way. If remediation occurred, the related activities must be identified. If remediation has not occurred or is not complete, that must also be identified, explained and documented.

The [Regional Local Agency Liaison](#) will submit the certification request to the Region Right of Way Manager for the State mandated certification review. The Region Right of Way Manager, or designee, will visit the local agency and review the acquisition files for the project and determine if the right of way was acquired according to the guidelines.

If the [Regional Local Agency Liaison](#) and the Region Right of Way Manager determine that the Local Agency Guidelines – Section B
July 2009

project is ready for certification, the Region Right of Way Manager will co-sign the certification form and the Liaison will include it in the package to be transmitted to Right of Way Headquarters Programming Coordinator for final processing. The Region Right of Way Manager will also provide the local agency and the [Regional Local Agency Liaison](#) with a letter detailing the findings of the review and any deficiencies that may have been noted.

If the [Regional Local Agency Liaison](#) and the Region Right of Way Manager determine that the project cannot be certified, a letter will be provided to the agency and [ODOT's Local Government Section](#) detailing the deficiencies encountered and the corrective action required before certification can be completed.

N. PROPERTY MANAGEMENT

If it is using FHWA funding, the acquiring agency shall establish property management policies and procedures that will assure control and administration of excess lands and improvements acquired for right of way purposes. These procedures shall establish the following items:

1. Property Records Showing:
 - a. an inventory of all improvements acquired as a part of the right of way;
 - b. an accounting of excess properties acquired with FHWA funding;
 - c. an accounting of the property management expenses and the rental payments received;
and
 - d. an accounting of the disposition of improvements and the recovery payments received;
2. Methods for accomplishing the clearing of right of way when such clearance is performed separately from the control for the physical construction of the project;
3. The methods for managing the rodent control program;
4. The methods for employing private firms or public agencies for the management of real property; and
5. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

If the local agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the local agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

The local agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

In the event that right of way acquired with FHWA funds becomes excess, the surplus right of way may be disposed of only after approval by ODOT's Right of Way Section. In this situation, the local agency must notify the [Regional Local Agency Liaison](#) who will coordinate with the Region Right of Way Manager. If the disposal is to a private party, the local agency must determine fair market value (either through the appraisal process or by public sale) and either credit FHWA for its share of the net proceeds of the sale or use the federal share of the net proceeds for activities eligible for funding under [Title 23 of the United State Code](#) for transportation purposes.

Federal regulations provide for the use of airspace for non-highway purposes above, at, or below the highway's established grade line, lying within the approved right of way limits. For information regarding airspace issues, refer to ODOT's [Right of Way Manual](#).

If the use of airspace is contemplated, the local agency should contact the [Regional Local Agency Liaison](#) who will coordinate with the Region Right of Way Manager for more detailed policies and procedures that must be considered.

O. DOCUMENT RETENTION

The acquiring local agency shall maintain all records of its right of way actions as required by state and federal law. In addition, the local agency shall maintain a diary wherein each individual involved in relocations, negotiations, or property management functions shall enter and initial a suitable description of each contact and other information concerning that function. Each entry shall clearly show the month, day and year of the contact; the name of the individual who made such contact; and the name(s) of the individual(s) contacted. The local agency shall be responsible to secure and maintain all project related documents and records generated from consultants retained on the local agency's behalf to perform the right of way acquisition services. Upon request, the [Regional Local Agency Liaison](#) will provide guidance regarding retaining appropriate and adequate records.