



ACQUIRING R/W ON FEDERALLY FUNDED PROJECTS For LPA's

Presented By:

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ODOT Region 2 R/W & Utilities Manager



Acronyms

FHWA = Federal Highway Administration

CFR = Code of Federal Regulations

U.S.C. = United States Code

STD = State Transportation Department

LPA = Local Public Agency

(City, County, Port Authority, etc.)

“State” can be interpreted to include Local Agencies utilizing federal funds to accomplish transportation projects.



The FHWA Right of Way Program

Derived from three fundamental sources:

- (1) the Fifth Amendment to the United States Constitution, which declares that "...no person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation";



The FHWA Right of Way Program

- (2) the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended, which provides benefits and protections to those directly impacted by federally-assisted projects; (49 CFR Part 24) and
- (3) Title 23 of the United States Code, the law pertaining to the Federal-aid highway program. (23 CFR Part 710)



Oregon's Constitution & Law

- Oregon Constitution (Article I, Section 18)
“Private property shall not be taken for public use, nor the services of any man demanded, without just compensation;....”
- ORS Chapter 35
 - Pay close attention to 35.346, 35.500-35.530



FHWA's Expectations for Right of Way Acquisition

- 23 CFR Part 710
 - Right-of-Way and Real Estate
- 49 CFR Part 24
 - Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs
- State Law
 - ORS Chapter 35



Responsibility For Local Programs Oversight

- ODOT is one of the State DOTs that chooses to pass Federal Funding along to Local Public Agencies (LPAs).
- ODOT has a stewardship agreement with FHWA that controls how this is done.
- The Stewardship Agreement obligates ODOT to the oversight of Federally Funded Projects.



Responsibility For Local Programs Oversight

- ODOT has an agreement with the Association of Oregon Counties (AOC) and the League of Oregon Cities (LOC)
- The AOC/LOC Agreement, Part II paragraph F states “State shall provide staffing resources dedicated to local project oversight.....”.



AOC/LOC Working Agreement

- Establishes guidelines for allocating and administering the
 - Surface Transportation Program (STP) funds
 - Transportation Enhancement (TE) program
 - Highway Bridge Program (HBP)
- Provides provisions to administer other Federal Aid programs



AOC/LOC Agreement & Right of Way

The AOC/LOC Agreement:

- Requires compliance with the Uniform Act
- Requires a Right of Way Services Agreement
- Defines responsibility for programming federal funds for right of way acquisition
- Defines responsibility for right of way certification



Right of Way Services Agreements

- Define responsibilities for all phases of a Right Of Way project
- Require a resolution of necessity from the LPA
- Responsibilities negotiated between LPA and ODOT
- Require approval from Department of Justice for ODOT to commit to condemnation work



Monitoring By ODOT R/W

- Part XXIV of the AOC/LOC Agreement covers R/W Activities.
 - Each Local Public Agency is required to either:
 - Develop a Right of Way Manual and have it approved by FWHA.
- OR**
- Adopt ODOT's Right of Way Manual



Monitoring By ODOT R/W

- ODOT Region R/W must approve the persons doing R/W acquisition activities
- There must be a separation of duties
 - The appraiser can not review the appraisal
 - The appraiser and review appraiser can not present the offer or negotiate the settlement.
- Exception
 - The appraiser can negotiate if the amount is under \$2,500 and just compensation has been set or approved by another



Monitoring By ODOT R/W

- Consistent communication between the LPA and ODOT Region personnel will establish the ability to have a successful project with a complete and accurate R/W Certification.
- The oversight responsibility of ODOT R/W is fulfilled when the R/W Certification for the project has been signed by the LPA and co-signed by ODOT.



Monitoring By ODOT R/W

- See attachments for:
 - O.R.S. 35.346
 - O.R.S. 35.510
 - Checklist of Major R/W Acquisition Activities
 - Local Public Agency R/W Monitoring Sheet
 - R/W Certification Form



The Acquisition Process



What is required?

- R/W Maps and Legal Descriptions
- R/W Authorization to proceed
- General Information Notice
- Appraisal
- Appraisal Review
- Negotiated Settlement
- Relocation
- R/W Clearance
- Condemnation, if required
- Certification of R/W



Right of Way Maps & Legal Descriptions



Right of Way Maps & Drawings

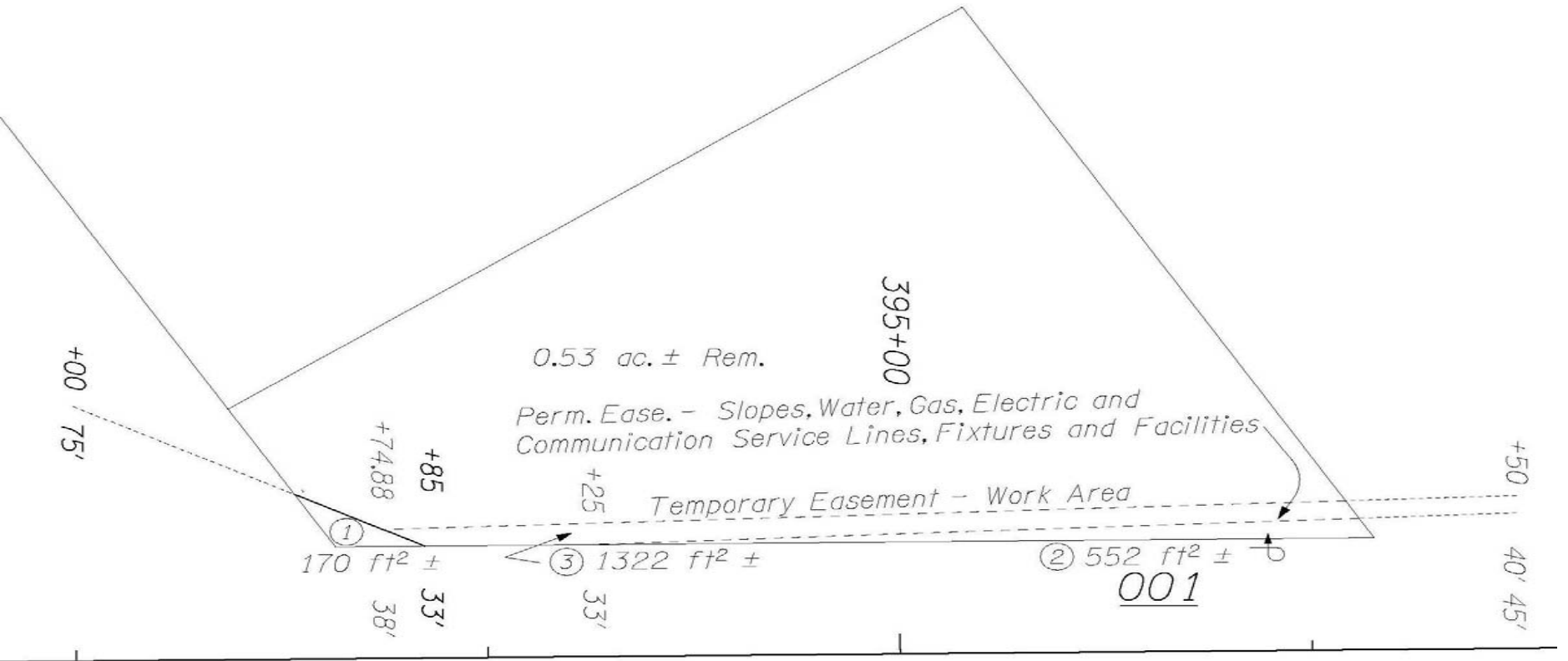
Show needed rights of way

- Fee
- Permanent Easement
- Temporary Construction Easements
- Show existing features that require consideration or compensation
- Used by the real property appraiser
- Used by the negotiator and the property owner
- Used in condemnation proceedings
- Clarity is essential



Right of Way Legal Descriptions

- Centerline descriptions
- Metes and bounds descriptions
- I.D. all parcels, fee takings as well as easements
- Incorporate into the final deeds and condemnation settlements for recording
- Accuracy is essential



See Attachments
Slide 40



FILE ADDENDUM

(NOT to be included with Exhibit A)

File 000000

Drawing 10B-21-13
7/18/2005

OR 207: Elm Ave. – 184 Section
Hermiston Highway
Umatilla County
Non Throughway

Land Owners name

Parcels 1, 2, and 3

Parcel 1 access language: none

Parcel 2 access language: none

Parcel 3 access language: none

These parcels lie within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T 4 N, R 28 E, W.M.

These parcels lie within Tax Lot 4N-28-10AB-000 of Umatilla County.

Remainder: 0.53 Acres, more or less.

Prior files, recorded documents, and access control: none

(EXHIBIT A - NEXT PAGE)

See
Attachments
Slide 41



EXHIBIT A - Page 1 of 2

File 0000000
Drawing 10B-21-13
7/18/2005

PARCEL 1 – Fee

A parcel of land lying in the NW¼NE¼ of Section 10, Township 4 North, Range 28 East, W.M., Umatilla County, Oregon and being a portion of that property described in that Warranty Deed to **Land Owners name**, recorded January 30, 1964 in Book 222, Page 555 of Umatilla County Deed Records; the said parcel being that portion of said property included in a strip of land variable in width, lying on the Southerly side of the center line of the relocated Hermiston Highway, which center line is described as follows:

Beginning at Engineer's center line Station 374+41.29; said station being at the Southeast corner of Section 3, Township 4 North, Range 28 East, W.M.; thence South 89°23'04" West 2640.18 feet; thence South 89°22'30" West 2640.85 feet; thence South 0°31'04" East 2648.86 feet to Engineer's center line Station 453+71.18.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Southerly Side of Center Line
393+00.00		393+85.00	75.00 in a straight line to 33.00

Bearings are based upon the Oregon Coordinate System of NAD83 (1998), north zone.

This parcel of land contains 170 square feet, more or less.

See
Attachments
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EXHIBIT A - Page 2 of 2

File 0000000
Drawing 10B-21-13
7/18/2005

**PARCEL 2 - Permanent Easement For Slopes, Water, Gas, Electric and
Communication Service Lines, Fixtures and Facilities**

A parcel of land lying in the NW¼NE¼ of Section 10, Township 4 North, Range 28 East, W.M., Umatilla County, Oregon and being a portion of that property described in that Warranty to Land Owners name, recorded January 30, 1964 in Book 222, Page 555 of Umatilla County Deed Records; the said parcel being that portion of said property included in a strip of land variable in width, lying on the Southerly side of the center line of the relocated Hermiston Highway, which center line is described in Parcel 1.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Southerly Side of Center Line
394+25.00		394+50.00	33.00 in a straight line to 40.00

This parcel of land contains 552 square feet, more or less.

**PARCEL 3 - Temporary Easement For Work Area (3 years or duration of Project,
whichever is sooner)**

A parcel of land lying in the NW¼NE¼ of Section 10, Township 4 North, Range 28 East, W.M., Umatilla County, Oregon and being a portion of that property described in that Warranty Deed to Land Owners name, recorded January 30, 1964 in Book 222, Page 555 of Umatilla County Deed Records; the said parcel being that portion of said property included in a strip of land variable in width, lying on the Southerly side of the center line of the relocated Hermiston Highway, which center line is described in Parcel 1.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Southerly Side of Center Line
393+74.88		396+50.00	38.00 in a straight line to 45.00

EXCEPT therefrom Parcel 1 and Parcel 2.

This parcel of land contains 1322 square feet, more or less.

See
Attachments
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Right of Way Authorization



Right of Way Authorization

- Authorization to ODOT from FHWA on Federal-aid projects
- Authorization to ODOT Region from the ODOT Right of Way Section
- Authorization to the LPA from ODOT

Time Requirements

- 3-4 weeks on State-funded projects
- 6-8 weeks on Federal-aid projects



Authorization requirements

- Environmental Clearances
- Right of Way maps/drawings and legal descriptions
- Condemnation Resolution by the Local Agency for each property (ORS 35.610)
- Right of Way cost estimate for programming



IMPORTANT!

**R/W Authorization is required
before the start of
Appraisal or Acquisition**



R/W Cost Estimates

Right of Way cost estimate for programming includes:

- Land and improvements costs
- Economic damages/Costs to Cures
- Relocation costs
- Demolition costs
- Personnel and administrative costs
- Legal costs and contingencies



INTEROFFICE MEMO

Date:

To:

From:

Subject: Programming Estimate for Example Project

I estimate the funds necessary to complete the Right of Way acquisition on the above referenced project as follows:

Land	0.00
Improvements	0.00
Damages	0.00
Relocation	0.00
Demolition	0.00
Personnel Costs	0.00
Misc. Costs	0.00
<u>Legal & Contingencies</u>	<u>0.00</u>
Total	0.00

I estimate we will acquire ___ properties, relocate ___ dwellings and relocate ___ business.

See Attachments
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General Information Notice

49 CFR Part 24 Subpart B § 24.102(b)

Notice to owner:

As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See § 24.203)



Right of Way Appraisal



Compensation Requirements

- Just compensation is required
- Just compensation is the fair market value (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970)

The Appraisal is the Basis for Just Compensation



What Is An Appraisal

- “A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information”.
(Uniform Relocation Assistance and Real Property Acquisition Policies Act)



Appraisal Notification

- O.R.S. 35.346
 - (3) Unless otherwise agreed to by the condemner and the owner, prior to appraising the property the condemner shall provide not less than 15 days' written notice to the owner of the planned appraisal inspection. The property owner and designated representative, if any, shall be invited to accompany the condemner's appraiser on any inspection of the property for appraisal purposes.



Appraiser Qualifications

- Certified or licensed contract appraisers
- Competent in eminent domain appraising
- Trained and experienced staff



Appraisal Review

- Required by law
- Recommends Just Compensation
- Just Compensation is set by the Agency
- A revised appraisal requires a new review and timeline



Appraisal Standards

- Set by FHWA

References

- ODOT Right of Way Manual – Chapter 4 (2005)
- Uniform Standards of Professional Appraisal Practice (USPAP)



Right of Way Negotiations



Acquisition of Private Property

- Sensitivity toward property owners
- Direct personal contact with people affected by our projects
- Build rapport and trust
- Treat people with respect and uniformly
- Treat people in a fair and equitable manner



Legal Requirements

- Permanent and Temporary Easements
 - require the same process as fee parcels
- Notice to Owners
- Written offer of just compensation and copy of appraisal (O.R.S. 35.346 (2))
- Reasonable opportunity to consider the offer and present their own material information
49 CFR §24.106
- Minimum of 40 days (O.R.S. 35.346(1))



Legal Requirements

- Conduct negotiations without any attempt to coerce the property owner
- Right to payment before possession
- Possession upon payment
- 90-30 Day Notices
 - Cost to cure
 - Relocation
- Obligation to offer to purchase uneconomic remnant



Administrative Settlements

- After reasonable effort to negotiate an agreement
- Any amount over just compensation must be justified in writing
- Settlement decision is the Agency's responsibility
- ODOT Form – the Final Report package



When Negotiations Fail

- Documentation – the Negotiator’s Diary of Contact (Report of Personal Contact)
- Alternate Dispute Resolution (mediation)
- Recommending Condemnation
- Settlement Conferences
- Trial
 - The defendant expenses for trial are paid if the award is more than your first written offer.



Right of Way Relocation



Relocation Requirements

- Purpose is to minimize disruption and provide equitable treatment
- Reimbursement program
- Relocation is a high-risk area
- Relocation is for personal property as well as for residences and businesses
- Aliens not lawfully present in the U.S. do not receive benefits
 - 49 CFR §24.208



Relocation Requirements

- Required on all projects regardless of funding source
 - O.R.S. 35.510 (1), (2)
- General Information Notice
 - **certified mail**
 - May be given at the start of appraisal process
- 90/30 day notice



Relocation Requirements

- Displaced persons or businesses must be given reasonable time to relocate
- Relocation must be performed by qualified personnel with:
 - Training in the Uniform Act
 - Training and experience in relocation
- Relocation payments alone are not enough



Relocation Requirements

Relocation Advisory Assistance is mandatory

- Assistance with forms and regulations
- Assistance locating a new residence or building
- Assistance with translators if needed
- see 49 CFR §24.205 & ODOT R/W Manual Paragraph 6.355
- Documentation
 - Owner Contact Report (Diary)
 - Relocation Forms and computations



Relocation Planning

- Ask for assistance early
- It can take 12 months or more to get a move complete
- Relocation plan is a requirement
 - Part One: Overall view of relocations within a project
 - Part Two: Individual relocation plans



Residential Relocation

- Occupant Interview
- Available replacement dwelling is required
- Decent, Safe and Sanitary (DS&S)
- Replacement Housing Benefit
\$22,500 maximum
- Rent Supplement Payment
\$5,250 maximum
- Housing of Last Resort



Residential Relocation

- Moving personal property – 50 miles
 - Common Carrier
 - Move Schedule
- Utility reconnection fees
 - Same number of utilities
- Storage
 - Up to 12 months, with prior authorization, if not claiming a move schedule



Non-Residential Relocation

- Non-residential interview
- Moving personal property – 50 miles
 - Common Carrier
 - Self-move based on estimates
 - Self-move based on actual costs
- Reestablishment Expenses
- Fixed payment in lieu of benefits
 - Average of last two years income as shown on tax reports
 - Not less than \$1,000 nor greater than \$20,000



Fixtures vs. Personal Property

- Personal Property is moved
- Fixtures are generally valued with the improvements on the property



Fixtures

- Annexation – how is the item fixed to the building
- Adaptation – is the item specially constructed to fit this building or to carry on the purpose for which the building was constructed
- Intent – did the party intend to make this a permanent item
 - check the lease for special considerations



Special Moves

- Special equipment
- Expert installers
- Heavy loaders & haulers
- Clear understandable inventory
- Mapping of items may be required
- Recalibration of machinery
- Special requirements at the replacement site



R/W Clearance



Demolition and Hazardous Waste

- Hazardous Materials, in the taking, need to be identified
 - Petroleum products
 - Hazardous Chemicals
 - Asbestos
 - Lead Paint
- How these items effect the Fair Market value needs to be addressed in the appraisal



Demolition and Hazardous Waste

- Remediation needs to be completed by R/W or have the necessary remediation identified as part of the construction plans and specifications
- Improvements must be cleared from the R/W or the must be identified to be cleared as part of the construction contract



Oregon Department of Transportation





Oregon Department of Transportation







Oregon Department of Transportation





Right of Way Condemnation



What is Condemnation?

- Court determination of just compensation
- Last Resort - used when negotiated settlement can not be reached
- State Law requires a minimum 40 day period after initial written offer to property owner before Condemnation can be started



Condemnation Process

- Recommendation for Condemnation (RC)
- Final Offer Letter
- Condemnation Complaint
- Deposit of Just Compensation
- Possession
 - Upon deposit or order of the court
 - 90/30 day notice
- Oregon Department of Justice may handle condemnation if previously committed in R/W Services Agreement



Right of Way Certification



R/W Certification

- R/W Certification is required by 23 CFR Part 635.309(b) and states:
 - All properties have been acquired according to FHWA directives.
 - Lists any exceptions to the certification
 - All improvements have been cleared from the area.
 - Relocation of displaced owners/tenants and/or personal property has been completed according to FHWA directives.
 - Hazardous Materials have been addressed.



Timing of the Certification

- Required 6-12 weeks prior to the Contract Letting Date
- Co-signed by the agency
- Co-signed by ODOT Region R/W Manager
- R/W Certification is part of PS&E Package (Plans, Specifications & Estimate)



Exceptions to the Certification

- Exceptions are properties not in Agency's possession by the contract bid date
- Exceptions should be rare
- If necessary and approved, identify property not in possession and date possession can be reasonably assured
- Property is identified in Plans and Specifications as not available
- Requires a "Public Interest Statement" from the Agency

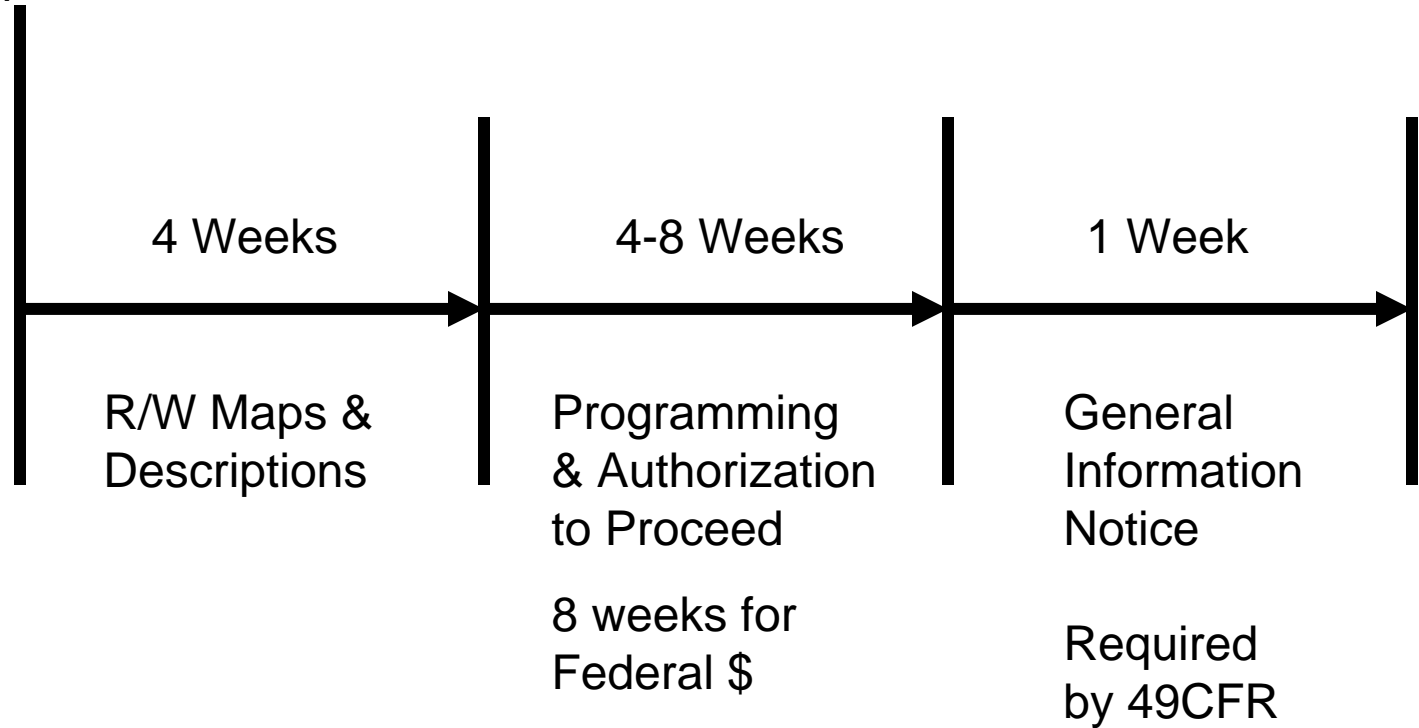


***Why does it take those R/W
folks so long to clear the R/W***



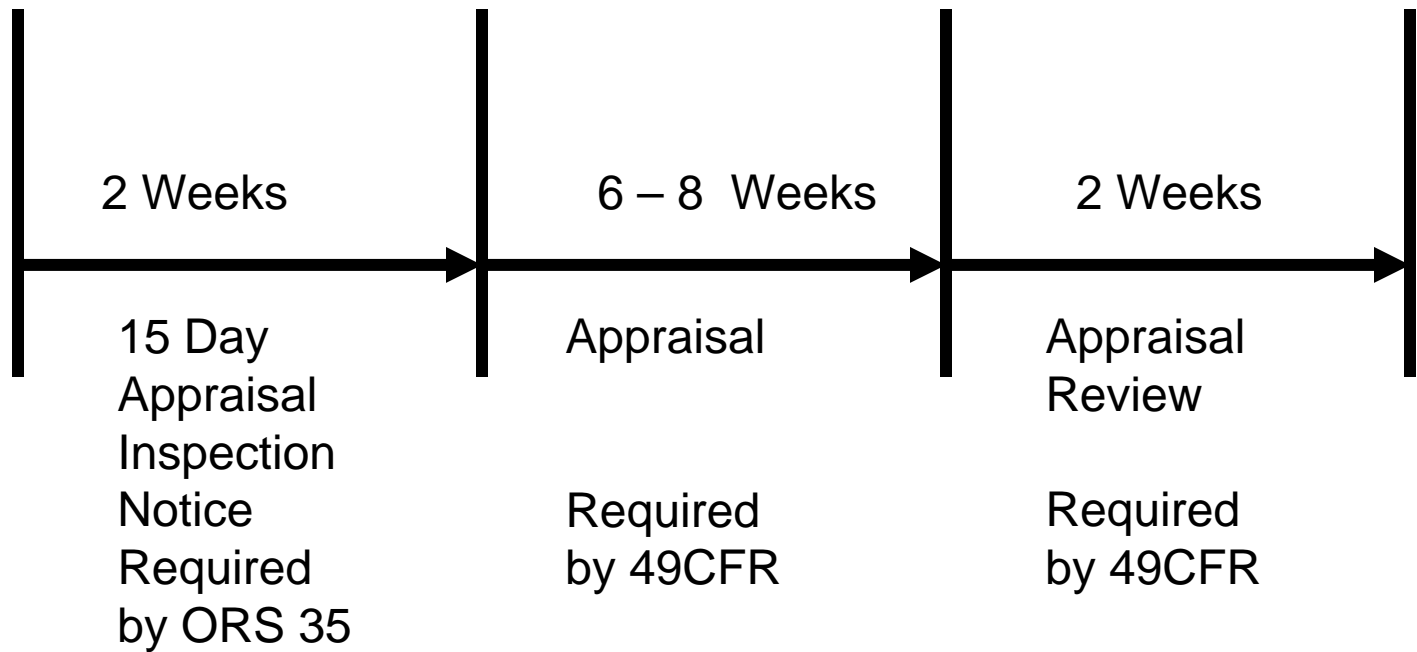
34 - 44 Weeks for an uncomplicated property

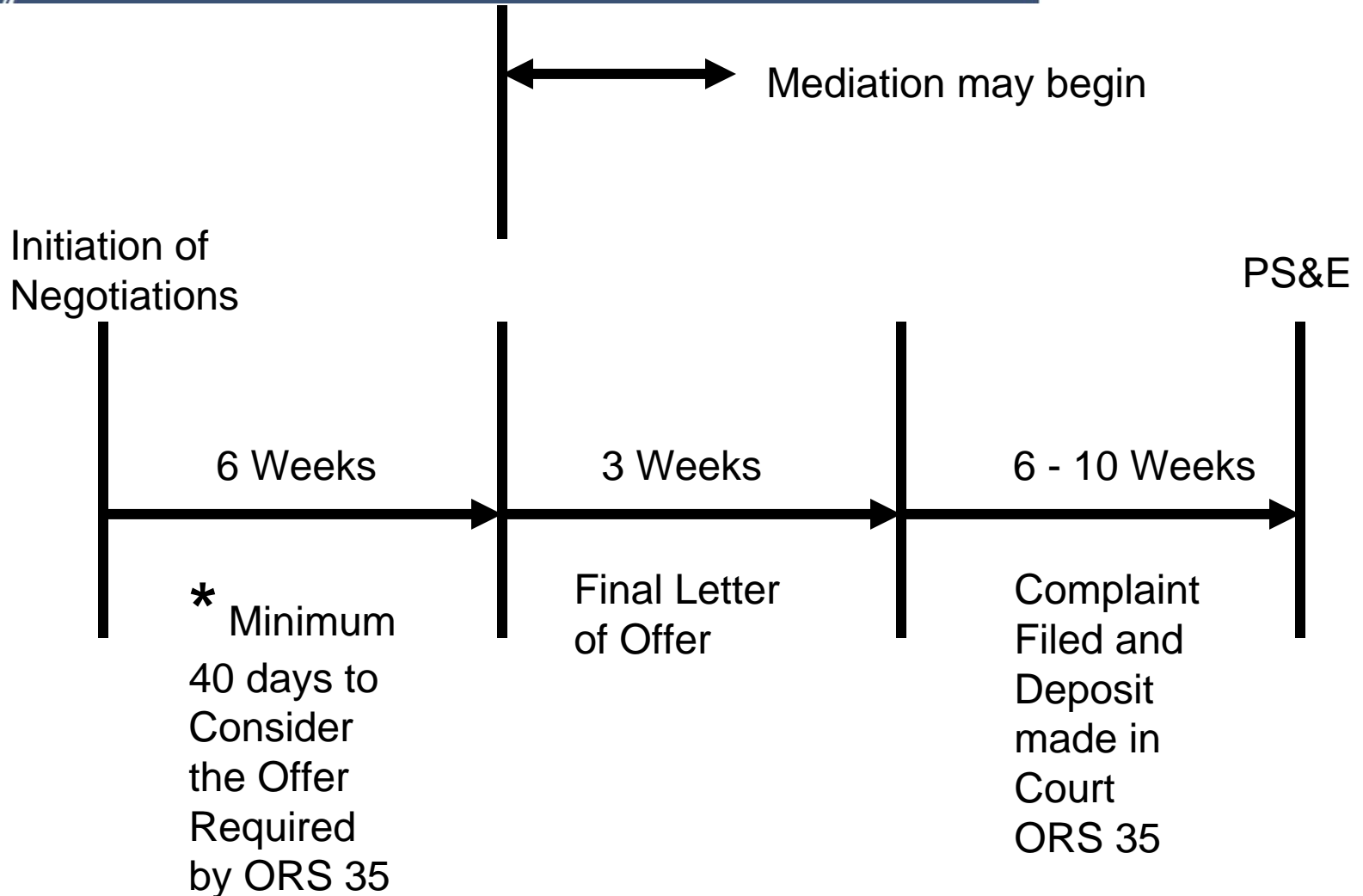
Design
Acceptance





Appraisal
Inspection





* Often additional time is needed in order to achieve settlements and avoid condemnation whenever possible.



34 - 44 weeks for an uncomplicated parcel

Add time for:

- The number and complexity of the parcels.
- Any relocations – 90/30 day notice requirement
- Demolition and/or HazMat Remediation
- Multiple people with an interest in the property
- Death of the owner/working within a probate or estate
- An owner that lives out of the country or is vacationing out of the country
- Bankruptcy



Early Acquisition
aka
“At Risk” Acquisitions



Early Acquisition

- Defined in 23 CFR 710.105(b) as acquisition in advance of any FHWA authorization or agreement ¹
- “At Risk” is used to explain that the States bear the risk associated with acquiring parcels that may not be required for the project if not within the approved alignment following the environmental process. ¹

¹ from FHWA Memorandum dated August 24, 2007



Title 23 § 710.501 Early acquisition

- (a) *Real property acquisition.* The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.



Title 23 § 710.501 Early acquisition continued

(b) *Eligible costs.* Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federal aid project if the following conditions are met:



Title 23 § 710.501 (b)

- (1) The property was lawfully obtained by the State;

- (2) The property was not land described in 23 U.S.C. 138;



23 U.S.C. 138

- public park
- public recreation lands
- wildlife and waterfowl refuge of national, state, or local significance.
- an historic site of national, state, or local significance



23 U.S.C. 138

- Unless
 - (1) there is no feasible and prudent alternative to the use of such land, and
 - (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use



Title 23 § 710.501 (b)

- (3) The property was acquired in accordance with the provisions of 49 CFR part 24;
(The Uniform Act)

- (4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d– 2000d–4);
(Non-discrimination)



Title 23 § 710.501 (b)

- (5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
- (i) The decision on need to construct the project;
 - (ii) The consideration of alternatives; and
 - (iii) The selection of the design or location;



Title 23 § 710.501 (b)(5)

(5) How do you fulfill Paragraph 5 ?

- Acquire areas where construction is needed whether or not you complete the current project.
- Acquire areas that are common to all proposed alignments.
- Early in the process, work closely with your State Federal-Aid & R/W personnel.



Title 23 § 710.501 (b)

- (6) The property will be incorporated into a Federal-aid project.

- (7) The original project agreement covering the project was executed on or after June 9, 1998



**Right of Entry
&
Permit of Entry**



Right of Entry

- Pre-construction entry for
 - Survey
 - Geology
 - Environmental
 - Archeology
 - etc.
- Pay close attention to O.R.S. 35.220 & 672.047
 - Provides for proper notification
 - Provides the ability to seek an order providing entry from the courts



Right of Entry

- Prior to or During Construction
 - Strictly for the benefit of the property owner, the project must be able to walk away and not do the work
 - Most common use is for reconnecting driveways when the lip created by the project is very small
 - Must not destroy improvements
 - Does not require compensation



Permit of Entry for Construction

Under exceptional circumstances the Region Right of Way Manager may authorize the Right of Way Agent to offer the owner the option of a Permit of Entry. The owners must be fully informed of their rights and the State's obligation to:

- make payment available before requiring the owner to surrender possession of the real property;
- provide the tentative plan for completing the acquisition process; and
- the approximate date the State desires possession.



Permit of Entry for Construction

Permits of entry cannot be used to circumvent normal negotiation processes or solely to meet a predetermined construction schedule.

If used you must still complete the full acquisition process



Permit of Entry for Construction

- The following will normally be considered exceptional circumstances:
 - The property owner is a governmental agency.
 - An event of an emergency nature where it is necessary to enter onto private property to protect the highway facility or the private property.



Permit of Entry for Construction

- To avoid the need to resort to condemnation where complex title problems require an abnormal time to clear and/or other special circumstances where it is in the owner's interest to surrender possession of the property before payment is made available.
- The property to be acquired is the result of a design change instituted after physical construction of the project is underway and the time required to complete acquisition of the property would unduly impede overall completion of the construction work.



Tips

- Get early agreement with your Local Agency Liaison and ODOT R/W on how to approach the acquisition on your project.
- Work together on the documentation necessary to prove the acquisition does not influence the environmental assessment for the project.



Success

Vs.

???????



Obstacles to Success

- Not enough time allowed for R/W acquisition, relocation and demolition
- Offers or promises made to property owners by non-Right of Way staff
- Real or perceived impression that LPA or its consultants are not negotiating in good faith
- Real or perceived pressure or coercion by LPA or its consultants
- Ripple effect of design changes, errors and omissions



Aids to Success

- Understand your R/W needs early in project development
- Begin with the end in mind
 - Successful R/W Certification is the goal
- We are partners in the process
 - FHWA
 - ODOT
 - Local Public Agency
- Communicate early and often with ODOT
- Ask all of your questions



WEB SITES

- [FHWA Real Estate Acquisition Guide for Local Public Agencies](http://www.fhwa.dot.gov/realestate/lpaguide/index.htm)
www.fhwa.dot.gov/realestate/lpaguide/index.htm
- [23 CFR Part 710](http://www.access.gpo.gov/nara/cfr/waisidx_04/23cfr710_04.html)
www.access.gpo.gov/nara/cfr/waisidx_04/23cfr710_04.html
- [49 CFR Part 24](http://www.access.gpo.gov/nara/cfr/waisidx_04/49cfr24_04.html)
www.access.gpo.gov/nara/cfr/waisidx_04/49cfr24_04.html
- [ODOT R/W Manual](http://www.oregon.gov/odot/hwy/row)
www.oregon.gov/odot/hwy/row



CONTACT INFORMATION – REGION ROW OFFICES

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