

## Chapter 9. Property Management

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### 9.100 Introduction

The Transportation Commission requires that properties acquired by ODOT for right of way, or other related purposes are managed in a manner that will maximize any long-range public benefit. To achieve this goal the Property Management Unit (PM) maintains an inventory of real property acquired and an accounting of related costs and expenses in the management and disposition of those properties. The Unit is responsible for the methods used in managing the properties.

Operationally the R/W Property Management function is divided into two parts, these are: 1) Project related and 2) Non-Project related.

Project related activities are the responsibility of, and conducted under the supervision of Regional Right of Way Supervisors.

Non-Project related activities are the responsibility of, and conducted under the supervision of the Property Management Supervisor located in Salem.

### 9.105 Authority Over Oregon Department of Transportation (ODOT) Real Property

ODOT Policy #ADM 06-04 (1/31/95) states that authority over ODOT real property is divided between 1) Support Services, Facilities Management, 2) ODOT Regions, and 3) Technical Services, Right of Way Section.

**“Operating Property”**: is the responsibility of Support Services and ODOT Regions.

**“Excess Property”**: Responsibility is divided between Support Services, ODOT Regions and Technical Services, Right of Way Section.

*ODOT Region* has authority to proceed with the use of an excess parcel, when that use is the one for which the property was acquired and is for transportation system improvement.

*Support Services, Facilities Management Section* has authority to proceed with the use of an excess parcel when that use is the one for which the property was acquired and is for construction of a department facility.

*Technical Services, Right of Way Section* has all other authority over excess property. This authority extends to the temporary use of excess property prior to its use in a transportation system improvement or its development as a department facility. It also includes authority over the permanent use of excess property by ODOT, when that use is one different than the use for which the parcel was originally acquired.

**Surplus Real Property**: Authority over surplus real property is split between the ODOT Regions and Technical Service Right of Way Section.

*ODOT Region*: has the authority to designate “Surplus” real property from excess property.

*Technical Services, Right of Way Section:* All other authority over “Surplus” Real Property resides with Technical Services, Right of Way.

### **9.110 Policies**

1. Properties capable of income production assigned to Right of Way shall be managed in a manner consistent with sound business practices. An evaluation of return shall be made to assure a return of fair market value and produce income-exceeding expenses, where possible.
2. The property management function, both project-related and non-project related, assumes responsibility for protecting public safety and limiting liability by securing (locking, boarding openings, filling/covering open holes, removing dangerous objects, and or demolition, etc.) land and improvements acquired.
3. Improvements shall be removed from needed right of way by sale or demolition as soon as practicable and when there is no reasonable probability of their disposal through public sale or salvage. Also, improvements should be removed when it is in the public's interest to protect health, safety esthetics, neighborhood character or the environment.
4. The Right of Way Section shall maintain a record system to inventory properties acquired for highway or related purposes along with an accounting system to track property management income and expenditures.
5. The Right of Way Section shall attempt to dispose of property deemed surplus to the needs of the Department as quickly as possible, in a manner that will provide the maximum benefit to the Highway Trust Fund and the State of Oregon.

### **9.115 Definitions**

The following definitions are used only for the administration of the Right of Way Property Management function and may be applicable only to carrying out the responsibilities of this section of ODOT’s Right of Way Manual [Chapter 9](#).

#### **Active Acquisition Project**

An authorized acquisition project that has not yet been constructed.

#### **Active ODOT Property**

This designation of ODOT owned property includes all property purchased for the use of the Department, and is identified as operating right of way and operating ODOT property.

### **Agenda Letter**

Is the instrument used to set minimum acceptable value of a surplus property based upon an appraisal review. Also establishes the terms and conditions for sale of the property.

### **Air Space**

Air space is that space located above, at or below the highway's established grade line and lying within the approved operating right of way boundaries.

### **Auction**

A public sales process assuring the greatest degree of objective opportunity for the bidders to purchase a parcel of ODOT real property. ODOT may use one of two types of auctions, 1) public oral auction or 2) sealed bid auction. The choice of the type of auction is at the discretion of the agent handling the sales proceedings.

The judgment to be made is, which process produces the greatest net return to the Highway Trust Fund.

### **Excess Property**

Real property which has never been used, or no longer is being used to carry on ODOT activities. Excess property includes, but is not limited to, remnant of real property purchased and located outside of the developed right of way limits of a project, uneconomic remainders, potential material sources, depleted quarries, abandoned stockpile sites, and closed and inactive maintenance stations.

### **Fair Market Value**

ODOT is required by state constitution (as interpreted by the Oregon Attorney General), to receive the fair market price for any real property disposed of, sold, rented, leased, or exchanged that is an asset of the Highway Trust Fund. Fair Market Value is defined (for purposes of this chapter) to be that value the property would most likely sell, rent, lease for if exposed to the open market for a reasonable length of time and sold, rented, or leased to a knowledgeable person, fully aware of what he/she is purchasing, leasing or renting.

### **Fixtures**

Personal Property that is more or less permanently attached to real property, and is legally treated as real property while it is so attached.

### **Grants**

Required to create a new approach where access control exists.

### **Inactive ODOT Property**

*Department owned real property not currently needed for ODOT's operational use. As determined by the respective Region Manager, this type of property includes non-operating right of way and non-operating property.*

### **Indentures**

Required when an applicant wishes to move an access more than 10 feet from the location listed in the deed. It also is required to increase the deeded width of an existing approach up to a specified maximum measurement or to remove use restrictions other than farm use.

### **Jurisdictional Exchange**

ODOT may exchange real property in a manner that will serve the interests of the State and most adequately conserve highway funds (ORS 366.395 (2)). The Region Manager has delegated authority to recommend that Department owned real property assets be included in a jurisdictional exchange (transfer) with a local public agency (cities and counties) in exchange for goods and services (assuming maintenance responsibility of roadways) by the local jurisdictions. In this process, the Right of Way Manager has delegated authority to convey Department owned real property interests. ODOT Financial Services Section completes the Jurisdictional Trade Model, which presents a comparison of the contributions and cost assumptions of each party to an exchange of highway assets.

### **Land Use Permit**

The Land Use Permit can be employed to allow use of Department owned land by a private party when it is not feasible to rent the property to achieve a proper return, yet there are still benefits to the Department, such as decreased maintenance costs.

### **Non-operating Property**

Property that was purchased for the purpose of supporting ODOT operations and functions but is no longer needed. This would include but is not limited to stockpile sites, quarry sites, and maintenance sites.

### **Non-operating Right of Way**

Property that was purchased as highway right of way that is now either “excess” to the needs of the Department or has been declared “surplus” to ODOT’s needs.

### **Non Project Related Property Management**

Property Management activity not associated with an active acquisition project. This includes but may not be limited to tasks such as: entering into and managing rentals, air and property leases, land use permits, sale of surplus real property etc. Activities in this category are the responsibility of and supervised by the Property Management Supervisor.

### **On-Premises Sign**

A sign designed, intended or used to advertise, inform or attract the attention of the public as to activities conducted on the premises on which the sign is located; or the sale or lease of the premises on which the sign is located.

### **Operating Right of Way**

Property utilized for the construction and implementation of the highway infrastructure. This type of property designation generally includes all properties located within the bounds of the highway right of way (property lines) that is actively being used to support transportation uses.

### **Operating ODOT Property**

This designation of property is property that was purchased for and is actively used for the support of ODOT operations and its functions. This would include but is not limited to stockpile sites, quarry sites, and maintenance sites.

### **Outdoor Advertising Sign (off premises sign)**

A sign designed, intended, or used to advertise, inform, or attract the attention of the public as to:

1. Goods, products, or services which are not sold, manufactured or distributed on or from the premises on which the sign is located;
2. Facilities not located on the premises on which the sign is located; or
3. Activities not conducted on the premises on which the sign is located.

### **Personal Property**

Is generally those items that are movable, not permanently affixed to, and not part of the real estate.

### **Project Related Property Management**

Property Management activity associated with an active acquisition project. This includes but may not be limited to tasks such as: entering into and managing short term rentals, sale of improvements/fixtures, taking possession of acquired property, trades of project surplus property for necessary rights of way, preparation of improvement inventory etc. Activities in this category are the responsibility of the Regional R/W Supervisor and are conducted under his/her supervision.

### **Real Property**

Includes the interest, benefits, and rights inherent in the ownership of physical real estate and includes the “bundle of rights” that is inherent in the ownership of real estate.

### **Rental Agreement/Lease**

The form and format used for leasing/renting non-operating property.

### **Salvage Value**

Means the probable sale price of an item offered for sale on the condition that it would be removed from the property at the buyer’s expense. A reasonable period of time needs to be allowed to find a buyer with knowledge of the uses and purposes for which

it is adaptable and capable of being used. This includes separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

### **Street Vacation**

A governmental entity (most commonly a municipal corporation such as a city) that has jurisdiction over a particular street holds a hearing to determine whether or not that street is needed for public use. If a determination is made that it is no longer needed for public use, the property may be vacated or abandoned to the abutting property owners. Generally, the vacated street (typically an easement) will be divided in half. The owners of those halves then receive whatever right(s) the governmental entity had in the vacated street.

### **Surplus Real Property**

Real property no longer needed for highway purposes by ODOT that has been approved for disposal.

### **Trade Fixture**

Fixtures owned and more or less permanently attached by a tenant to a rented space of a building for use in conducting a business.

## **9.120 Project Related Property Management**

Generally, project related property management consists of those activities that surround the management of those personal and real properties purchased as part of an active acquisition project. This may include real properties purchased for roadway improvements, properties purchased as uneconomic to property owners and those acquired as a result of negotiations and/or settlement of condemnation proceedings. The agents may be required to perform certain tasks such as determining salvage values, taking possession of real and personal property, securing the property from vandalism, clearing the right of way, and selling, leasing, or exchanging of property.

## **RESPONSIBILITIES**

### **9.125 Region Right Of Way Manager**

Region Right of Way Managers are responsible to assure that the regional project related property management program is administered in accordance with the policies and procedures set forth in this chapter. They can approve short term rent back agreements, sales of improvements and fixtures, and project related trades on active right of way acquisition projects

### **9.130 Region Senior Right of Way Agent/Right of Way Agent**

These Agents are responsible for performance of project related Property Management activities in the region and operate under direction of the Region Right of Way Manager.

## **PROPERTY MANAGEMENT ACTIVITIES**

### **9.135 Taking Possession**

To track possession dates the region receives copies of letters of acceptance, deposit and vacation notice letters to property owners from the Acquisition Unit.

When taking possession, an agent meets with grantors to have them sign and date possession form 734-3640 in which the grantor relinquishes possession of the real property acquired and certifies that all personal property has been removed. If it is not possible to have form 734-3640 signed in person by the grantors; the Agent must send the form by certified mail to the grantors and include the following paragraph:

*"If the enclosed form is not signed and returned within 10 days from the date of this letter, it will be assumed that all personal property has been removed from the premises being purchased by the Oregon Department of Transportation."*

If the acquisition involves the purchase of equipment and fixtures, the Agent also prepares a Buildings, Fixture and Equipment Inventory List Form 734-3638 and determines that all of the items purchased are delivered in the condition stated in the appraisals.

After meeting with the grantors and visually inspecting the property, the agent completes the Taking of Possession Form 734-3639 and forwards this form with the other possession related forms to Salem Right of Way Headquarters file. On properties involved in condemnation, the agent needs to write "IN CONDEMNATION" prominently at the top of this form.

Once possession has been taken, the Agent recommends to the Region Right of Way Manager whether the property should be, sold, demolished, or included in the construction contract for demolition. Insurance values should be calculated at the same time. The value should be the market value of a property, less its land value. (Reported on form 734-3640.)

### **9.140 Vandalism of Improvements**

Properties must be secured after the Department takes possession. To protect these properties, the Agent must, at a minimum, have the following done:

1. Place appropriate No Trespassing signs on buildings, improvements, or vacant land when deemed necessary.

2. Take necessary measures to secure all buildings or structures. May include cancellation of utilities, winterizing, changing locks, etc.
3. Determine if it would be helpful to contact state or local law enforcement agencies to request assistance in protecting improvements. If it is determined that contracting with private security firms is necessary, proper contracting processes must be followed. (See [Chapter 10](#) of the Right of Way Manual.)
4. Report vandalism to the local and state police if improvements are damaged. The Agent is to document the file with an estimate and complete a Property Damage Report Form 734-3375 that is immediately forwarded to Salem Right of Way Headquarters file.

### **9.145 Removal of Hazards and Attractive Nuisances**

The Agent is to identify and remove hazards or attractive nuisances that may be present upon taking possession of properties. These hazards may include any item or condition that may exist, that could be dangerous to the general public.

If it is not possible or timely, or if it is beyond the expertise of Department forces to do so, the Agent is to secure a private contractor to perform the work following necessary contracting processes as set forth in [Chapter 10](#) of the Right of Way Manual.

### **9.150 Disposal of Improvements to Clear the Right of Way**

The Agent should sell, or contract to demolish or remove improvements as required to meet project needs.

If the Agent determines there is insufficient time to sell the improvements, or there is no market or demand for the improvements (if the improvements failed to sell at a public auction), then the Agent should contract to demolish the improvements. For additional information contact the Right of Way Contract Coordinator.

The agent needs to be familiar with contracting procedures when hiring demolition work or buying goods and services.

The agent needs to inspect the property and estimate the cost and timeline needed to perform the desired work and then obtain authorization to proceed.

The agent must prepare specifications for the work to be performed. Once the specifications are prepared, the agent must discuss bid bond and performance bond requirements. When the contractors have had an opportunity to deliver their bids, the agent accepts the quotes in the form requested or opens the bids at the date and time stated in the advertisement. The agent then evaluates the quotes for compliance with the bid specifications and determines which is the most acceptable quote based on the lowest bid, bidder's financial position, quality of past work performance, or other

appropriate criteria. The agent recommends acceptance of the most favorable bid to the Unit Supervisor.

With authorization to proceed the agent informs the successful contractor of acceptance and notifies the other bidders of the bid results. The agent delivers a signed contract to the contractor, informs the contractor to proceed with the work specified in the contract, and monitors the work as it progresses. The agent then gives a contract payment to the Unit Supervisor who reviews to see that proper procedures have been followed and that documentation is complete. The supervisor authorizes acceptance of the work and directs the agent to inform the contractor that the work has been accepted. The agent notifies the contractor and forwards the packet to the Contracting Coordinator for payment.

### **9.155 Salvage Value**

When a property owner retains improvements as part of an agreement, the acquisition agent must request an estimate of salvage value. Estimates are provided on the Salvage Value Appraisal Form 734-3641 in sufficient detail to support the estimate.

In completing the salvage value appraisal form, the Agent is to consider the probable sale price of an improvement as if it would be offered for sale on the following conditions:

1. That it will be removed from the property at the buyer's expense.
2. A reasonable period is allowed to find a knowledgeable purchaser.
3. Individual components may be sold separately if in the best interest of ODOT. If the submitted salvage value is acceptable, the Region Supervisor reviews, approves and forwards the original salvage appraisal form to the Salem Right of Way Headquarters file.

### **9.160 Monitoring of Improvement Removal Work**

In order to monitor progress being made to remove improvements, the Agent must periodically inspect the job site. If it becomes apparent the work will not be completed within the allotted time, the Agent must assess the merits of providing an extension, or, to notify the purchaser that the deposit will be forfeited and the Department will reclaim title to improvements or equipment and dispose of them at the Department's expense. If the Agent agrees to an extension, it must be in writing and state the length of the extension.

### **9.165 Conclusion of Improvement Removal Work**

When the improvements have been satisfactorily removed, the Agent completes the Disposition of Improvements and Site Clearance Form 734-3655. This form provides

documentation to the file that the work has been completed and provides a means to release the contract payment and all or a portion of the deposit. The Agent forwards the form to the Contract Unit Supervisor, who processes payment to the purchaser.

### **9.170 Prevailing Wage Applied to Removal of Improvements**

The 1964 Labor Compliance Manual for Federal Aid Construction published by the U.S. Department of Transportation, Federal Highway Administration, provides certain provisions which may affect right of way clearance projects; D-204-3 Demolition Projects:

- D-204-3.1 General:

Demolition work, in and of itself is not subject to the prevailing wage requirements of the Davis-Bacon and related acts. But demolition work performed as a part of a construction contract is clearly covered by the Davis-Bacon and related acts. Demolition performed under a separate contract is also covered if it may be reasonable viewed as a part of the construction or closely related or immediately incidental thereto. It is well established that demolition work in certain circumstances becomes a Phase of construction subject to the law, where the purpose of this activity is to clear the land to facilitate an orderly and timely progress of a scheduled construction project. However, demolition work which is performed for a purpose and at a time which would clearly disassociate it from construction activity would not generally be considered a Phase of construction. Among the elements to be considered is whether the demolition closely proceeds construction in a point of time, the form of the contract and the primary purpose of the contract.

- D-204-3.2 Purpose of the Contract:

Demolition work accomplished substantially in advance for the scheduled commencement date of the project will not be considered as a Phase of construction if such advance clearing is primarily to:

1. Derive maximum salvage value from the improvement;
2. Prevent the development of a public nuisance; and
3. Make an intervening public use of the property prior to utilization as a highway right of way for construction purposes.

- D-204-3.3 Time Element:

Demolition work will be considered as being accomplished substantially in advance of construction when it is to be completed three (3) months or more in advance of the commencement date of construction operations. However, any demolition or removal work, whether incident to sale, or otherwise, if accomplished incident to bids or offers to buy, accepted by the State more than five (5) days after the receipt of the wage decision applicable to the planned construction project, must be considered as being

work incident to a Phase of construction subject to the Federal labor standards requirements of the Davis-Bacon and related acts.

- D-204-3.4 Form of the Contract:
  1. Land acquisition contract providing removal of the structure:

When the grantor of the right of way retains title to the improvements for the purpose of salvage or removal, such as salvage or removal activities by the owner, or by his vendee or contractor, do not constitute construction covered by the activities by the State, or of a State contractor, in relocating structures for the benefit of the grantor pursuant to the right of way agreement, do not constitute construction within the meaning of the Davis-Bacon and related acts.
  2. State contracts for demolition for removal subsequent to acquisition of title to right of way:

When the State title to the improvements and thereafter deals with them separately as State property, work done in connection with the removal or demolition of such improvements is considered “construction” within the contemplation of the Davis-Bacon Act and related acts, whether it is accomplished by bids for the demolition work, or contracts of sale, requiring removal of the improvements. The laborers and mechanics employed in connection with such work are covered by the prevailing wage requirement of those acts.

However, if as discussed in Section D-204-3.3 above, the work is accomplished substantially in advance of construction, for the purposes enumerated herein, such work will not be considered “construction,” and the prevailing wage requirement will not apply, if such work is accomplished under a separate contract for that governing the direct construction operations.

1. When the state or government takes title to the land including all improvements, timber, orchards, crops, etc., and does not dispose of such severable property separate contract:
  - a. Any work performed by the construction contractors or subcontractors, with their own forces for the purpose of removal, demolition, destruction or salvage of such severable assets is construction within the meaning of the prevailing wage requirements.
  - b. If the construction contractor or subcontractor disposes of such severable assets by sale in place, with an obligation on the purchaser to remove the severable property from the right of way, such demolition and removal operation constitutes construction. All activities that are performed by such purchaser after removal from the right of way are not governed or required by the construction contract.
  - c. When the construction contractor or subcontractor accomplishes the demolition and sells the severed materials to purchasers who take delivery

on the project site, the demolition is covered, but the loading and removal by the purchaser are not covered. This is similar to the situation where the contractor sells a piece of construction equipment at the site of a project with the responsibility being on the purchaser to load and remove the piece of equipment involved in the sale transaction.

### **9.175 Advertising for Auction of Improvement/Fixture/Personal Property**

Acquired fixtures, personal property etc. must first be offered for sale to other State Agencies prior to being disposed of by the Department. Region will provide the information to either Department of Administrative Services (DAS) for notice distribution or directly to other state agencies as specified by the fixtures and equipment appraisal or other lists prepared by the Region.

The agent must adequately advertise the planned sale by completing a request for advertising on Public Auction Buildings for Removal. On the request form the Agent must describe the improvements to be auctioned for removal, the minimum acceptable bid for each improvement, inspection times, which dates the advertisement is to run, and length of time available to remove the improvements. The advertisement is to be placed by the Agent in the newspaper of general circulation in the area in which the improvements are located for not less than once a week for four successive weeks. The Unit has Instructions and Regulations of Purchase of Improvement printed on the reverse side of the advertisement notice and made available to interested parties and bidders. The Agent may place sale signs on the property, which adequately call the public's attention to the planned auction.

### **9.180 Sale of Improvements at the Auction**

At the advertised auction time, the Agent begins the auction and follows the auction procedures. If the auction provides an acceptable bid, the Agent fills out the Disposal of Buildings Form 734-3648. The form contains the terms of and conditions pertaining to the removal of the improvements in general and the Agent must specify or include:

1. The purchase price.
2. The location of the improvements.
3. The removal time as stated in the advertisement.
4. A deposit amount necessary to guarantee the complete removal and clean up of the improvements and site.
5. Additional information requested on the form.

The purchaser signs and, by virtue of delegated authority, the Agent accepts the proposal by signing the form.

The Agent receives payment for the improvements and issues a receipt to the purchaser. The acceptance on the bid form becomes a bill of sale for the improvements. The Agent authorizes the purchaser to begin removal of the improvements.

The money is deposited in the Department's account and a copy of the receipt and deposit is immediately forwarded to the Salem Right of Way Headquarters along with a Property Management Action Request (Form #734-2156).

### **9.185 Preliminary Auction Functions**

After receiving approval to conduct an auction, and after it has been properly advertised, the Agent is ready to hold the auction in accordance with the terms stated in the advertisement.

The Agent and assistant(s) should arrive at the auction site at least 30 minutes prior to auction to be sure copies of the Sales Instructions and Regulations Form 734-3660 and copies of the advertisement are available and to answer questions regarding sales terms and conditions, method of payment, deposits, etc.

ORS 273.205 requires all terms and conditions for a sale to be included in the published advertisements. The Agent must not make any statements at the auction that will change the conditions of the sale. If a problem should arise that would substantially alter the terms, value, title, etc., the Agent may deem it necessary to cancel the auction and re-advertise at a later date.

The Agent should make note of any significant questions that have been asked prior to the auction and summarize the issues and responses prior to the sale so all bidders are aware of the sale requirements.

### **9.190 Conducting an Auction**

The Right of Way Section is required to conduct public auctions when; (1) selling to private persons surplus properties valued over \$5,000; or (2) when selling improvements for removal. There are two types of auctions; oral and sealed bid. The Agent is responsible for conducting the auction with the assistance of one or more region office staff members.

### **9.195 Oral Auction**

The Agent begins the auction by assembling the bidders and reviewing the terms and conditions of the sale and answers any further questions. The Agent informs bidders of the order in which the sale will proceed if more than one item or parcel is involved, and also specifies which landscape items or appurtenances are or are not included in the sale. The Agent requests that bidders make their bids verbally rather than by gestures.

If individuals are interested in bidding on property being sold, but are unable to attend the auction, they may submit a sealed bid with a deposit in an amount to be determined by the Agent. The Agent will open the bids prior to the start of the auction, and those bidders present will be notified of the highest sealed bid. This bid will set the minimum auction bid so long as it exceeds the advertised minimum.

The Agent invites bids by asking for a bid at the established minimum price. As bids are received, higher bids are requested until it is apparent that a final bid has been made. Three attempts are to be made for a final higher bid. If the last bid is accepted as the high bid the Agent indicates to all present that the item is sold.

The auction assistant must secure the name, address, and phone number of the next highest bidder. In the event the sale to the highest bidder falls through, the Agent may offer the item to the next highest bidder for the price established by the high bid.

Should a situation arise that could jeopardize the sale, the Agent may reject all bids and start the auction over, if possible. Reasons for rejecting the bids include:

1. The highest bid is below the established minimum.
2. The bidder is deemed not responsible.
3. The bid is submitted under something other than the advertised terms and conditions.
4. No bids are received.

If no bids are received the Agent may at any time during a period of one year after the advertised date of sale, sell property in such manner as deemed appropriate, and in the best interest of the Department.

### **9.200 Sealed Bids**

The property may be sold utilizing the sealed bid process. Interested buyers may submit a sealed bid with a deposit in an amount to be determined by the Agent. Bids will be opened at a specified date and time. (See [9.545](#).)

### **9.205 Concluding the Auction**

Once a potential purchaser has been determined the transaction needs to be formalized on the appropriate auction sale form. The Agent completes the bid or sales form, collects the required deposit, provides buyer with a sales receipt, and forwards the material to Salem Right of Way Headquarters. The Agent provides an application for contract approval to the purchaser if applicable.

### **9.210 Sale of Equipment or Other Small Improvements**

The Agent completes the Bill of Sale (Form 734-3649) when there is a sale of equipment, fixtures, or other small items. This includes signing and obtaining the purchaser's signature on the form. The Agent receives payment for the improvements and deposit and issues a receipt to the purchaser.

## **MANAGEMENT OF PROPERTY**

### **9.215 Renting/Leasing of Property**

When it is determined that sufficient time exists to rent property, either because the property is surplus to the needs of a project or the construction schedule is far enough in the future, a month to month rental agreement may be used. The Agent must also:

1. Conduct an inspection of the property to determine access, potential use, physical condition, and possible detrimental influences such as topography, Hazmat, and neighborhood
2. Obtain written approval from District Manager and determine any use restrictions to be imposed.
3. Obtain a description of the property to be leased or rented.
4. Determine fair market rental rate based upon a market study.
5. Actively solicit tenants by advertising and/or personal contact, and screen potential tenants using the Rental Application form 734-3645.
6. Prepare rental agreements to reflect the terms of rental and the use of each property.
7. Collect deposits and the first months rent.
8. Manage the property during the tenant's occupancy in conformance with Oregon State Landlord and Tenant laws and lease terms whichever is applicable.

### **9.220 Liability Insurance Clause**

Tenants will provide insurance to indemnify ODOT. The following clause is required and should be included in the insurance binder when the Department leases property and permits it is to be subleased:

*"It is understood and agreed that the following are included as additional named insured under this policy:*

*THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, ITS MEMBERS, OFFICERS, AGENTS AND EMPLOYEES, EXCEPT AS TO CLAIMS AGAINST LESSEE FOR INJURY OR DEATH TO, OR DAMAGE TO THE PROPERTY OF, ANY OF SAID ADDITIONAL NAMED INSURED."*

If claims are made against the Department of Transportation, the Property Management Supervisor is to report the details in writing to the legal counsel.

### **9.225 Advertising Signs on Department Property**

Based upon Oregon Transportation Commission policy adopted May 25, 1976, outdoor advertising signs are not permitted on highway rights of way. Department properties **will not** be rented or leased when the only intended use by the renter is for the installation and maintenance of an outdoor advertising sign. However, on-premise signs pertaining to the activity conducted on the property are allowed on non-operating property and non-operating right of way.

### **9.230 Fire Prevention on Rental Properties**

In order to minimize the danger of fire in Department rental properties the Agent must:

1. Visually inspect each improved property prior to renting to identify fire hazards.
2. If deemed necessary the Agent may elect to request an inspection of the property by the local fire department.
3. Be sure functioning smoke/fire detectors are installed in all residential units. These devices must be inspected annually by the Agent or a designee. The file should indicate the annual inspection date.

### **9.235 Rent Back to Current Occupants**

If a former owner or tenant is permitted to occupy the real property after acquisition for a short term or a period subject to termination by the Department on short notice, the rent shall not exceed the fair market rent for such occupancy.

If it is necessary for a displacee to remain in occupancy after the date of physical possession by the State, and project requirements permit, the State can rent the premises to the displacee for a short term. The displacee must sign a rental agreement prepared by the Region Property Agent at a rental amount not to exceed the fair market rent for short-term occupancy.

If that occupant was previously paying rent as a tenant to the former property owner, the owner can continue to collect the rent until the State takes physical possession. At that point in time subsequent rent should be collected by the State per a new rental agreement.

The Agent must determine with the Region Supervisor whether the occupants will be allowed to remain past the normal vacation date (as determined by the 90-30 day notices). The occupant must be willing to sign the Department's rental agreement. For tenant or owner-occupants renting back, the Agent must prepare a rental agreement at the existing rental rate or calculate a rental rate not to exceed the fair rental rate to a

short-term occupier. This amount cannot exceed market rent for a standard length of tenancy. If the tenant is allowed to remain in occupancy after the 90 day period the rent may be adjusted at that time.

Tenants or owner-occupants have the right to remain in an acquired property for the full 90 days allowed by the standard relocation notice. In such cases the Department must rent back to the tenants even though they may not be willing to sign a rental agreement.

### **9.240 Maintenance or Improvement of Short Term (Project Related) Rental Properties**

The Region Right of Way Manager is responsible for keeping rental properties decent, safe, and sanitary, including making sure all improvements are equipped with an approved fire/smoke alarm device.

1. When deciding whether to perform maintenance on improved rental property, in advance of a pending project, the Agent should:
  - (a) Calculate the potential income by estimating the rental rate of the property and number of months the property can be rented before disposal is required.
  - (b) Estimate the property taxes to be paid and the cost of general upkeep, including holding and administrative costs. Property taxes are due for a full twelve-month period if the property is rented for one or more days after July 1 of any year. If a property is going to be rented only for a short period subsequent to July 1, use a full years tax load for this analysis.
  - (c) Use one months rent as an amount for "rent" loss. Increase if possibility of rent loss is greater.
  - (d) Determine the amount of money available to perform the work by subtracting the costs from the estimated income.

**EXAMPLE:**

\$ 10,000 Estimated Income  
(\$ 3,000) Property Tax  
(\$ 1,000) Estimated Rent Loss  
\$ 6,000 Amount available for repairs  
\$ 9,000 Cost of repairs

If the cost of the repairs exceeds the amount available to perform the repairs, the improvements should be disposed of. The repairs may be done if their cost is less than the amount available to perform them.

### **9.245 Establishing Fair Market Rental Rates**

To enable Property Management to keep rental rates in line with the present real estate market, the Agent must evaluate each rental at least once a year. A written appraisal (rent study) must be prepared that indicates the condition and factors influencing the conclusion of economic rent (fair market value). The Agent must determine whether the property is to be rented throughout the new tax year.

As new properties are acquired or existing ones become vacant throughout the year, a similar rental evaluation must be prepared.

In establishing monthly rental values on a commercial, industrial, or multiple-residential property, or for a lease exceeding one year, the services of a staff appraiser may be utilized unless a fee appraisal has been authorized by the Region Supervisor. The Agent should conduct a preliminary reading for content and accuracy, and then forward copies of the rent study to the Region Supervisor. A copy of the reviewed study must be sent to Right of Way HQ for the File.

### **9.250 Securing Tenants**

Once property is available to rent and a rental rate has been established, the Agent should actively undertake efforts to obtain tenants. The Agent should post the property with a "For Rent" sign and place an advertisement in the classified section of a local newspaper inviting interested parties to apply to rent the property.

Potential tenants are required to fill out the State's Rental Application Form 734-3645. The Agent should make the forms available to interested persons and inform applicants that the information will be verified and that a credit check will be made through a credit bureau.

### **9.255 Project Related Property Trades**

Project related property trades are typically used as a means of negotiations to acquire necessary property for a project.

Property to be traded may or may not be located within the limits of an active project. If the property to be traded is located within an active project area, the parcel must be declared surplus to ODOT needs by written statement from the Region Manager authorizing disposal of the property. ODOT is required to receive full Fair Market Value for its surplus property.

If the parcel is not within the active project area, laws require additional steps be taken. These steps include offering the property to other State, County, and city agencies, as well as offering to lessee, and adjacent property owners. (See section [9.405-9.415](#) of Surplus Process.)

In either case, the property to be traded must be a legal lot. However, adjacent remnants may be combined via Lot Line adjustments. The Agent will obtain a

"Statement of Conformance" (form: 734-2074) from the local land use planning agency stating the status of the ODOT property. All land use planning issues such as Partitions, Lot Line Adjustments, and Boundary Surveys must be resolved so that ODOT can issue a Deed to the trade parcel at transaction closing.

Legal Descriptions may be requested from Right of Way Engineering or, if obtained from another source, the Agent should have the description reviewed and approved by Right of Way Engineering.

When Federal funds were involved in acquiring the property, Federal Highway Administration (FHWA) approval is required prior to property being transferred if the property was acquired for the interstate or involved operating right-of-way of the NHS.

Haz Mat status of the ODOT surplus parcel and property being acquired must be considered. It is not ODOT policy to acquire contaminated sites.

An appraisal of the ODOT parcel is required to establish fair market value, and to make sure the value represents any enhancement or diminution created by the project.

An Agenda letter accompanied by a transmittal letter must be prepared and approved by the Right of Way Manager prior to property transfer.

All Processing costs are charged against the project.

## **NON-PROJECT RELATED PROPERTY MANAGEMENT RESPONSIBILITIES**

The activities that comprise non-project related property management might consist of the sale of surplus properties. Typically, properties deemed surplus to ODOT needs may consist of land situated outside of the operating right of way, unused maintenance sites, disposal sites and/or land purchased as excess property.

### **9.260 Property Management Unit Supervisor**

The Right of Way Manager appoints the Property Management Supervisor who provides day to day supervision of the Property Management Offices and provides policy direction to Region Units. The Property Management Supervisor administers and implements procedures for complying with ODOT and Right of Way section policies, FHWA regulations, and applicable state statutes and administrative rules.

### **9.265 Senior Agent/Property Agent**

These Agents are responsible for performance of non-project related Property Management Activities Statewide and operate under direction of the Property Management Supervisor.

### **9.270 Property Management Coordinator**

The person in this job/position is responsible for preparing/executing/monitoring land sales contracts, leases, rental agreements and related documents, processing grants and indentures of access, providing interpretations of laws, rules, guidelines to unit members, members of field units and the public. This position carries the primary responsibility for assuring that all documents prepared for property management functions have been prepared in accordance with ODOT guidelines.

### **9.275 Property Records Specialist**

The purpose of this job/position is to provide a variety of complex and technical support services for the Property management Supervisor. Position holder oversees all Phases of record management and is responsible for the maintenance, accuracy and credibility of the Property Management Accounts Receivable system that produces a biennial income to the Department in excess of \$8,000,000.

### **9.280 Assistant Property Agent**

The Assistant Property Agent participates as a member of the Property management Agent group in sales planning and strategy. They may prepare and send out surplus disposal review requests, and research inquires from public and private parties interested in purchasing surplus properties. The position requires a thorough understanding of the technical aspects of the surplus process. The person in this position will work closely with the Property Agents in all aspects of sales, leases, rentals and land use permits.

## **PROPERTY MANAGEMENT ACTIVITIES**

### **9.285 Securing Tenants**

Once property is available to rent and a rental rate has been established, the Agent should actively undertake efforts to obtain tenants. The Agent should post the property with a "For Rent" sign and place an advertisement in the classified section of a local newspaper inviting interested parties to apply to rent the property.

Potential tenants are required to fill out the State's Rental application Form 734-3645. The Agent should make the forms available to interested persons and inform applicants that the information will be verified and that a credit check will be made through a credit bureau.

### **9.290 Establishing Rental/Lease Rates**

The State Constitution requires that all property that is a Highway Trust Fund Asset, be rented, leased, sold, or exchanged at its Fair Market Value.

To keep rental rates in line with the real estate market, the Rental agreement must be evaluated at least once a year. Prior to the end of term the Property Management Coordinator will request a review list of the agreements that need adjustment from the Property Records Specialist along with pertinent information (i.e. copy of agreement, map, etc.). The list will be forwarded to the Region Supervisor for rent study assignment. Region Right of Way Agent will prepare a rent study. Upon receipt of rent study, the Property Management Coordinator forwards information to Property Records Specialist. The Property Records Specialist Coordinator shall then notify by letter each tenant whose rent is being adjusted, and update accounts in Right of Way Accounts Payable (RAP) for each account being adjusted.

The Region Right of Way Manager or Property Management Supervisor has the discretion to forward the rent study to the appraisal review unit if deemed appropriate and/or necessary.

### **9.295 Rental/Lease of Property (Non-Project Related)**

Often it is in the best interests of the Department to rent or lease non-operating property. Once appraisals, use restrictions, and conditions have been obtained from District or Region Managers, the Property Agent must:

1. Determine fair market rental rate based upon a market study.
2. Actively solicit tenants by advertising and/or personal contact, and screen/qualify potential tenants using the Rental Application form 734-3645.
3. Prepare appropriate agreement to reflect the terms of tenancy and the use of each property.
4. Collect deposits, and appropriate rents in advance.
5. Manage the property during the tenant's occupancy in conformance with Oregon State Landlord and Tenant laws and lease terms whichever is applicable.

### **9.300 Demolition Contracting Procedures**

The Agent should sell, contract to demolish, or remove improvements as required.

For additional information contact the Contract Coordinator in Right of Way Project Administrative Unit.

The agent needs to be familiar with contracting procedures when hiring demolition work or buying goods and services.

The agent needs to inspect the property and estimate the cost and timeline needed to perform the desired work and then obtain authorization to proceed.

The agent must prepare specifications for the work to be performed. Once the specifications are prepared, the agent must discuss bid bond and performance bond

requirements. When the contractors have had an opportunity to deliver their bids, the agent accepts the quotes in the form requested or opens the bids at the date and time stated in the advertisement. The agent then evaluates the quotes for compliance with the bid specifications and determines which is the most acceptable quote based on the lowest bid, bidder's financial position, quality of past work performance, or other appropriate criteria. The agent recommends acceptance of the most favorable bid to the Unit Supervisor.

With authorization to proceed the agent informs the successful contractor of acceptance and notifies the other bidders of the bid results. The agent delivers a signed contract to the contractor, informs the contractor to proceed with the work specified in the contract, and monitors the work as it progresses. The agent then gives a contract payment to the Unit Supervisor who reviews to see that proper procedures have been followed and that documentation is complete. The supervisor authorizes acceptance of the work and directs the agent to inform the contractor that the work has been accepted. The agent notifies the contractor and forwards the packet to the Contract Coordinator for payment. (Contact Project Administration Unit for further information.)

### **9.305 Prevailing Wage (Davis-Bacon) and Related Acts Applied to Removal of Improvement**

In general property management activities would not require adherence to prevailing wage requirements (Davis-Bacon and related acts), however, there may be special circumstances when prevailing wage applies on non-project related on Property Management. (See [9.145.](#))

## **RENTAL AGREEMENTS**

The agreement format used to rent property varies with the type of property being rented, the length of term, and special conditions. The Senior Agent may recommend agreement types needed to the Property Management Supervisor.

### **9.310 Month-to-Month Rental Agreement (Form 734-3642)**

This form is used when renting improved residential properties and can be modified for use on short-term commercial, industrial or agricultural uses.

In completing the rental agreement the Agent must enter the specific terms and conditions of the agreement including:

1. The location of the property being rented.
2. The monthly rental amount determined.
3. The beginning date of the agreement through the last day of the first rental period, and the prorated amount due for that period.
4. Collect deposits and first months rent.

5. Names of other persons who will be residing in the premises in addition to the tenants.
6. Any additional conditions, such as a pet clause, which pertain to the situation.

### **9.315 Land Rental Agreement**

Short-term rental of ODOT Property may be conducted using a Land Rental Agreement. This type of agreement may be used for both project related and non-project-related properties. The Agent must:

1. Conduct an inspection of the property to determine access, potential use, physical condition, and possible detrimental influences such as topography, hazmat, and neighborhoods.
2. Obtain written approval from the Region Manager and determine any use restrictions to be imposed.
3. Determine if an expenditure account (EA) has been established. If not, take necessary steps to have the EA established.
4. The Land Rental Agreement Form must contain a description of the property as well as the purpose for which it is to be used.
5. Request a Fair Market Rent Study to determine rental rate. Determine the details of the lease, including name, address, Social Security Number (SSN) or Federal Identification Number (FID) of the lessee; address of the property; terms and conditions; provisions for indexing rent, maintenance, property tax payment, and other special provisions.
6. Secures a tenant by advertising or through personal contact. (See [9.480](#).)
7. Completes the Land Rental Agreement Form 734-3658 (1) and have the tenant sign the agreement. To make the agreement valid, signatures must be received from the Property Management Supervisor and the tenant.
8. Land Rental Agreements must be reviewed to determine need for adjustment (s) to the monthly or annual market rental rate (s), as per the following criteria:
  - Month to month rental agreements with a rental rate of \$400 or less per month are evaluated for market rent, based on a three year interval, with a CPI index adjustment applied during intervening years. Rental agreements of \$400 or more per month are evaluated on an annual basis to determine market rent.
  - Year to year rental agreements of \$4,800 or less per year are evaluated for market rent based on a three year interval, with a CPI index adjustment applied during intervening years. Rental agreements of \$4,800 or more per year are evaluated on an annual basis to determine market rent.

### **9.320 Civil Rights Clause in Rental Agreements**

The 1964 Civil Rights Act, as it affects Property Management Procedures, is interpreted as follows:

The Civil Rights Clause is to be included in month-to-month rental agreements executed by the Department insofar as residential property is involved when property is vacated by the seller and is to be rented to another party, the Department in accordance with the Civil Rights Assurances, must rent the property without discrimination as to race, color, sex or national origin. If the Department's month-to-month agreement permits subleasing by the tenant, provisions must be included in such leases to prohibit discrimination by the tenant in such transactions.

Property management agreements between the Department and private parties involving property acquired by the Department with Federal participation, which is leased temporarily after acquisition but before construction, must contain the following clauses:

The lessee, for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the lease that:

(1) No person, on the grounds of race, color, sex or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, and

(2) That the lessee shall use the premises in compliance with all other requirements imposed pursuant to Title 15, Code of Federal Regulations, Commerce and Foreign Trade, Subtitle A, Office of the Secretary of Commerce, Part 8 (15 C.F.R., Part 8) and as said Regulations may be amended.

That in the event of breach of any of the above non-discrimination covenants, the Department shall have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

### **LEASE TYPES**

The agreement format used to rent property varies with the type of property being rented, the length of term, and special conditions. The Senior Agent may recommend agreement types needed to the Property Management Supervisor.

### **9.325 Leases (Other than Air Space Leases)**

Leases are used for long-term occupancies of commercial, industrial, agricultural, and residential property located on non-operating right of way. Also may be used for short-term occupancies requiring special terms and conditions. The Agent must:

1. Conduct an inspection of the property to determine access, potential use, physical condition, and possible detrimental influences such as topography, hazmat, and neighborhoods.
2. Determine if an expenditure account (EA) has been established. If not, take necessary steps to have the EA established.
3. Obtain written approval from the District Manager and determine any use restrictions to be imposed.
4. Request a Fair Market Rent Study to determine lease rate. Determine the details of the lease, including name, address, Social Security Number (SSN) or Federal Identification Number (FID) of the lessee; address of the property; terms and conditions; provisions for indexing rent, maintenance, property tax payment, and other special provisions.
5. Have the lease document prepared and approved by Legal Counsel.
6. The Agent prepares a transmittal letter to present to the Right of Way Manager for approval and execution of the lease.
7. The Agent has the lessee sign the lease agreement, collects the initial lease payment, provides the lessee with a receipt, and gives lessee possession of the property.

**NOTE:** If several parties are interested in leasing a parcel, the Agent can obtain approval to lease the property, then hold an auction to determine who will lease the parcel. The Agent follows the procedures required for conducting an auction.

### **9.330 Wireless Communications Facilities Site Lease**

ODOT has produced guidelines for the placement of wireless facilities on both Interstate, and non-interstate right of way and excess property. Currently wireless facilities are not permitted on Interstate Highways. The purpose of these guidelines are to establish criteria for siting future wireless communications facilities so as to lessen the impacts on the adjacent community and highway facilities. Included in these guidelines are considerations for preserving the operational safety as well as the functional and aesthetic qualities of the highway. Selected sites shall not adversely impact the safety or operations of Oregon Department of Transportation (ODOT) workers.

#### **Procedures**

1. Applicant shall submit a proposal to the District Office including a photographic visual simulation to demonstrate the visual effects of the proposed facility.
2. District offices shall review proposed facilities for consideration of placement approval, site compatibility, and landscaping.

3. District offices will process requests for exceptions to this policy and send them to Right of Way Section for review and approval.
4. Final approval of exceptions will be obtained from a Wireless Communications Placement Committee.
5. Right of Way Section's Property Management Unit will determine market value and obtain all signatures on a lease or rental agreement before siting can occur.
6. Permit is issued by the District Office.

### **9.335 Air Space Leases**

Air space is that space located above, at or below the highway's established grade line and lying within the approved operating right of way boundaries which is not presently or in the foreseeable future required for highway use. With the Region Manager's approval, approval of FHWA on interstate right-of-way only, and subject to various restrictions, the air space may be leased.

The Agent must:

1. Conduct an inspection of the property to determine access, potential use, physical condition, and possible detrimental influences such as topography, hazmat, and neighborhoods.
2. Determine if an expenditure account (EA) has been established. If not, take necessary steps to have the EA established.
3. Obtain written approval from the District Manager and determine any use restrictions to be imposed. Request Project Environmental Classification (project prospectus – part 3).
4. Request a Fair Market Rent Study to determine lease rate. Determine the details of the lease, including name, address, Social Security Number (SSN) or Federal Identification Number (FID) of the lessee; address of the property; terms and conditions; provisions for indexing rent, maintenance, property tax payment, and other special provisions.
5. Obtain FHWA approval for lease of interstate right of way. Additional FHWA approval is not required for the leasing of interstate airspace when FHWA has previously approved the same or similar use of the same air space, and the lease terms are similar except for the lease rate which must be current fair market value.
6. Have the lease document prepared and approved by Legal Counsel.
7. The Agent prepares a transmittal letter to present to the Right of Way Manager for approval and execution of the lease.

8. The Agent has the lessee sign the lease agreement, collects the initial lease payment, provides the lessee with a receipt, and gives lessee possession of the property.

**NOTE:** If several parties are interested in leasing a parcel, the Agent can obtain approval to lease the property, then hold an auction to determine who will lease the parcel. The Agent follows the procedures required for conducting an auction.

### **9.340 Material Site Leases and Purchase Agreements for Material Extraction**

DOT often will need to enter into lease agreements with private landowners, where ODOT is the lessee, for the use of their property. Use for such property may include the development of a stockpile site, storage site, the extraction of rock material (quarry), or the placement of a cellular tower and related equipment. This procedure is to clearly define the process in which to acquire material site/communication leases and purchase agreements for material extraction.

1. The Region Office or Communications makes request to Region Right of Way office.
2. The Region Office or Communications Identifies expenditure accounts to use. Contact Region Environmental Coordinator to obtain the necessary environmental clearance. If federal funding is used, a part 3 will need to be produced and approved by FHWA prior to acquisition of the property.
3. A Region Geologist will obtain assurance, including permits from the permitting agency if needed that surface mining can occur from the property.
4. The Right of Way Project Coordinator sets up the Right of Way file.
5. The Region Right of Way Office makes administrative determination or appraisal, as appropriate, for site lease, and completes valuation process, if needed, for materials extraction.
6. Right of Way Review completes appraisal review for any appraisals prepared.
7. Region Right of Way Office sends request for property lease to Right of Way Documents Specialist.
8. Region Right of Way Office sends request for material purchase agreement to Right of Way Document Specialist. Terms and conditions for the agreement should be provided when documents are requested.
9. Region Right of Way Office obtains signatures for the completed lease and/or material purchase agreement from property owners.
10. Region Right of Way Office signs final reports and sends to Salem Right of Way Headquarters for processing.

11. Right of Way Closing Specialist prepares payment letter, processes first annual site lease payment, Sends lease to owner, Sends documents to Region Right of Way office for distribution to appropriate Region staff for future lease payments. Payments for material extraction are managed under a separate agreement between Region and the property owner.
12. Region Office Lease or Communications receives documents and makes future lease and/or material payments.

### **9.345 Land Use Permit**

The land use permit can be employed to allow use of Department owned land by a private party when it is not feasible to rent the property to achieve a proper return, and there are still benefits to the Department, such as decreased maintenance costs.

1. Conduct an inspection of the property to determine access, potential use, physical condition, and possible detrimental influences such as topography, hazmat, and neighborhoods.
2. Obtain written approval from the District manager and determine any use restrictions to be imposed.
3. Determine the period for which the land use permit applies. The period between permit renewals cannot exceed one year.
4. Obtain Use and access restrictions from the District Manager.
5. Determine fee amount: The amount of the permit fee can be \$0 (gratis) when monetary benefits to the Department exceed the cost of the permit preparation and review, \$50 for a simple permit preparation with little or no field inspection and no plan review, or \$150 for a complex permit preparation requiring a plan review and continuing inspection.
6. The fee for a Land Use Permit is not the same as a rental payment. It is a permit fee, Land Use Permit annual fees cannot be prorated or returned if cancelled before the expiration date.
7. Per Oregon Revised Statutes, property covered by a Land Use Permit is not subject to the local property tax assessments.
8. The Land Use Permit cannot be assigned.
9. The Agent must periodically evaluate the Land Use Permit to determine if this type of agreement is appropriate to use.

## PROCEDURES

### 9.350 Security Deposits

Oregon Revised Statutes, Chapter 90, includes the following landlord obligations regarding security deposits:

1. "Security deposit" means any refundable payment or deposit of money designated to secure the performance of a rental agreement or any part of a rental agreement. Deposits that are nonrefundable could include cleaning deposits, advance payments of rent, or pet deposits, etc.
2. The landlord for the tenant who is a party to the rental agreement shall hold security deposit. Claim of a tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy.
3. Landlord may claim all or part of the security deposit that is reasonably necessary if the deposit was made for any or all of the following purposes:
  - a. Remedy tenant's defaults in performance of the rental agreement including but not limited to, unpaid rent, theft of property, or damages to the property by the tenant.
  - b. Repair damages to premises caused by tenant, not including normal wear and tear.
4. A Security deposit shall not be required or forfeited to the landlord upon the failure of the tenant to maintain a tenancy for a minimum number of months in a month-to-month tenancy.
5. A landlord may also require the payment of a prepaid rent deposit as a security deposit. Prepaid rent means any payment to the landlord for a monthly or weekly rent obligation not yet due, including a last month's rent deposit. The landlord may claim from the prepaid rent deposit only the amount reasonably necessary to pay the tenant's unpaid rent.
6. In order to claim all or part of the security deposit, within 31 days after the termination of the tenancy and delivery of possession the landlord shall give to the tenant a written accounting which states specifically the basis or bases of the claim.
7. The security deposit or portion of the deposit not claimed in the manner provided by subsection (5) and (6) of this section shall be returned to the tenant not later than 31 days after the termination of the tenancy and delivery of possession to the landlord.
8. The landlord shall give the written accounting as required by subsection (6) of this section or shall return the deposit as required by subsection (7) of this section by personal delivery or by first class mail. Proof of timely compliance with this requirement shall include a postmark.

9. If landlord fails to comply with subsection 6 of this section, or fails to return any prepaid rent required to be paid to the tenant under Section 1 to 33 of the Act, tenant may recover the property and money due in an amount equal to twice the amount wrongfully withheld.
10. This section does not preclude the landlord or tenant from recovering other charges under ORS 90.100 to 90.940.
11. This section binds the holder of the landlord's interest in the premises at the time of the termination of the tenancy.

### **9.355 Liability Insurance Clause**

Tenants will provide insurance to indemnify ODOT. The following clause is required and should be included in the insurance binder when the Department leases property and permits it to be subleased:

*"It is understood and agreed that the following are included as additional named insured under this policy:*

*THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, ITS MEMBERS, OFFICERS, AGENTS AND EMPLOYEES, EXCEPT AS TO CLAIMS AGAINST LESSEE FOR INJURY OR DEATH TO, OR DAMAGE TO THE PROPERTY OF, ANY OF SAID ADDITIONAL NAMED INSURED."*

If claims are made against the Department of Transportation, the Property Management Supervisor is to report the details in writing to the legal counsel.

### **9.360 Advertising Signs on Department Property**

Per Commission policy adopted May 25, 1976, outdoor advertising signs are not permitted on ODOT owned property. Department properties will not be rented when the only intended use by the renter is for the installation and maintenance of an off premise sign. However, on-premise signs pertaining to the activity conducted on the property are allowed.

### **9.365 Employee Occupied Housing**

Every state agency that provides housing for its employees must collect a rental value for such housing based on its fair market rental rate. The Property Management Unit is responsible for determining the proper rental rate for employee housing provided by the Department of Transportation. The Unit is also responsible for providing annual reviews to determine whether adjustments to the rent are warranted.

The Department of Administrative Services working through the ODOT Facilities Management Section, provides the Property Management Unit the necessary forms, assumptions, and a list of State employee occupied dwellings needing rental

evaluations. The Property Management Supervisor distributes the requests to the responsible Region Right of Way Manager for assignment to staff appraisers. Completed evaluations are returned to the Property Management Unit, which returns the rental information to the Facilities Management Section.

## **PROPERTY MANAGEMENT DURING OCCUPANCY**

### **9.370 Fire Prevention on Rental Properties**

In order to minimize the danger of fire in Department rental properties the Agent must:

1. Visually inspect each improved property prior to renting to identify fire hazards.
2. If deemed necessary the Agent may elect to request an inspection of the property by the local fire department.
3. Be sure functioning smoke/fire detectors are installed in all residential units. These devices must be inspected annually by the Agent or a designee. The file should be noted of the annual inspection date.

### **9.375 Maintenance or Improvement of Rental Properties (Non-Project Related)**

The Agent is responsible for keeping rental properties in a safe and secure condition. All improvements must be maintained in a habitable condition, suitable for occupancy, and in accordance with state and local ordinances.

1. When deciding whether to perform maintenance on improved rental property, the Agent should:
  - a. Calculate the potential income by estimating the rental rate of the property and number of months the property can be rented before disposal is required.
  - b. Estimate the property taxes to be paid and the cost of general upkeep, including holding and administrative costs. Property taxes are due for a full twelve-month period if the property is rented for one or more days after July 1 of any year. If a property is going to be rented only for a short period subsequent to July 1, use a full year's tax load for this analysis.
  - c. Use one months rent as an amount for "rent" loss. Increase if possibility of rent loss is greater.
  - d. Determine the amount of money available to perform the work by subtracting the costs from the estimated income.

EXAMPLE:

\$10,000 Estimated Income  
(\$ 3,000) Property Tax  
(\$ 1,000) Estimated Rent Loss  
\$ 6,000 Amount available for repairs  
\$ 9,000 Cost of repairs

If the cost of the repairs exceeds the amount available to perform the repairs, the improvements should be disposed of. The repairs may be done if their cost is less than the amount available to perform them.

2. For improved properties that may be sold as surplus, the Agent should undertake the following analysis:
  - a. Estimate cost of needed repairs.
  - b. Determine land value as though bare and ready for redevelopment.
  - c. Approximate the property value if the repair(s) were made.
  - d. Estimate the property taxes to be paid and the cost of general upkeep, including holding and administrative costs.
  - e. Estimate demolition costs.
  - f. From the repaired property value, deduct b, d, and e.

If this net figure is below the repair estimate, the improvement should be demolished; if greater, the procedure discussed above in item 1 should be used to aid in decision making.

3. For routine, day-to-day maintenance on rental property, the Agent must assess the need for the work in a prudent, business-like manner. Then determine whether the work should be performed by Department forces or by a private contractor to perform the work within the required time frame, as specified in the Landlord Tenant Act.

The Act specifies 7 days for essential services, and 30 days for all other cases. Essential service includes heat, hot and cold running water, electricity, gas, sewer, and garbage services.

### **9.380 Tenant Repairs**

Standard maintenance practices preclude a tenant from performing repairs on Department-owned property. However, there are some situations where it would be practical for a tenant to perform minor repairs due to distance or cost. Examples could include replacing a small windowpane, making minor toilet repairs or replacing worn out window coverings. If a tenant is allowed to make minor repairs, the Property Agent and the tenant need to agree in advance on the nature and extent of the work to be performed and materials to be purchased. The Department will pay for pre-approved

material purchases by the tenant by reimbursing the tenant for the materials upon receipt of a prepaid invoice. Payment is to be made by using the Departments invoice payment system for purchases of materials. Tenant provided labor cannot be reimbursed, nor can rent credits be given to a tenant for materials or labor.

### **9.385 Tenant Rental Statement and Payment**

Each month the Property Management Unit prepares and mails rental statements to tenants showing the amount of rent due for the next rent period and any outstanding arrearage. It is a tenant's obligation to tender payment according to the terms of the rental agreement.

### **9.390 Delinquent Rentals**

The Agent is responsible for debt collection and must regularly review the current rental information to determine whether a rental account is overdue. (Past due land sale contract payments are monitored by the Property Management Coordinator.) If payments are overdue, the Agent should verify the delinquency. The Agent contacts delinquent tenants by phone to collect payment, or prepares and delivers a Delinquent Rent Letter Form 734-3846. A certified mailing, with return receipt requested, is recommended to prove date notice was given to the tenant. This will help if legal proceedings are necessary. The letter must include:

1. The amount of money which is past due, and any penalties or other charges that have accrued.
2. The date the payment is expected to be made. This date should be at least 72 hours (3 days) but not more than 4 or 5 days from the date of the letter. The Property Management Supervisor, in some cases, may approve other arrangements for repayment.
3. The date on which vacation of the property is required if the tenant does not tender the past due amounts.

If the tenant pays the amount owing by the deadline, the rental agreement remains in effect.

If the tenant does not meet the deadline, the Agent must take steps to terminate the rental and remove the tenant from the property, including, if necessary, using legal eviction proceedings.

### **9.395 Partial Payment Agreement**

During the period between the delivery of the delinquent letter and the vacation of the premises by the tenant, it may be prudent to accept a partial payment of the outstanding rent. Acceptance of partial payment after the deadline stated in the letter

will nullify eviction proceedings in progress, unless the Department retains a right to continue with the proceedings without having to provide the tenant with further notice. Suggested language to have the tenant sign when making the partial payment is:

*"It is understood and agreed that the acceptance of the sum of \$\_\_\_\_\_ as rent on this date is not payment in full of all delinquent sums and is not to be considered a waiver of the rights of the Oregon Department of Transportation to bring an eviction proceeding in court without further notice if the tenant fails to pay all amounts of rent in arrears by \_\_\_\_\_ (date)."*

In an effort to evict for non-payment of rents or to have the tenant make payment in full on a delinquency, the Agent may begin a Forcible Entry & Wrongful Detainer (FED) action and, follow up to be sure the tenant is evicted or moves, as per ORS Chapters 90 and 105.

When all collection efforts have been exhausted by the Agent, the Agent shall prepare a letter setting forth all collection activities attempted, the result thereof and a recommendation to refer this account for further collection including "write off." This letter is to be delivered to the Property Management Supervisor for approval, then to the Property Management Records Specialist for processing and delivery to Accounting for referral to the Department of Revenue for collection.

### **9.400 Rent Terminations**

Either party upon 30 days written notice to vacate can terminate month-to-month rental agreements.

If a tenant is delinquent in paying rent the Agent will pursue collection and possibly the FED process to remove the tenant. The Delinquent Rent Letter Form 734-3846 is used only when the eviction is being pursued because of delinquent rent.

A chronic problem tenant can be evicted with the standard 30 days written notice. A 10-day notice can be used if the same problem has been encountered and documented within the last 6 months. The best time to remove a problem tenant is when the rent is current since the security deposit will cover rent due during the 30-day notice period. In terminating a rental the Agent should:

1. Take immediate possession of the property upon vacation by the tenant.
2. Inspect the rental property and complete the Rental Termination and Deposit Form 734-3646 and attempt to have tenant acknowledge.
3. Ascertain the closing water bill and other applicable utilities.
4. Prepare a Property Management Action Form 734-2156 stating the specific reasons for termination.

The Property Agent forwards the termination material to the Property Records Specialist who updates records to reflect the termination.

### **9.405 Collection of Rent on Vacated Properties**

The Property Management Supervisor and the Agent must discuss the delinquent accounts to determine what action should be taken to collect on them once the tenants have vacated. The Property Records Specialist computes the balance owed on the delinquent account either as of a certain date or as an ending balance. The Agent shall furnish charges for the final utility bills, an estimate of the damages to the property and/or the cost to clean up the premises, and other appropriate charges to be added to the delinquent payment. The Property Records Specialist closes the rental records. The Agent writes to the tenant giving 30 days to make arrangements for payment of the delinquent rent and indicates that the security deposit has been applied to the outstanding debt.

If the tenant fails to make satisfactory arrangements for payment, upon notification by the Agent, the Property Records Specialist forwards the "Account Information and Assignment Agreement" form to the Controller in the Department's Finance Section for assignment to the Department of Revenue for collection.

### **9.410 Forcible Entry and Wrongful Detainer (FED)**

Forcible Entry and Wrongful Detainer (FED) is a procedure by which a landlord, for specified reasons, can evict a tenant through a reasonably prompt court process. Once it has been determined that a tenant must be evicted, the Agent needs to provide written notice to the tenant of the Department's intent to terminate the tenancy.

To proceed with the FED process the Agent needs to obtain a complaint form at the district court of the county in which the property is located. After completing the form the Agent files it into court along with appropriate filing fees. The court clerk will set a date for a preliminary hearing, usually 7-10 days after the payment of the filing fees. The sheriff for the county posts a FED form on the door of the tenant thereby serving notice to the tenant of the impending proceedings.

At the preliminary hearing, if the Department appears and the tenant does not appear, a default judgment will be entered against the tenant and in favor of the Department. If the tenant appears and the Department does not, an order will be entered dismissing the complaint.

If both parties appear, the court can set the matter for trial as soon as practicable, unless the parties advise the court that the matter has been settled. It is also possible that at the hearing, the court can hear arguments and enter a default judgment against the defendant if the Department's case is complete and correct. Any trial will be scheduled no later than 15 days from the date of the hearing and the court may order the tenant to pay rent that is accruing into court. If the matter is scheduled to go to a trial, the Agent should seek counsel from the State Attorney General's Office.

## **PROPERTY DISPOSAL PROCEDURES**

### **9.415 Surplus Real Property Disposal**

Surplus property is property owned by the Department, which has been formally declared surplus to the needs of the Department. This property can be sold to state or other public agencies, or to private parties. Surplus property is usually sold on a cash basis, except that land sales contracts may be available on certain properties with the approval of the Property Management Supervisor. It is also possible to exchange surplus property for needed rights of way if the properties are similar and in reasonable proximity. Before any surplus parcel can be disposed of it must be appraised for market value.

By law the Department must give public agencies and non-profit housing authorities the next opportunity, after other state agencies, to purchase surplus property directly from the Department. The agency must pay Fair Market Value as set by the Department through the appraisal and review process.

Property with an appraised value greater than \$5,000 must be sold at public auction unless approved otherwise by the Right of Way Manager. Property with an appraised value of \$5,000 or less may be sold direct, at public auction or by any other means deemed to be in the best interests of the Department.

### **9.420 Declaring Real Property Surplus to Needs of the Department**

Requests to sell Department property can originate from individuals, businesses, public agencies or from within the Department. Before steps can be taken to sell the property it must be determined whether the property is surplus to the needs of the Department.

## **SURPLUS PROCESS**

The Department's Management Policies and Procedures Manual contains detailed procedures for declaring property surplus under HWY ROW 10-01 entitled, "Criteria For Processing Requests to Declare Real Property Surplus to Needs of the Department of Transportation." These procedures along with the 1989 "Revised Region Right of Way Surplus Process" instructions are the basis for the following process. There are currently four (4) Phases in the surplus process. The Phases are described in detail as follows:

### **9.425 Phase I**

The Property Management Unit may receive requests from interested parties. These request may originate from private parties, company's, governmental agency's, non-profit organizations, or from within ODOT. Upon receipt of the request, the Agent reviews the property file to determine the parcel status. If the parcel has been declared surplus during the last three (3) years the Agent may proceed with sale of the property without seeking further approval. If the parcel was purchased as excess at the time of acquisition the Agent must seek approval for sale from the Region Manager.

The Agent must conduct an inspection of the property to determine access, potential use, physical condition, and possible detrimental influences such as topography, hazmat, and neighborhoods.

The Agent should determine the feasibility of obtaining septic approval, partitioning, zone change, and development of access to maximize return to ODOT.

- **EA Setup**

The Agent completes Expenditure Account (EA) form 734-2318 and submits it to the Senior Agent for approval. The Sr. Agent forwards to the Property Records Specialist for EA setup.

- **Input Request**

If the parcel has not been declared surplus, the Agent prepares a "Input Request for Sale of Excess Property" form 734-3666, including name(s) and phone number of interested parties. The Agent should also include an estimate of sale price, sketch map of parcel with all file numbers outlined or highlighted, a copy of the right of way map, and a printout of the property inventory record. The Agent attaches copies of letters, memorandums, etc. that prompted the request plus all pertinent maps and information. Then sends one package each to: a) District Manager b) Environmental Section - Salem c) Preliminary Design Unit - Salem d) Region Planner e) Region Geologist. These units have 30 days to respond back to the Agent. The Agent may wish to check with District and Region offices for receipt of material and status.

Agents send a copy of the input request to Region.

## **9.430 Phase II**

- **Letter to Region Manager**

When written recommendations have been received, or if 30 days has lapsed with no response, the Agent assumes no objections to disposal of the parcel and forwards all information to the Region Manager along with Form 734-2167 for Region Instructions to retain or dispose.

The Region Manager reviews the data and makes the decision to either retain or dispose of the parcel, and forwards the decision to the Agent. When the Agent receives Region Manager's decision, Agent notes the decision and proceeds accordingly.

- **Region Manager Recommendation to Review Units**

The Agent informs the review units providing input of the Region Manager's decisions then updates the Property Inventory Database. If the property is to be retained the Agent requests the EA be closed.

### 9.435 Phase III

- **Hazmat Phase 1 -Environmental Assessment**

If the Agent has reason to suspect contamination on a site the Region HazMat Coordinator should be contacted for an environmental assessment.

- **Conformance of Surplus Property to Local Planning Requirements**

The Agent must determine whether the surplus property conforms to the local planning requirements for land divisions. The Agent forwards a Statement of Conformance with "Local Requirements For Sale of State-Owned Land" (Form 734-2074) to the city or county planning body having jurisdiction over the property. The public agency either signifies the surplus property meets the local requirements and approves the sale, or it states whether a variance, a partition or other action is required prior to selling the property. If the sale is approved, the Agent continues with the surplus sale process. If the property does not meet the local agency's standards, the Agent and the property Manager discuss whether to correct the deficiency and proceed to halt the sale.

- **Contracting Surveys and Descriptions**

ORS Chapter 92 indicates that a survey may be required by a local jurisdiction to describe, monument, and create a map for partitioning. Exceptions may be if ODOT purchased a legally created lot and is selling it without retaining any portion for ODOT use, and when remnant parcels are assembled to adjacent property via lot line adjustment. The agent may determine appropriate action by the Statement of Conformance received from the local planning agency. The Agent submits the survey and description to the Right of Way Engineering Unit for review.

- **Request for In House Description**

The Agent requests that a description be prepared on the surplus property from Right of Way Engineering Unit. This description will be used in the deed and as the basis for the appraisal. When the description is received, the Agent forwards a copy to the Region Right of Way Unit, or Fee Appraiser along with an appraisal request.

- **Right of Repurchase**

If the parcel was purchased via condemnation after October 1973 (i.e. a complaint was filed in court) the parcel is subject to the "Right of Repurchase" statute (ORS 35.385). If ten years has lapsed and the parcel has not been used, the parcel must be offered to the grantor at the original purchase price plus 7% simple interest per year of State ownership. If the parcel was purchased as right of way and all or any part was used for the project, the parcel is not subject to the Right of Repurchase, and processing for sale may continue.

- **Letter to State Lands (DSL)**

ODOT retains the mineral rights on all parcels of 10 acres or larger. Exceptions require a decision by the State land Board (DSL) after a presentation by ODOT of the reasons the mineral rights should be sold. For parcels under ten acres in size, a letter must be sent to DSL advising that the property meets certain DSL criteria and the mineral rights will be sold (ORS 270.100).

DSL has authority over all state owned mineral rights. When mineral rights are being retained a special provision has to be included in the deed. See OAR 141-73-125 for sample. Note: If the parcel was originally purchased and used as a material source, it is exempt from this process (ORS 273.785)(1).

- **Letter to Department of Administrative Services (DAS)**

The Agent notifies the Department of Administrative Services (DAS) that the property is available for disposal. DAS will then distribute notification to all State Agencies, and City and County Governments (OAR 734-035-070).

- **Memo to Permits**

Technical Services Access & Utility Permit Section to determine status of any utility permits affecting the property to be sold.

- **Letter to Federal Highway Administration (FHWA)**

A. If a surplus parcel was acquired for interstate highway, or involves operating right of way of the National Highway System, Federal approval is required for sale of the parcel.

B. Request project environmental classification (project prospectus – part 3). Only when FHWA is involved.

## 9.440 Phase IV

- **Appraisals Requested & Received**

The Agent will request the appraisal from the Region Right of Way Unit as per the following procedures:

- **Property Management Appraisal Process**

1. Property Management sets up the surplus property file in RAIN.
2. Agent makes a request for appraisal services to the R/W Supervisor in the Region in which the surplus property is located. The request will be in the form of a memo and will include a target completion date for the appraisal, as well as all pertinent information and maps necessary for the Region Supervisor to evaluate the request. Completion times will be reasonable. Shortened time periods for "rush" situations will be the exception only as needed.

3. The Region ROW Supervisor will respond to the Agent within 3 days as to whether the office will do the appraisal. If the completion date requested by Property Management cannot be made, a new date will be agreed upon between Property Management and Region. In all cases, an accepted written appraisal request will be based upon a completion date agreed to by both Property Management and Region.
4. If Region declines the appraisal or cannot agree to a completion date, Property Management has the options of trying the other 4 Region offices or contracting for a fee appraisal.
5. Once an agreement has been reached and the appraisal will be done internally, Property Management will provide the EA for time and costs.
6. Property Management will provide an appraisal specification sheet along with each file to be appraised.
7. The Statement of Conformance will be completed and included with each specification sheet, unless Property Management does not obtain a Statement of Conformance.
8. The Region ROW office will assign the appraisal task in RAIN for tracking. It will also fill out the appraisal screen in RAIN just as on any other file.
9. Midway through the appraisal assignment time period, Property Management will contact the Region ROW Supervisor and inquire whether the agreed upon completion date will be met. (Region ROW should not wait for this Property management contact if it knows earlier that the completion date will not be met.) If at the time of this inquiry the ROW Supervisor indicates that completion date won't be met, there will be three options: Property Management and Region negotiate a new completion date; Property Management withdraws the appraisal request and contacts the other regions to see if the work can be done within the desired timeline.; Property management contracts for a fee appraisal.
10. For appraisals at \$20,000 or more the Region will send one copy of the completed appraisal to Appraisal Review; the second copy will be sent directly to the agent. The Region Supervisor or Appraisal Review may review appraisals under \$20,000. This distribution back to Property management will be identified in the appraisal specifications that Property Management provides at the onset of the request.
11. Appraisal Review should do their review the same as any other appraisal, utilizing RAIN. Completed reviews should be identified in RAIN. The Reviewer will also be instructed to let Property Management know when the review is completed and provide a copy electronically. The Right of Way file and signed Appraisal Review (pink sheet) are to be sent to Property Management as well.

- **Agenda**

The Agenda Letter is the instrument used to set a minimum acceptable value of a surplus property based upon an appraisal review. The Agenda letter also establishes the terms and conditions for Sale of the property. The Right of Way Manager has the authority to approve or further delegate approval of the agenda letter. The Property Management Supervisor may approve the Agenda Letter when the value is at or above the reviewed amount. The Right of Way Manager must approve agenda Letters requesting the sale of properties for less than the reviewed amount or having complex issues.

- **Public Notice of Properties Valued at More than \$100,000**

ORS 270.105 dictates that for properties valued at \$100,000 and above, the State Agency (ODOT) will invite public comment on the sale of the property. Recommended notification procedure is to place an ad in the public notice section of the local newspaper. The ad should be published at least once, approximately one week prior to the advertisement of sale.

- **Advertisement of Sale**

As per OAR 734-035-0090 (Publication of Notice of Sale) the following sale advertisement procedures will be used when advertising property for sale.

Except as provided in OAR 734-035-0110, the Department shall give notice of all sales of real property or interest therein with an asking price in excess of \$5,000.

The notice of sale shall contain:

- (a) A description of the property by street address and/or by legal subdivision;
- (b) The minimum price for which the property will be sold;
- (c) A brief statement of the terms of the sale; and
- (d) A source to contact for information about the property. The notice of sale shall be published in accord with the following minimum time standards:
  - (a) For properties valued between \$5,001 and \$25,000 -- Three times during the three-week period preceding the sale by publication in a newspaper of general circulation in the county in which the property is located; or
  - (b) For properties valued in excess of \$25,000 -- Three times during the three-week period preceding the sale by publication in a newspaper of general circulation in the county in which the property is located, and in such other publications as the Department deems appropriate.

In addition to the minimum standards for publication contained in section (3) of this rule, the Department may provide more extensive notice of sale if such additional exposure is prudent due to value of the property, intense interest on the part of the public, or other factors.

In addition to the public notice by advertisement, the Department shall, as much as is practicable, post properties offered for sale with signs indicating their availability for purchase (ORS 284, ORS 366, & ORS 270.130).

- **Exception to Publication of Notice of Sale**

The Department may sell or dispose of real property or an interest therein direct to a private party without publication of a notice of sale when the property, because of its size, shape, location, utility, condition of title, or restriction imposed upon the property by the Department, has minimal value and is useful only to adjacent owners or when, because of local land use ordinances, the property may not be disposed of to anyone other than adjacent property owners.

## **SALE TYPES**

Property approved for surplus disposal may be sold by direct sale, public auction. Surplus property is property owned by the Department, which has been formally declared surplus to the needs of the Department. This property can be sold to state, other public agencies, or to private parties. Surplus property is usually sold on a cash basis, upon approval; a land sales contract may be available.

### **9.445 Direct Sale**

By law, the state must give public agencies the first opportunity, after state agencies, to purchase surplus property directly from the Department.

Surplus properties that cannot be independently developed, have only one adjacent buyer, or have a value of less than \$5,000.00, may be sold by direct sale. By law, the State must give public agencies the first opportunity, after other state agencies, to purchase surplus property directly from the Department. The agency must pay the Fair Market Value as set by the Appraisal Review and agenda letter.

### **9.450 Auctions**

Either oral auction or sealed bids, at the discretion of the agent may accomplish Public Sale. Property with an appraised value (approved agenda letter) greater than \$5,000 must, by law, be sold at public auction.

## **METHODS OF PURCHASE**

### **9.455 Exchanges**

It is also possible to exchange surplus property for needed right of way if properties are similar and in reasonable proximity, with the approval of the Region Right of Way Manager. The state may enter into an agreement with other public agencies or private

parties to exchange property for other property of equal value as determined by appraisal(s).

#### **9.460 Jurisdictional Exchange**

The Region Manager has authority to declare a parcel of ODOT property surplus to the needs of the Department and exchange that property to local public agencies (cities and counties) for goods and services that can be utilized by the Region for operational purposes (ORS 366.395).

#### **9.465 Contracts**

Upon approval of the Property Management Supervisor, a land sales contract can be used as an agreement, which provides method of financing including terms and conditions.

#### **9.470 Cash**

The preferred method of purchase.

#### **9.475 Intergovernmental Agreement (IGA)**

Between the department and another governmental agency are used both in project related and non-project related transactions and may include transfer of state owned real property as well as other goods and services.

### **TERMS AND CONDITIONS OF SURPLUS PROPERTY SALES**

Each parcel to be sold may present a situation requiring special terms and conditions which need to be determined in advance and included in the advertising and sale material. A few examples of special terms or conditions include:

#### **9.480 Amount of Deposit**

The agent may request a deposit of at least 10 percent of the high bid with the balance of the bid price to be paid typically within 60 days. If a sale is conducted through sealed bids, the agent must inform bidders that each bid is to be accompanied by a certified or personal check (it is not our policy to accept cash) for at least the deposit amount.

#### **9.485 Property Taxes**

Most of the Department's properties that are sold are not on the tax rolls at the time of the sale. Properties sold and the deed recorded prior to July 1 of each year will have taxes to due the following November 15.

Properties sold and the deed recorded after July 1 of each year will not be taxed until the following year. Any properties sold that are already on the tax rolls will be pro-rated based on a 365-day year by the Property Management Coordinator at the time of closing.

On land sales Contracts and leases the State pays the taxes by November 15 of each year in order to receive the discount. Contract Purchasers and leases have 30 days to reimburse the department for the taxes paid on their behalf. If they are not reimbursed the taxes are added to the principal balance and the purchaser's payments are adjusted accordingly for the next 12 months.

State owned properties are tax exempt unless they become money producing. Properties under Land Use Permits remain tax exempt.

### **9.490 Deed Restrictions**

The Property Agent indicates which deed restrictions should be imposed, access control, etc. Examples of typical restrictions are listed below.

### **9.495 Mineral & Geothermal Clause**

That there is reserved unto the State of Oregon, its successors and assigns, all minerals, as defined in ORS 273.775(1), and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, re-injecting, storing, drilling for, and removing such minerals and geothermal resources, provided, however, that the right reserved to use the surface for any of the above activities shall be subordinate to that actual use of the surface of the premises deeded herein, or any part thereof, being made by the surface rights owner at the time that the State's lessee conducts any of the above activities. In the event such use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from State's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the State's lessee conducts any of the above activities.

### **9.500 Access Completely Restricted Clause**

That there is reserved by Grantor, and waived by Grantee, all access rights between the above described real property and the (relocated) \_\_\_\_\_ Highway abutting on said parcel.

This reservation shall run with the land and shall not be subject to modification, cancellation, or destruction by adverse user or estoppel, no matter how long continued. Nothing in this conveyance shall be construed as conveying any estate, right, title, or

interest in and to said abutting public highway right of way or any rights of reversion therein or thereto.

### **9.505 Access Control Clause**

That there is reserved by Grantor, and waived by Grantee, all access rights between the above described real property and the (relocated) \_\_\_\_\_ Highway abutting on said parcel, EXCEPT, however,

There is granted access rights to and from the (Direction) side of said highway opposite Highway Engineer's Station (Engineer Station #) in a width of (Number of feet) feet.

This reservation shall run with the land and shall not be subject to modification, cancellation, or destruction by adverse user or estoppel, no matter how long continued. Nothing contained in this conveyance shall be construed as conveying any estate, right, title, or interest in and to said abutting public highway right of way or any rights of reversion therein or thereto.

### **9.510 Sign Clause**

That the above described land shall never be used for the placing or maintenance of any advertising sign, display, or device, except such sign, display, or device used to advertise the activities on said land, or the lease or sale of said land or any portion thereof. In the event of violation of this condition, Grantor shall have the right, through its authorized officers, agents, or employees to enter upon said land and remove, destroy, or obliterate any unauthorized sign, display, or device, without liability for damage or injury thereto, and to recover the cost of such removal, destruction or obliteration from the owner of said land.

### **9.515 Junk Clause**

That no junk, scrap, junked motor vehicles, or parts thereof, debris, trash, waste, or other such materials shall be placed on said land for whatever purpose in any manner so as to be visible from a state highway, provided that such items as listed above can otherwise be placed on said land without violating any applicable law, ordinance, or regulation. In the event of violation of this condition, Grantor shall have the right, through its authorized officers, agents, or employees, to enter upon said land and remove or destroy any unauthorized junk, scrap, or other material mentioned above and recover the cost of such removal or destruction from the owner of said land.

### **9.520 Garbage Clause**

That this property shall not be used for the operation of any garbage dump or sanitary landfill. If such use is made of the property, Grantor may, at its election, enter upon said

land and restore it to the condition that existed prior to said use for garbage dump or sanitary land fill purposes and recover the cost thereof from the owner of said land.

### **9.525 Noise and Air Clause**

That this conveyance is made upon the further condition, which shall constitute a covenant running with the land, that Grantor shall not at any time become liable to Grantee and grantee's heirs, successors and assigns in interest, for damages to the land herein described or any buildings, structures, improvements, or property of any kind or character now or hereafter located upon said land or for any injuries to any owner, occupant, or any person in or upon said land or for any interference with the use and enjoyment of said land or for damages which except for this covenant might constitute a nuisance caused directly or indirectly by noise or air pollutant emissions from transportation vehicles using the highway or transportation facility adjacent to said land. Any reference in this covenant to the highway or transportation facility adjacent to said land refers to the highway or transportation facility as it now exists and also as it will exist with future improvements. Grantee and grantee's heirs, successors and assigns covenant not to sue Grantor for any said injuries or damages.

### **9.530 Reversionary Clause**

It is understood that if the above described property or any portion thereof is used for purposes other than public purposes, title to the property or portions thereof used for purposes other than public purposes shall automatically revert to and vest in Grantor.

### **9.535 Civil Right Assurances on Land Sales**

(Reverter clause to be used only when it is determined that such clause is necessary to effectuate the purpose of Title VI of the Civil Rights Act of 1964.)

All contracts must include Appendix C clauses from the Assurances.

The civil rights language to be included in land sales contracts is as follows:

The Grantee, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that (a) no person shall, on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such land hereby conveyed, (b) that the Grantee shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. In the event of breach of any of the above-mentioned nondiscrimination

conditions, the Department shall have the right to re-enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to and vest in and become the absolute property of the Department of Transportation and its assigns, as such interest existed prior to this instrument.

### **9.540 Septic Approval**

For surplus parcels being sold without public sewer, a septic permit is usually advisable. Advertisements must state whether septic approval has been received or denied, or whether septic approval was not requested.

The Property Agent must determine whether the site justifies applying for a septic permit. Criteria to consider include:

1. Only sites that can be developed should be considered.
2. Soil classification, size and shape of the parcel, terrain, location of domestic well, rivers, creeks, ponds, highway ditches, etc. should be evaluated to determine suitability for a septic permit.
3. The septic permit should increase the value of the site beyond the cost of the permit costs and test hole expenses.

If the Property Agent determines a septic permit is desirable, the Agent then hires a private contractor to obtain required permits, dig the test holes, and provide the test results. The holes should be covered if it is not possible to refill them in the same day. The agent should place a copy of the test results in the right of way file and also include this information on the Appraisal Specification Sheet when ordering the appraisal report.

If the parcel being sold contains a domestic water well, it is ODOT's responsibility to have the well tested. The Agent should request a well report that includes water quality and quantity levels.

### **9.545 Disclosure of Appraisal on Surplus Property**

Appraisals of property being sold at public auction shall not be disclosed prior to the sale. However, appraisals of properties being sold by direct sale may be disclosed with supervisor approval.

### **9.550 Sales of Department Owned Property to State Employees**

The sale of Department owned properties to State employees shall be conducted in a manner, which assures that employees have not used their official positions or office to obtain undue financial gain. The agent conducting an oral auction or sealed bid auction will not be allowed to participate as a bidder or purchaser.

Direct sales and sales to State employees after an auction in which no bids were received will require the approval of the Right of Way Manager. There will be no direct sales to employees of the Right of Way Section.

## **CONDUCTING AN AUCTION**

The Right of Way Section is required to conduct public auctions when; (1) selling to private persons surplus properties valued over \$5,000; or (2) when selling improvements for removal. There are two types of auction; oral and sealed bid. The Agent is responsible for conducting the auction with the assistance of one or more region office staff members.

### **9.555 Preliminary Auction Functions**

After receiving approval to conduct an auction, and after it has been properly advertised, the Agent is ready to hold the auction in accordance with the terms stated in the advertisement.

The Agent and assistant(s) should arrive at the auction site at least 30 minutes prior to auction to be sure copies of the Sales Instructions and Regulations Form 734-3660 and copies of the advertisement are available and to answer questions regarding sales terms and conditions, method of payment, deposits, etc. ORS 273.205 requires all terms and conditions for a sale to be included in the published advertisements. The Agent must not make any statements at the auction that will change the conditions of the sale. If a problem should arise that would substantially alter the terms, value, title, etc., the Agent may deem it necessary to cancel the auction and re-advertise at a later date.

The Agent should make note of any significant questions that have been asked prior to the auction and summarize the issues and responses prior to the sale so all bidders are aware of the sale requirements.

### **9.560 Oral Auction**

The Agent begins the auction by assembling the bidders and reviewing the terms and conditions of the sale and answers any further questions. The Agent informs bidders of the order in which the sale will proceed if more than one item or parcel is involved, and also specifies which landscape items or appurtenances are or are not included in the sale. The Agent requests that bidders make their bids verbally rather than by gestures. If individuals are interested in bidding on property being sold, but are unable to attend the auction, they may submit a sealed bid with a deposit in an amount to be determined by the Agent. The Agent will open the bids prior to the start of the auction, and those bidders present will be notified of the highest sealed bid. This bid will set the minimum auction bid so long as it exceeds the advertised minimum.

The Agent invites bids by asking for a bid at the established minimum price. As bids are received, higher bids are requested until it is apparent that a final bid has been made.

Three attempts are to be made for a final higher bid. If the last bid is accepted as the high bid the Agent indicates to all present that the item is sold.

The auction assistant must secure the name, address, and phone number of the next highest bidder. In the event the sale to the highest bidder falls through, the Agent may offer the item to the next highest bidder for the price established by the high bid.

Should a situation arise that could jeopardize the sale, the Agent may reject all bids and start the auction over, if possible. Reasons for rejecting the bids include:

1. The highest bid is below the established minimum.
2. The bidder is deemed not responsible.
3. The bid is submitted under something other than the advertised terms and conditions.
4. No bids are received.

If no bids are received the Agent may at any time during a period of one year after the advertised date of sale, upon approval, sell property administered by it in such manner, as it deems appropriate.

### **9.565 Sealed Bids**

The Property Management Unit may choose to conduct a sealed bid auction. This method is particularly useful on properties in remote areas of the state. Sealed bids are accepted on the Sales Agreement/ Bid Form, and will include a deposit established by the property agent.

For Sealed Bid Auctions the Right of Way Manager signs an Agenda Letter that sets a minimum acceptable value based upon an appraisal review. The Agent establishes the terms and conditions for the sale. Sealed bids are accepted on the Sales Agreement/ Bid Form that includes a deposit amount established by the Agent. Sealed bid auctions are advertised in the same manner as Oral auctions. (See 9.710.) The minimum acceptable bid is stated in the advertisement along with the conditions of sale, a deadline for accepting sealed bids, and a bid opening date.

The bid opening is held at the appointed date and time noted in the advertisement. The bids are opened and checked for compliance of the specified conditions and terms of the sale. When the successful bidder is determined, (usually the high bid) the Agent signs the bid form, and issues a receipt to the purchaser on Form 734-3872 for the deposit. (See Sec. [9.575](#).) The Agent obtains acceptance of the bid from the Right of Way Manager, and sends a copy of the approved bid form and receipt to the purchaser. Deposits from the unsuccessful bidders are immediately returned to the sender, and the results of the auction become public knowledge. The file is then forwarded to the Property Management Coordinator for Deed preparation. For sales that occur in Region the Agent deposits the bid amount in an authorized bank (see Sec [9.580](#)) and forwards the bid form, deposit slips, and file to the Property Management Coordinator.

Upon receiving full payment the Property Management Coordinator will send the Deed to the appropriate County for Recording. The purchaser may have possession of the property upon final payment.

When identical offers are received, new bids will be requested. The minimum acceptance price will be that amount which created the identical bids.

### **9.570 Concluding the Auction**

Once a potential purchaser has been determined the transaction needs to be formalized on the appropriate auction sale form. The Agent completes the bid or sales form, collects the required deposit, provides buyer with a sales receipt, and forwards the material to the Salem Right of Way Headquarters. The Agent provides an application for contract approval to the purchaser if applicable. At the advertised auction time, the agent, begins the auction and follows the procedures. The agent should be assisted by one or more staff to act as witness, monitors the proceedings, and document transactions. If the auction provides an acceptable bid and bidder, the agent fills out the Bid Form 734-3679. This form contains the terms and conditions under which the property sale occurs and must be signed by the purchaser. The agent must specify and include:

1. The minimum acceptable bid.
2. The amount of the highest bid, and the deposit paid, and the balance due.
3. The conditions or restrictions to be placed in the deed. These must also have appeared in the advertisement notice.
4. The amount of the certified or personal check accompanying the sale bid. A copy of the receipt given to the purchaser is to be attached to the bid form.
5. Whether it is to be cash or contract sale, and when the balance of the purchase price or down payment is due.
6. The name of the purchaser(s) as it will appear on the deed or the contract. The agent signs the bid form, collects a deposit from the purchaser on Form 734-3872 for the deposit. If there are contract terms available, the agent provides an Application For Contract Approval Form 734-2108 for the purchaser to complete and return for approval.

To document the auction activity the agent completes the Sale Record Form 734-3656. Information to be listed includes:

1. Description of property being sold.
2. The sale price of each item being sold.
3. The approximate number in attendance at the sale.
4. The names of Department personnel at the sale.

5. The name and address of the highest bidder.
6. The name and address of the next two highest bidders, if applicable.
7. The bidding listed as it started and ended particularly the next highest bid amount for land, buildings, or major items.

The agent forwards the following sale records to the Property Management Unit:

1. The Bid Form.
2. The Receipt.
3. The Sales Record.
4. The application For Contract approval, if applicable.

The Property Management Unit processes sale agreements by:

1. The Property Records Specialist reviews the sale agreement and confirms that all deposits and down payments have been received and credited to the proper accounts.
2. The Property Records Specialist also removes the property from appropriate inventory and insurance lists.
3. The Property Management coordinator secures a contract or deed as appropriate for the transaction, requests payments to complete the transaction, and requests the Acquisition Unit to prepare documents.
4. The Property Management Coordinator requests that the deed or contract documents are prepared and closes the transaction by obtaining final signatures and having the documents recorded.

## PROPERTY MANAGEMENT ACCOUNTING PROCESS

### 9.575 Property Management Inventory

A computerized inventory of ODOT is maintained by the Property Management Unit. The list is to be updated periodically to reflect recent acquisitions of excess parcels, recent disposal of property, and property status changes.

SSP	Stockpiles
P	Parks, Waysides, Scenic Stripes, Rivers, Corridors, Greenways
RFU	Retained for Future Use
R/W	Right of Way
EXC	Excess
M	Maintenance Sites, Office Buildings

MS	Misc. Sites (Radio, Office Buildings)
Q	Quarries
GP	Gravel Pits

### **9.580 Revenue and Non-Revenue Producing Properties - Tax Report**

Each year the Property Records Specialist prepares a list of revenue producing properties and by July 5th provides a copy to the Property Management Coordinator for review and editing.

The Property Management Coordinator must examine the revenue-producing list for any additions or deletions and make corrections if necessary. The Property Management Coordinator must return the updated listing to the Property Records Specialist by July 10th of each year.

The Property Records Specialist reviews the tax list for proper file and tax account numbers and sends the list (by county) to the appropriate county tax office by July 15th of the year.

In November the Property Management Unit approves the tax statements and enters the amount of tax paid into Right of Way Accounts Program.

### **9.585 Insurance Inventory**

Since the State is self-insured, the Department must maintain an inventory of properties to be reported to the Risk Management Division of the Department of Administrative Services (DAS) Department. Each year the Property Records Specialist prepares a list of properties to be placed on the insurance list. The list is delivered to the Region Right of Way Manager or designee each June for updating. The Region provides additions or deletions to the list as needed and returns the list to the Property Records Specialist by June 30th. The inventory is forwarded to the Fixed Assets Administrator.

### **9.590 Property Management Accounting Procedures**

All receivables are to be deposited on a daily basis. Under no circumstances are checks to be held. Department of Justice has advised that a deposit of a check is not considered a legal acceptance of an agreement.

All checks that are received must be logged into the "Daily Check Log." Checks and cash are to be separated by the type of funding (state or federal) used in the original purchase of the property and placed into the appropriate treasury expense account for either state or federal.

Further, all checks received by Agent or region office must be stamped on the reverse side with the appropriate endorsement stamp depending upon the type of funding.

### **9.595 Property Sales and Rent Receipts**

The Property Sales and Rent Receipt, Form 734-3872, documents money received for the sale of land and improvements. It is also used as a receipt for land use permit fees and for rent and deposits received when a rental agreement is prepared, or when rent is paid directly to a region office or Agent. Renters should be advised or reminded that the Department prefers payments be sent directly to the Right of Way Section in Salem.

### **9.600 Bank Deposit Slips**

A bank deposit slip must be prepared for the authorized bank branch when the property agent or region office has received payments.

Use appropriate deposit slip depending on the type of funding. Present the deposit to the bank for validation if received in the Region or to ODOT Financial Services if received in Headquarters.

Attach Controller's copy to documents and/or receipts and forward to the Property Management Records Specialist for review, updating the accounts receivable system and forwarding to the Financial Services Accounting Section.

Retain field copy in Region Right of Way files or Headquarters file.

Further correspondence involving any particular deposit must include the deposit slip number. Any voided deposit slips must be forwarded to the Property Management Unit for storage by the Financial Services Accounting Section. The field copy is to remain in the Region/Headquarters files.

### **9.605 Non-sufficient Fund (NSF) Checks**

If a check is rejected by the bank, the Property Management Unit is notified by the Financial Services Accounting Section. The Property Management Unit notes the permanent file and requests collection of the amount due. The Property Agent or designee must arrange to get cash, a cashier's check or a money order to cover the amount. If it is a tenant who writes an NSF check, the Property Agent must analyze the cause for the NSF payment and, if deemed necessary, advise the tenant in writing that future rental payment be by cash or money order.

### **9.610 Penalties, Late Charges, and Other Fees**

The Department reserves the option to assess penalties and late charges on rentals, leases, land use permits, and land sales contracts. These can include but are not limited to late fees, assignment fees, recording fees, and administrative and research charges.

### **9.615 Second Party Checks**

When a second party gives the Department a check for a payment owed by someone such as a renter or purchaser, the check should be made payable to the Oregon Department of Transportation. The Department will credit the payment to the account of the tenant or purchaser. Any refund of a deposit will also go to the renter or purchaser. Checks are not to be made payable to any employee of the Department.

### **9.620 Purchase of Services & Materials**

The Agent may need to purchase services such as carpenter, handyman, plumber, electrician, etc. and materials in order to keep properties in a habitable or secure condition suitable for occupancy or in accordance with State and Local ordinances. It may be advisable to consult with Right of Way Headquarters Contracting Unit.

### **9.625 Expenditure Account (EA) Numbers**

Property Management expenditure account (EA) numbers consist of an "R" placed before the file number, followed by a three digit sub-job number, three digit activity code number, and a three digit object code.

The EA should have a minimum of five digits following the "R." Add leading zeros after the "R" if necessary.

A typical EA for a property management file is:

R52868 003-L31-265 (File #)-(sub-job)-(activity code) (object code)

- The sub-job element connects property management expenses and revenues to federal-aid or non-federal-aid participation budgets. Care needs to be used to accurately establish, charge or credit the appropriate budget. Property Management sub-jobs are designated as follows:

002 denotes property management activity with federal-aid participation.

003 denotes property management activity involving no federal-aid participation.

- Activity codes permit tracking the types of expenses related to various property management duties and are summarized as follows:

L30 Real Property Management

For activities performed by the Right of Way Section Property Management Unit other than disposal of surplus property. Includes mowing, maintenance of all types, securing tenants, collecting rents, tenant services, inspections, evicting, billing and account maintenance. Monitor continued need for real property and prepares and updates inventories of excess property. Includes processing of abandonments, relinquishments, and retentions.

### L31 Surplus Property Management

Activities performed under the Right of Way Property Management Unit in the sale or disposal of real property. Includes costs of surveying, appraising, advertising, auctions, closing and all support activities.

### L11 Approach Permits and Access Management

For all section activities in the management of access not involving a specific active project. Included in this are Property Management's work in grants and indentures of access. Includes meetings with property owners developers, local officials and other ODOT staff regarding specific access inquiries and applications; research on rights of access as a part of the permit application process; execution of Local Government agreements; and implementation of reviews of access denials.

032 For all section work, both HQ and Regional. This includes program administration, appraisal, meetings, inspections, etc.

J30 Take possession of real property after acquisition; prepares inventories; manage temporary rent-backs; sell, remove or demolish improvements; remediate onsite hazardous material issues; all support work performed under this program.

## 9.630 Expenditure Account (EA) Set Up

The agent examines R/W file to determine if any Federal, LPA etc. funds were used in its acquisition, or if property was used as a match for Federal Credit. Checks to see if an EA is already established in TEAMS and is active and correct.

If EA exists in TEAMS and the property was purchased with "**State**" only funds, check to make sure the sub-job is "003". Body of EA may need updating, otherwise no further action required.

If EA does not exist in TEAMS and the property was purchased with "**State**" only funds, prepares a TEAMS EA set up sheet and gives to Property Records Specialist to set up in TEAMS.

If EA exists in TEAMS and the property was purchased with "FHWA" participation and has a "002" sub-job, the body of the EA may need updating but otherwise no further action is required.

If EA does not exist in TEAMS and the property was purchased with FHWA participation, an EA has to be established. Prepare a TEAMS EA set up sheet and give to Property Records Specialist to set up in TEAMS.

Property Records Specialist receives the EA Setup sheet from the agent and sets up an EA in TEAMS.

## **ACCESS MANAGEMENT**

### **9.640 Grants of Access**

A Grant of Access is required to create a new access where no right of access exists between the highway and a portion of, or all of a property abutting the highway. If an access is to be granted, the property owner must make application and purchase the right of access. Access rights are property rights that ODOT acquired. ODOT must receive fair market value when disposing of surplus property. The purchase price of access rights is the difference in market value of the property before and after the access is granted.

The Property Management (PM) Unit's function in the Grant of Access Process begins after the property owner has submitted an application and it has been approved by the Technical Services Manager (TSM). If the grant has been approved, the TSM forwards the application to the Property Management Unit (OAR – chapter 734-Div. 51).

- The Property Management representative and the District Manager (DM) may meet with the property owner to discuss the appraisal process and related fees.
- If the property owner wants to proceed, the DM will notify the Property Management Unit to proceed with the appraisal.
- After the Property Management Unit completes the appraisal of the Grant, forwards it to Appraisal Review Unit. After the appraisal is reviewed the Property Management Unit notifies the property owner of the market value. If the Property owner decides to proceed, the PM Unit prepares the transaction, accepts payment from the property owner for the Grant and related costs, and completes the closing process.

### **9.645 Indenture of Access**

An Indenture of access is required when an applicant wishes to move an access more than 10 feet from the location listed on the deed. It also is required to increase the deeded width of an existing approach up to a specified maximum measurement, or to remove use restrictions other than farm use. The applicant must meet conditions specified in OAR 734 Division 51.

### **9.650 Jurisdictional Exchange**

ODOT may exchange real property in a manner that will best serve the interests of the State and most adequately conserve highway funds (ORS 366.395 (2)).

The Region Manager has delegated authority to recommend that Department owned real property assets be included in a jurisdictional exchange (transfer) with local public agencies (cities and counties) in exchange for goods and services.

In this process, the Right of Way Manager has delegated authority to convey Department owned real property interests. ODOT Financial Services Section completes the Jurisdictional Trade Model, which presents a comparison of the contributions and cost assumptions of each party to an exchange of highway assets.

The Jurisdictional Exchange Model compares the contributions, (goods and services) offered by the local public agency to the costs associated with managing and holding the property to be traded, along with the costs associated with the trade in an effort to identify the benefits derived from the exchange of highway assets. Elements, such as reversionary rights or maintenance responsibilities, that are included in the trade agreement are incorporated into the trade model so an appropriate balance between the value of the property traded and the cost of goods and services received can be achieved.

Once a decision by Region has been made to use a surplus property for a jurisdictional trade, the Right of Way Property Management Unit will remove this parcel(s) from the inventory of potential sale properties and document the status on the inventory database and right of way file. At that time, the Property Management Unit will have no involvement with the property. Region will assume all responsibility, unless so negotiated differently and shown in the Agreement, for all costs related to with the maintenance of the property and costs associated with the proposed trade, including but not limited to the cost of appraisals, surveys, site contamination clean up and any other related property issues.

If the proposed exchange agreement does not materialize as expected, the property may, at the approval of the Region Manager, may be returned to the Property Management Unit for sale. The Property Management Unit will then reacquire from the Region Manager, all management responsibilities for the property. (Consult with Financial Services Section for detailed Jurisdictional Exchange process information.)