Chapter 3. Right of Way Project Management

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3.100 Introduction

The Right of Way Project Manager, as a Project Team member, is an integral part of all major activities and decisions required between a project's initial identification and Right of Way certification.

Liaison activities provide links to the public, affected property owners, project personnel, local public agencies, and right of way personnel in matters relating to the Right of Way Program and its requirements in project development.

The Right of Way Project Manager oversees, coordinates and manages the Right of Way process on projects as assigned.

As a core member of the project development team the Right of Way Project Manager participates in all project team meetings, and contributes to the development and implementation of realistic project scopes, schedules and budgets.

The Right of Way Project Manager supports the project by attendance at public hearings, answering property owner's questions and concerns, providing right of way reports and estimates for the environmental process and by participating on access subteams.

The Right of Way Project Manager oversees right of way projects, coordinating and managing all aspects of the right of way acquisition portion in the development of highway projects.

The Right of Way Project Manager is responsible for assigning and overseeing all tasks in appraising, acquisition, and relocating displaced property occupants and clearing rights of way, including the removal of property improvements and hazardous materials. This work involves contracting with the private sector as well as making work assignments.

The Right of Way Project Manager has the responsibility for the budget, scope, schedule and final delivery of a right of way project.

3.120 Policies

1. Right of way work shall be performed in compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, state laws, civil rights laws, and other applicable state and federal regulations.
2. Each Region or Area will carry out its Right of Way project management liaison activities to facilitate planning and maximize cooperation between sections in order to comply with the Oregon Action Plan.

3. Right of way cost estimates are for planning or programming purposes only. Estimate particulars for individual files are confidential and must not be divulged to other ODOT units or the public, including property owners.
4. Right of Way project management activities will conform to ODOT's PD-03 Project Development Access Management Subteams.

3.200 Right of Way Project Manager Responsibilities

The Right of Way Project Manager assists in forecasting and amending budget data in the biennial process for updating the STIP (Statewide Transportation Improvement Program).

As a Team member, the Right of Way Project Manager actively participates in scoping trips to identify potential right of way impacts, represent property owner concerns, and inform the Project Team about Right of Way delivery time lines and potential costs during project development.

The Right of Way Project Manager is responsible for examining the AMS® Project Scheduling System or other scheduling format, throughout project development. This is to protect Right of Way time lines and recommend critical modifications to the schedule where warranted.

In addition to providing preliminary and revised cost estimates during project refinement, the Right of Way Project Manager formulates the programming estimate for authorization approval to begin the acquisition stage.

The Region Right of Way Manager or the Right of Way Project Manager may prepare the Certification document for signature by the Right of Way Supervisor at the end of the project. This document states that the state has legal and physical possession of all necessary right of way, and that the right of way was acquired in conformance with state and federal regulations.

In some cases, a project may be certified with exceptions or holdouts, namely that certain properties have not yet been acquired, but the state will have possession prior to the contractor's need to utilize the property.

3.300 Planning and Management Systems Phase

3.310 Oregon Transportation Management System (OTMS)

The purpose of the PLANNING AND MANAGEMENT SYSTEMS PHASE is to identify transportation needs and develop prioritized lists of future projects for inclusion in the STIP (Statewide Transportation Improvement Program).

The Project development process is continual. Projects are nominated by the Oregon Transportation Commission (OTC), Oregon Department of Transportation (ODOT), Area Commissions on Transportation (ACTs), local governments and the general public.

The assessments conducted during this phase are based on objectively identifying the condition of roads, bridges, and intersections which are in most need of repair along with anticipated transportation needs.

The phase includes such activities as: corridor, local transportation system, and regional transportation planning.

The process begins with a problem or deficiency, then proposed projects are compared against each other and prioritized according to their relative importance and feasibility.

Two major activities occur during the Planning and Management Systems Phase:

1. Transportation system planning - a process which outlines transportation strategies and future projects for a specific geographic region, and
2. Management system analysis - a computerized assessment program which organizes and prioritizes information about transportation facilities.

Management systems which rank the data include:

1. Bridge Management System (BMS)
2. Congestion Management System (CMS)
3. Intermodal Management System (IMS)
4. Pavement Management System (PMS)
5. Public Transportation Management System (PTMS)
6. Safety Management System (SMS)
7. Traffic Monitoring System for Highways (TMS-H)

Initial public involvement occurs during this phase, as well as the preliminary designation of responsibilities in an Intergovernmental Agreement.

There is no direct Right of Way involvement in this early stage, but the resulting prioritized project lists will have a bearing on Right of Way responsibilities at later stages.

3.400 Program Development Phase

The program development phase moves selected projects from the prioritized lists and schedules them into the STIP. Refinement plans may be required if a preferred solution is not evident. Otherwise, design alternatives are developed and evaluated, their major features and costs are outlined, and they are prioritized.

Three major activities occur during the Program Development Phase:

1. The identification of potential projects,
2. Preliminary feasibility analyses, and
3. The prioritization and selection of projects to be included in the STIP.

Right of Way involvement in this phase includes evaluating projects to determine right of way impacts and to develop preliminary cost and time estimates for acquisition, relocation, and demolition and access management issues.

3.410 Statewide Transportation Improvement Program (STIP)

Projects needed on the state highway system to meet performance measures, carry out corridor plans or the regional and local transportation system plans are identified during the Program Development Phase.

Proposed projects are evaluated, major features and costs are defined and they are prioritized for selection. The focus is to move selected projects from the prioritized list and schedule them in the Statewide Transportation Improvement Program (STIP).

The Statewide Transportation Improvement Program is a four-year program of projects which is updated at two-year intervals, and requires Right of Way costs input.

The program cycle begins with the receipt of project recommendations. The STIP continues as a draft (DSTIP) until accepted by the Transportation Commission. The approved STIP document is then released. At that point a new DSTIP is started for the next four-year program.

The STIP Coordinator prepares the draft statewide program, assigns funding, and verifies that statewide program goals are met. (See 3.470 Funding Programs.)

Several iterations within the management systems, regional management and statewide coordination activities may be necessary before the Oregon Transportation Commission (OTC) approves the STIP.

Only those projects selected for inclusion in the STIP continue through the Project Design Alternative Selection and Design Phases of the Project Development Process.

3.420 Preliminary Feasibility Analysis

During the prioritization and selection of projects for consideration in the STIP, project scoping teams conduct initial reconnaissance.

Proposed projects are evaluated to determine whether topographical, environmental, community, and fiscal constraints would prevent a project's success. The Project Team then develops a project scope and project prospectus.

Early in the project development phase, the Environmental Services Section initiates a Baseline Report process which is multi-discipline survey work to determine if significant or sensitive resources are located in the project area.

The study area will be broad enough to encompass all potential design alternatives including: right of way, construction easements, access roads, staging areas, agency-supplied material sources and temporary structures.

The Baseline Report will be provided to designers and the project team to assist in developing project alternatives that avoid or minimize impacts to the environment.

Projects are classified by potential environmental impacts as determined by the National Environmental Policy Act (NEPA).

The National Environmental Policy Act (NEPA), passed in 1969, established national environmental policy and goals for the protection, maintenance, and enhancement of the environment. NEPA requires federal and state agencies to examine the environmental consequences of major proposed actions, such as building a new transportation facility, and to conduct a decision making process that incorporates public input.

NEPA requires federal and state agencies to use a systematic process to provide environmental impact information to federal, state, local, and Indian Nation officials as well as citizens before decisions are made to take major actions that may significantly affect the environment. Agencies are required to study, develop, and describe impacts and alternatives and obtain public input to recommended courses of action when the project has federal funding.

3.430 Environmental Classifications

ODOT's Environmental Services Section is responsible for categorizing projects into one of three classes based on environmental impacts to the human or natural environment.

Class 1 projects have the potential for significant environmental impacts due to the large amounts of new right of way required for construction or other significant impacts. Typically this class includes new highways and major realignments.

Class 1 projects require the preparation of an Environmental Impact Statement (EIS). They also involve the formation of Citizens' Advisory Committees (CAC), public outreach, formal design alternative development, screening, a public hearing, and input/approval from various jurisdictional agencies. This process may take from two to four years to complete and results in a Record of Decision.

Class 2 projects generally do not have a significant impact on the environment and typically involve minor design alternatives with minor right of way requirements.

These projects are "categorically excluded" from the need for a NEPA evaluation and document, but may require permits or approvals from regulatory agencies.

Class 3 projects are those for which the significance of environmental impacts is not immediately apparent, such as improvement to an existing facility.

These projects require the preparation of an Environmental Assessment (EA) to determine if an EIS is required. If no EIS is required, a Finding of No Significant Impact (FONSI) is issued.

The EA process includes public involvement, alternative design development, screening, a public hearing and input/approval from various regulatory agencies. This process may take one and one half to three years to complete.

Commencement and extent of the Right of Way input varies with the classification of the project. Almost no investigation or input may be needed on Class 2 projects. A Class 1 project involving a corridor selection, or a Class 3 project, might require considerable research and commentary and a formal Right of Way Report.

3.440 Input by Classification

For Classes 1 and 3, the Baseline Report survey assesses the existing conditions of the biology, archeology, historic properties and wetlands within the project area against potential project impact. Typically, consideration of environmental impacts follows a "sequencing" concept:

- avoidance – Avoidance of the resource is the highest priority.
- minimization – If the resource cannot be avoided, then minimized harm is required to the resource to the maximum extent possible and practicable.
- mitigation – Where the resource cannot be avoided, and where minimization leaves harm to the resource, measures are implemented to mitigate or offset the harm.

The Environmental Baseline Report provides the context for the Project Development Team to design and screen project alternatives for a range of possibilities.

3.450 Creating a Prospectus

A project prospectus, scoping report, and a schedule is developed for each project included in the STIP. A prospectus is a formal summary of a proposed purpose, need and strategy to solve a problem.

The process incorporates the initial environmental considerations along with estimates on project costs, potential solutions and proposed sources of funding.

A Project Leader assembles a Project Team that identifies the work to be done to deliver a project with the specified features and functions to solve a problem or deficiency. The Team agrees to a project scope and produces all cost estimates for the work.

The draft scope and costs for a project are entered into the Project Delivery Work Planning System (PDWP), an application allowing project teams to document and communicate with each other in Real Time.

This “electronic prospectus" resides in a database for viewing by anyone with access to the system. Projects in the database can be searched by region, district or county. The Draft Project Prospectus is periodically updated until it is finally accepted.

Typically, the right of way costs are generally approximate this early in the project development. However, a periodic review of the Right of Way information is required.

3.451 Parts of the Prospectus

The Project Prospectus consists of four parts.

Part 1, Project Request, identifies the project location, defines the problem, and describes the proposed solution, the major items of work, and the estimated costs for: Preliminary Engineering (PE), Right of Way, Utility, Construction and Construction Engineering (CE) costs.

Right of Way is required to submit a preliminary cost estimate. The form requires input on the numbers of: files, acreages, relocations, acquisitions and easements.

The estimates include costs for: land and improvements, damages, demolition, costs to cure, relocations, legal and contingencies costs, and personnel costs. (See Appendix A - Scoping Report Estimator, Figure 1.)

The group, i.e., the State, consultant or applicant, who will complete the Right of Way descriptions is also required to submit an estimate of costs.

If the Right of Way estimate in the prospectus was produced by others, the component numbers should be confirmed by the Right of Way Project Manager.

Part 2, Project Details, includes Activity Responsibilities, Permits and Clearances and a sub-category for Right of Way items, such as: the number of acquisitions as well as the type and number of business and residential relocations.

Until the final alignment is selected, the number and level of impact is subject to change.

Part 3, Environmental Classification, addresses major environmental, cultural, and historic concerns that may exist. A restatement of the estimated right of way impacts including: easements, number of parcels, acreage and improvements are incorporated into this Part.

Part 4, Preliminary Engineering Authorization, specifies which organizational unit will perform the identified activities at the Preliminary Engineering stage, the estimated costs associated with the activities and the authorization status for that activity.

When all approving parties sign off on the draft version, the Project Prospectus becomes final.

It is extremely important that the costs and scopes of projects reviewed in the first two years of the next STIP are accurate. Underestimation of costs can jeopardize the delivery of a project.

Note: On federally-funded projects, right of way acquisition may not begin until FHWA approves the environmental document and the Right of Way Acquisition Phase is authorized.

3.460 Project Scoping

Scoping consists of integrating the project problem statement, on-site observations, design standards, access management standards and accident history with a proposed, well thought out solution, supported by the best cost estimate possible.

Once a list of potential projects is developed, a scoping trip is arranged to view the projects. The amount of Right of Way participation will vary with the project type, complexity, time schedule and the level of impacts.

Based on the preliminary project "footprint," the assessment of right of way impacts results in a cost estimate approximating the anticipated costs of land and damages to improvements.

In addition, relocation and demolition costs, anticipated time to acquire, personnel costs, legal costs, and contingencies must be calculated.

Scoping preparation for the Right of Way Team member should consist of several research steps. This planning and preparation will be the basis for all further project investigation and cost development.

Using State Highway Line Maps and preliminary project location sketches, old Right of Way maps covering the proposed project should be identified and copied. If there is sufficient time prior to the scoping trip, tax lot maps for the proposed project locations should be obtained.

After the scoping review, the Right of Way Team member should obtain county property tax assessment records, which contain property information on: land size, type, and age of improvements, situs address, ownership and assessed values.

Zoning information should be obtained from the Planning Department. Properties controlled by state or federal agencies should also be identified.

The real estate market in the project area should be investigated for land and improvement estimates to assist in developing a project cost estimate.

The Right of Way Project Manager also makes an estimate of the number of displacements that might occur. A brief summary of the area and its residential and business replacement availability is prepared. If it appears there might be problem with the quality or quantity of replacement housing, the Right of Way Project Manager should advise the Team and propose remedies.

After the cost estimate is developed and submitted, any documents and specific data used to develop the information must be kept in the Project Folder for generating other cost refinements, Right of Way programming estimates and reference.

Each time an estimate is produced; ***a copy must be inserted in the Project Folder*** and kept until the project is finalized.

3.461 Railroad and Utilities

If a Right of Way Utilities' representative is not included on the scoping trip, the Right of Way Project Manager should record any project goals which would significantly impact railroads or utilities.

Regional Utility personnel should be informed promptly because construction coordination and scheduling may significantly influence the time frame for the project. Railroad and utility relocations are handled through a separate program. (See 23 CFR 645 and 646; see also R/W Manual Chapter 10.)

3.462 Functional Replacement

Publicly-owned properties including land and/or facilities may be subject to the Functional Replacement provisions of CFR Title 23. Instead of paying fair market value for the real property, the state may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility (see 23 CFR 710.509).

3.463 Land Services Justifications

The Right of Way Project Manager may also be asked to provide right of way cost estimates to justify frontage roads, access roads, cattle or equipment passes, major installations for irrigation and/or restoration of water supplies.

As a Team member, the Right of Way Project Manager may encounter situations in which a land service facility, such as a frontage road, would prevent major damages created by the project, but is not part of the proposed project design. In this case, the Right of Way Project Manager should inform the Team to ensure that design options are not overlooked.

The potential damages to the property without the facility are weighed by the Team against the costs of the facility to the project and a decision is made.

Documents used in developing the estimates are found in Appendix A (Scoping Report Estimator, Figure 1, and Right of Way Scoping Report Form sample, Figure 2).

Once the project is scoped, the prospectus developed, and a funding source is assigned, it is included in the STIP. The Right of Way Project Manager is expected to provide budgets and estimates for periodically updating the STIP.

3.470 Funding Programs

In order to ensure that Right of Way activities, with mandated time lines, "fit" the project's scheduling expectations, the Project Manager should know about the source of the funds and their time frames.

Specific time frames may be outlined by the fund, i.e., the funds may have an expiration date. This is a consideration in developing cost and time estimates. For example, 18 months is permitted to file relocation claims; this may conflict with time constraints of special program funding. The Project Team must consider this in developing its project.

All projects are part of the STIP (Statewide Transportation Improvement Program), a federally required and regularly updated state plan and schedule of transportation projects.

The STIP includes statewide coordination of project identification from management systems, corridor plans, local comprehensive plans, Metropolitan planning organization (MPOs), and Transportation system plans (TSPs). In Oregon, the duration of the STIP is four years, updated every two years.

The projects which are included may be any combination of federal and state funding. The funding source is usually dependent on the type of project:

NHS (National Highway System) funds are federal funds earmarked for the Interstate system and for primary roads designated as part of the National Highway System. ODOT decides whether the project is "state only" or has a Local Public Agency (LPA) participation.

Interstate Maintenance (IM) are federal funds designated for repairs and upkeep of Interstate roads. These are "ODOT only" projects.

The federal STP (Surface Transportation Program) funds are flexible and fund a variety of projects. The program principles include:

State/LPA partnerships; flexibility in the use of funds; strengthening intermodal connections; and a recognition of the positive impact that transportation has on quality of life.

The fund is available to ODOT which, by agreement, shares part of the funds with counties and urban cities with a population of more than 5,000 (outside Urbanized Area). A portion of federal STP funds is required to go to urbanized areas with a population of over 200,000.

The federal HBRR (Highway Bridge Replacement and Rehabilitation) funds fall into two categories: on- and off-system bridges. The available funds are based on the percent of deficient bridges nationwide. ODOT allocates the funds to local agencies based on the percentage of deficient bridges in Oregon, determined by a biennial inspection.

Transportation Enhancement Activities (TEA) federal funds are shared largely with local governments according to negotiated agreements.

Congestion Mitigation and Air Quality (CMAQ) funds are directed to local agencies only, for areas not meeting DEQ air quality standards, primarily MPO (Metropolitan Planning Organization) areas in the state.

The federal Hazard Elimination Program (HEP) funds are available to ODOT and local agencies for safety issues, for example, left turn refuges and signals. The projects are selected on a cost-benefit ratio.

The federal Emergency Relief (ER) funds are accessible to ODOT and local agencies for on-system road repairs only. These are determined by functional classification and must have a declaration from the Governor.

The Oregon Transportation Investment Act (OTIA) is a bonded state funding program with very specific time frames and budgets. Status reports are sent directly to the Oregon Transportation Commission (OTC). Budgets and schedules cannot change without approval from OTC.

The Federal Lands Highway Program (FLHP) Projects are federally-funded, for Preliminary Engineering (PE) and Construction Engineering (CE); Right of Way activities may or may not be State-funded.

In addition, there are state funds in which all financial support on the project is provided by the state; there is no federal participation. Limited Right of Way acquisition periods may be involved.

3.480 Approval of STIP

Early stage project and alternative design development is allowed when the 4-year STIP is approved, and if applicable, federal PE funding is authorized. Work also continues on those projects previously funded, subject to any changes made during the STIP update period.

3.500 Project Design Alternative Selection Phase

This Phase includes preliminary site surveying, mapping, project design alternative analyses and the selection of the preferred alternative. The several “footprints” of the alternatives showing potential impacts to improvements should be shown on preliminary location maps provided by the region’s road designers. The selected alternative is not determined until the FHWA Record of Decision (ROD) is made after the FEIS is approved.

Alternative analyses occur during this phase to generate, evaluate and prioritize the most “feasible, reasonable and prudent” solution(s) to meet the project's purpose and

need. Right of Way involvement in this phase entails calculating right of way needs, impacts and costs for each proposed project design alternative.

Potential impacts are identified based on the "footprints" of the design alternatives. Impacted improvements such as: privately-owned wells, private utilities, septic systems, private fuel tanks, buildings, landscaping, fences, rock walls or other improvements which may be in the existing or proposed right-of-way are identified. Time requirements to resolve these issues are also required.

A Right of Way Report will be requested during this phase. It could be generated in a letter format or a formal report and takes into account all reasonable potential impacts to Right of Way resulting from the design, construction staging, traffic control, and environmental mitigation requirements.

The Right of Way report should include: a general statement, a brief synopsis of the basis on which the estimate was developed, a brief description of the alternatives, any limitations to the information considered, the estimated number of parcels affected, the number and types of relocations, the estimated costs of the alternatives and conclusions and recommendations. (See Appendix A, Right of Way Report Sample, Figure 5).

Right of Way assessment of impacts and costs, as developed during the earlier scoping activities, will be useful at this point. Further refinements of the "numbers" and additional on-site review may be required to assure that the information is more accurate and definitive.

Each alternative's cost estimate includes: acquisition of land and improvements, damages, relocation, demolition, legal and contingencies, incidental and personnel costs.

Generally, cost and time estimates will be based on preliminary Right of Way maps, tax lot maps and county assessor documents, zoning maps, comprehensive plan maps and real estate sales information. The cost estimates will be more refined than that provided after the original scoping trip.

Relocation data should include: numbers of residential displacements, special needs replacement requirements, sufficiency of replacements available in the market, last resort housing, types and numbers of business displacements, outdoor advertising signs and other special concerns. A summary sheet or other format may also be included.

If needed, Environmental Impact Statements (EISs) are prepared which require public comment, especially in the development of environmental documents related to identified project issues.

3.510 Contaminated Properties

The acquisition of contaminated properties continues to be a factor on many ODOT construction projects.

As early as possible in project development, the Project Team or the Right of Way Project Manager will request that the Region HazMat Specialist conduct an investigation to determine possible ground contamination within the limits of the project.

The assigned Specialist will also investigate all buildings to be demolished. Right of Way will obtain needed permits of entry for the hazardous material investigations.

If potential contamination is identified, the Project Team does a risk assessment to determine the course of action, either avoidance or minimization of acquisition.

3.520 Design Alternative Estimate Evaluation

After the technical reports are submitted, the Project Team evaluates the data for each alternative. These include: construction phasing, design exceptions, detour routing, frontage roads, level of service analysis, value engineering, right of way costs and impacts, landscape concepts, and access management strategies.

Conceptual designs for roadway, bridge, pavement, storm sewer, intersection and interchange layout, with cost estimates of major items for each alternative are weighed for their costs/benefits.

At this time stakeholder and public input are obtained for consideration.

3.530 Public Information - Types of Contacts

The Right of Way Project Manager, as part of the Project Team, may be called upon to meet or speak with interested parties about a project. Providing information about right of way acquisition and relocation processes along with projected time schedules are essential to developing an informed public.

Contacts may be made by phone, in person, by attending block, neighborhood, business association or special interest group meetings, participating in open houses or by delivering a right-of-way presentation at public informational meetings. These contacts may occur during both the PROGRAM DEVELOPMENT PHASE and the PROJECT DESIGN ALTERNATIVE SELECTION PHASES.

3.540 Public Meetings

At a public meeting, the Right of Way representative will be requested to describe the acquisition and relocation assistance programs for the project. Because projects vary by so many factors, preparation is required so the information presented is accurate and appropriate to the project.

Two leaflets should be introduced and made available at the assembly: "ACQUIRING LAND FOR HIGHWAYS AND PUBLIC PROJECTS," a description of the land acquisition program; and "MOVING BECAUSE OF THE HIGHWAY OR PUBLIC PROJECTS?" a description of the relocation assistance program.

3.550 Final Environmental Document

After all public meetings have taken place, Environmental Services conducts a formal public review of the draft EIS or EA and responds to issues raised. The Right of Way representative may be requested to reply to queries involving acquisition issues. These comments and responses are included in the final EIS or EA.

After final documents are reviewed and approved, a selected alternative is advanced and the Decision Statement is prepared. The process includes: updating environmental resource reports; final traffic reports; necessary land use actions; and identification and execution of intergovernmental agreements. The Final Environmental Impact Statement (FEIS) or Revised Environmental Assessment (REA) is then published.

Right of Way will be requested to read any interim or final Environmental publication for accuracy and appropriateness of Right of Way elements included in the document.

Specific mention by name or address of impacted or potentially-displaced individuals or businesses should be avoided; plans can change or be modified. It is better to list the approximate area to be acquired, acreage and the approximate number and types of displacements.

3.600 Project Design Phase

A detailed design of the selected alternative is generated after the completion of the final environmental document. Subsequent to alignment selection, detailed site surveys, mapping, and base map generation occurs.

Right of Way should encourage the best design; reasonable right of way impacts should not compromise the scope of the project.

Coordination and monitoring of survey activities are needed to assist Right of Way Engineering in the development of a base map, a Right of Way map, and descriptions in a timely manner. All important features such as wells, septic systems, signs, outbuildings, fences should be tied during survey work so the designer can locate the features on maps. Therefore, it may be necessary for a Right of Way Project Manager to conduct liaison efforts with property owners prior to authorization stage.

By establishing a final project alignment, the contract plan elements can be detailed and the Right of Way and permitting activities can proceed with the assurance that these activities will not need to be reworked later at greater cost and delay.

Project Development Decision Structure (PD-02 – effective 04/01/03) was updated to re-define the timing of the final design decision. Approved Design is now a major milestone in the project development process and in the AMS schedule.

All substantial features of a project and the outer bounds of a project footprint are to be declared at the approved design milestone. This is the “date” by which enough work and

decision-making has occurred to acquire right of way, obtain permits and develop contract documents. (This Approved Design % completeness could vary depending on the complexity of the project.)

Any significant changes to the selected approved project design must be accomplished through a formal Project Development Change Request process requiring a signoff by the Area Manager and the Technical Services Resource Manager (TSRM).

The change request may require a reevaluation of scope, schedule and budget. The cost of any approved changes will normally need to come from the established project funding. If the approved Right of Way funding for the project is exceeded, the funding allocation within the project budget (construction, PE, CE) will need to be adjusted to cover the additional Right of Way expenditures. These budget impacts need to be clearly delineated as part of the Change Request process.

If the increased costs can not be absorbed within the overall project budget, the Region Manager can also adjust the funding allocation with the Region Financial Plan to add additional project budget if necessary, possibly causing another project be delayed or down-scoped to free up the necessary funds.

It is extremely important for the Right of Way Project Manager to closely track the right of way expenditures and alert the Project Team Leader if the approved budget will be exceeded.

3.610 Access Management Subteam

When ODOT develops a highway project, all approaches within the project limits may be reviewed, mitigated, modified or closed as set out in OAR 734 Division 51, *HIGHWAY APPROACHES, ACCESS CONTROL, SPACING STANDARDS AND MEDIANS*. This is necessary to meet the classification of the highway, the highway segment objectives, mobility standards, spacing standards and safety criteria.

Under Oregon law, access, the right of an adjacent property to enter directly on to the state highway system, is subject to ODOT's regulatory authority.

Closures, restrictions, and relocations of accesses are accomplished under this authority (see OAR 734-051).

An Access Management Subteam's fundamental purpose is to ensure that project decisions relating to access management are fully considered, carefully monitored, and consistent with the best interests of the overall project as well as ODOT's broader highway policies, rules and statutes.

The Subteam efforts lead to smooth integration of conflicting points of view, emphasizing legal, design, community, or construction factors related to a project's design and construction.

The Project Leader or his/her designee is responsible for directing the Subteam. *Members perform (or request) the required access management research and develop*

the appropriate strategy, communication plan and official project access list called for by the access management policies and PD-03 (Project Development Access Management Subteams).

Before any strategy can be developed, an accurate pre-construction list of approaches must be created and verified by the Access Management Subteam. The initial list:

- identifies approaches that exist within the project boundaries; but
- does not determine right of access or permit status; and
- does not identify where a reservation or grant of access exists.

The final inventory should include information about the:

- location of the approach
- width of the approach
- approach construction material (concrete, AC, gravel)
- use of approach (single or shared)
- use of property (residence, restaurant, office, etc.)
- safety issues
- substandard spacing between approaches
- approaches not currently in use
- results from research about Grants of Access or Reservations of access and whether the approach exists

A strategy is then developed for the project by outlining the access management intent and addresses questions about:

- challenges and opportunities for the project
- broad goals
- specific goals
- deviations required to permit approaches
- implications for design, cost and schedule
- community needs or desires to be considered

(See PD-03 – Chapter 5 – Developing the Access Management Strategy Document.)

The Project Team reviews the Access Management strategy, recommends any changes and/or modifications to ensure the quality of the final product in accordance with statute, OAR734, Division 51 and the Oregon Highway Plan.

Research is conducted in preparation of the official project access list. (See PD-03 Doing the Research.)

Sources of information for the access list include:

- physical on-site inspection

- deed and tax lot records
- District permit records
- Right of Way Research Unit

Right of access research is always completed when a project requires the involvement of an Access Management Subteam. Research is initiated with Right of Way Engineering by completing an Access Control Research request form.

When the research is completed, the final project access list is generated. The Project Team reviews and recommends approval of the plan.

For further information, see PD-03, (*Project Development Access Management Subteams*) Access Management- Exhibit – PD03, OARs 734-051-0360, Access Management Plans; 734-051-0370, Project Development; and 734-051-0380, Closure of Existing Legal Approaches.

3.620 Programming Estimate

Upon completion of the Right of Way Map by Region staff and submittal of the map to Right of Way Section Headquarters, the Right of Way Programming Coordinator requests a programming estimate from the Region Right of Way Project Manager assigned to the project.

The programming estimate will serve as the basis for funding requests. It must be realistic, defensible and include amounts to cover legal settlements, as well as contingency costs that would be charged as Right of Way expenditures.

See Appendix A, (Right of Way Programming Estimator, Figure 3) which contains the necessary detail to assist in the development of the estimate. The document addresses:

a. Land
b. Improvements
c. Damages
d. Appraisal and negotiation costs and time
e. Personnel costs
f. Relocation activities and time frames
g. Demolition costs and time frames
h. Potential legal expenses
i. Contingencies

After development of the programming estimate, it is checked against the budgeted funds for right of way acquisition.

The estimate is then submitted to the Right of Way Programming Coordinator who requests funding for Right of Way through the Funds and Grants Unit with a “cc:” to the Region Financial STIP Coordinator.

3.630 Environmental Approval

Normal authorization of federal funding for real property acquisitions activities requires final project environmental approval. Either:

1. A final EIS has been approved, or
2. A FONSI has been approved, or

The action has been classified as a Categorical Exclusion (CE). The required documentation must be completed to demonstrate that significant impact will not occur to properties protected under Section 4(f), as amended and codified in 49 U.S.C. Section 303.

3.640 Authorization

No highway project is eligible for federal participation until the environmental document and the program has been approved by the FHWA and authorization to proceed has been obtained. (See Right of Way Manual, Chapter 12, Right of Way Project Coordination.)

Authorization is normally given on a project basis, derived from Right of Way Plans and received through the Electronic Fiscal Management Information System. Verbal authorization may be obtained when immediate authorization is necessary. Unauthorized charges are considered non-participating and not federally-reimbursed.

When authorization is requested and received, the Programming Coordinator will notify the Region to proceed with acquisition activities. Authorization can take from 4-8 weeks from the date the estimate is submitted. The Programming Coordinator will also provide the appropriate expenditure account to which the Region should charge all costs.

Most of our projects are now “federalized.” This means that federal dollars participate in a number of phases in project development and construction including: Preliminary Engineering (PE), Right of Way, Construction Engineering (CE) and construction. Adherence to criteria ensures reimbursement and future federal participation.

On “State” funded Right of Way Projects, whose right of way costs are under $10,000, (except for bonding & OTIA funded projects), the Funds & Grants Unit is merely notified by the Right of Way Program Coordinator of the project and the dollar amount. The intent is to accelerate the process for smaller projects.

On projects in which the state will acquire right of way for a local public agency (LPA), acquisition should not begin until the agency has made any deposits required by a previously generated Intergovernmental Agreement (IGA) or Right of Way Services Agreement.

Approval for ODOT to appraise or acquire right of way for LPA projects, must be obtained from the Right of Way Manager before entering into the Right of Services Agreement.

3.650 Funding Exceptions Prior to Environmental Approval

Preliminary acquisition activities, including title search, preliminary property map and the development of right of way descriptions necessary for the completion of the environmental process can be advanced under federally-funded preliminary engineering (PE) phase. In most cases, project authorization must occur prior to any appraisal work. Right of Way Administration must approve any request for authorization of advance appraisal activity before it is submitted to FHWA.

Appraisal activities may be authorized as a federally-funded preliminary Right of Way activity when FHWA concurs with ODOT's determination that there are no known environmental issues that:

1. could substantially change the preferred build alternative;
2. alter the anticipated date for final environmental approval; and
3. advancement of the appraisal work will effectively facilitate the progress of the project.

3.660 Acquisition Activities

Appraisal, acquisition, relocation and clearing the right of way must occur prior to certification.

These activities may be sequential, concurrent or overlapping due to project complexity, time constraints and multi-project scheduling issues. The appropriate procedures and policies guiding appraisal, acquisition and relocation are described in the pertinent chapters of the Right of Way Manual.

The acquisition strategy employed will depend on the information obtained during earlier project development phases.

Complex appraisal files, project schedule, staff availability and expertise, numbers of files, and time required for fee appraisals, will determine the order in which the appraisals are assigned and completed.

Fixture inventories, the presence of contaminated properties, on-premise signs and the need for other specialty reports will influence assignment decisions.

It is strongly recommended that the Right of Way Project Manager consider early planning to order and synchronize completion of all specialty reports for the project. This will ensure timeliness for completion of the appraisal process and consistency in

treatment of similar items found on the project. A reasonable amount of time for appraisal review needs to be considered.

Acquisition planning should also include the time needed for: document request completion, Office Title Reports receipt, special language requirements, identification of tenant-owned improvements and the statutory time notifications and response requirements placed on acquisition activities.

Complicated or extensive relocations, the 90-30 day notice requirements, the numbers of relocations, special needs requirements and the availability of replacements, business or residential, also need to be considered in laying out the plan.

The final report submission may not be the end of the process if there are acquired improvements that require the coordination for sale, disposal or demolition prior to certification.

When the Right of Way Section is responsible for oversight on city, county or other public or quasi-public projects, the Region Right of Way Manager or the assigned Right of Way Project Manager will provide assistance and respond to queries submitted by the public agency. They will also monitor these projects for compliance with applicable federal and state laws, regulations and procedures.

3.670 Acquisition and Demolition of Contaminated Properties

There will be instances in which the purchase of contaminated properties will be required.

If acquisition or construction needs are minor in nature and the cost of the HazMat investigation is greater than the probable investigation is greater than the probable remediation necessitated by the project, the clean up may be accomplished as part of the project, and the parcel may be purchased as clean, subject to certain conditions.

If acquisition of the site is determined to be feasible, the Right of Way Project Manager or an agent will contact the owners of the contaminated site(s) to determine their willingness and ability to perform or contract for the site clean up. The course of action chose by Right of Way will depend on the owner's response. If the landowner is unwilling, uncertain or unable to perform the site clean up, a Level 2 investigation is requested. The property will be appraised as contaminated and at the level of remediation typical for highest and best use.

Building demolition, by a specialized hazardous materials contractor, should be concluded prior to the construction project, but if this is not practical, a specialized contractor should be used rather than the general construction contractor.

See Chapter 5 for procedures (5.330 Hazardous Materials (HAZMAT)).

3.680 Certification

The right of way Certification procedure identifies the acquisition status of needed rights-of-way for the purpose of advancing a project to construction. It is a prerequisite to advertising the physical construction of a project for contractor bids on a typical Design-Bid-Build project, advertising or releasing the Request for Proposals document on a Design-Build project, or proceeding with force account construction. Right of Way Certification is a requirement on all highway construction projects within the STIP, regardless of funding source. Right of Way Certification is also necessary on all local public agency STIP projects.

The purpose of a right of way Certification is: 1) To identify and affirm that no additional right of way and relocation assistance is required for construction of the project; or 2) to provide ODOT's assurance that the acquisition of additional right of way and relocation assistance for displaced persons and/or businesses has been completed and in compliance with the federal requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, current federal regulations, and Oregon state law; and 3) to insure that clearance of the acquired right of way is so coordinated with the physical construction that no unnecessary delays or costs for physical construction will occur; and 4) to identify the existence and status of any hazardous waste issues within the right of way.

3.685 Certification Process on Design-Bid-Build Projects

(For more discussion on this process, refer also to Appendix B at the conclusion of this chapter.)

Timing of Certificate Writing

The Region Right of Way Manager* prepares a Right of Way Certification form. Right of Way Certification is one part of the final PS&E (Plans, Specifications & Estimate) package that is required by the ODOT Office of Pre-Letting (OPL) prior to the start of project advertisement. On federal-aid projects requiring full federal oversight, the Certification is also required by the FHWA three weeks before the planned advertising date as part of its approval process for the department's PS&E and its authorization for the department to advertise. Finally, different types of projects require different lengths of advertising before contract bid opening.

Because of all these variables, the due date for the right of way Certification can and will vary from project to project. The Region Right of Way Manager or Right of Way Project Manager is responsible for coordinating this date early on in the project with the Project Team Leader. Typical target dates for right of way Certification (*rule of thumb only*) would be 45 days prior to the contract bid letting date for state funded and state-administered federal-aid projects and 66 days prior to the contract bid letting date for full federal oversight projects. Again, this can vary and must be coordinated early-on with the Project Team Leader. (*See Appendix B for more details.*)

Writing the Certificate

The completed Certification identifies the condition of the right of way as of the date of the Certification:

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

Box 3 – This is used to identify any property acquisition or relocation work that is not done as of the date of the Certification but will be done prior to the contract bid letting date. Each property is to be identified with a brief discussion of the steps being taken to complete the acquisition or relocation activity by the letting date. It is important that the Region Right of Way Manager have a high degree of confidence that the incomplete work identified in Box 3 will be completed by the contract bid letting date. If there is a risk that the work will not be done, the project either should not be certified or the remaining property acquisition should be treated as an “Exception” in Box 4.

Box 4 – Exceptions to Certification (a.k.a. “Holdouts") are properties that will not be under department possession and use by the contract bid letting date. The department may, after discussions between the Project Team Leader, Region Right of Way Manager and other appropriate collaborators, decide to move forward with the contract bid letting and temporarily hold out the availability and use of these properties by the contractor. Exceptions that are agreed upon following this collaboration and which meet the criteria identified here and discussed in Appendix B do not require the approval of the Highway Division Deputy Director as defined in the PD-02 Operational Notice. On full federal oversight projects, Certification Exceptions will be reviewed by FHWA while approving the PS&E package.

Exceptions are what the name says – exceptions to the normal process. They should be done only in unusual circumstances and must never become the norm. See Appendix B for a more detailed discussion of the potential dangers for misapplication of the Certification Exception process.

Box 4 is used to identify Certification Exceptions. The Region Right of Way Manager must be able to provide, with a high level of confidence, a target possession date for each property. If a possession date cannot be provided with this required high level of confidence, the project should not be Certified. Multiple amended Certifications resulting from missed possession dates for property Exceptions are not allowed. Along with the identification of the property Exception and the projected possession date, the Region Right of Way Manager must also discuss in Box 4 why the Exception was required and the steps that are being taken to gain possession of the property by the stated date.

At a minimum, a decision to Except out properties on the Certification and proceed with contract bid letting must be based on the following:

1. The decision is the result of collaborative discussions between the Region Right of Way Manager, Right of Way Project Manager, the Project Development Team Leader and any other Region staff that are necessary.
2. If a property being considered is still occupied by displaced persons that have not as yet moved, the decision whether or not to hold the property out must also include the Right of Way Operations Manager. If the project has full federal oversight, the decision should also include FHWA.
3. All written offers for the acquisitions have been made per ORS 35 and the property owners have had reasonable and sufficient time to negotiate with the department or its agents; (see Appendix B for more discussion on this)
4. Any residential displacees remaining on the properties have had replacement housing made available to them according to 49CFR and 6.340 of the ODOT Right of Way Manual.
5. The Region Right of Way Manager is able to identify a reasonable possession date for each property with a high degree of certainty in meeting that date;
6. Property owners and displaced persons still occupying the property will not be subject to coercion, inconvenience or injury.

Whenever there are Exceptions identified in Box 4, a public interest finding must be written and attached to the Certification. This must provide a clear statement as to why it is in the public interest to proceed with the project at that time rather than delay the project to complete the right of way acquisition and relocation work. Increased project costs resulting from a delay in the project cannot be used as a justification to violate the requirements of the Uniform Act as detailed in the ODOT Right of Way Manual. The public interest finding should be completed and signed by the Area Manager.

Box 5 – This box is used to discuss whether there were hazardous material issues in the acquired right of way. If remediation was done, those activities must be identified. If the remediation was not done or is not completed, that must also be identified and discussed. If remediation was not done or will not be completed by the contract award date, the decision to proceed with the project must be the result of collaboration with the Project Team Leader and other appropriate staff.

The Certification is signed by the Region Right of Way Manager. On Local Public Agency STIP projects, the Region Right of Way Manager must co-sign along with the authorized local agency official. On Right of Way consultant projects, the Region Right of Way Manager co-signs along with the consultant. **The Region Right of Way Manager does not have to co-sign the Certification on state-funded Local Public Agency STIP projects if the Local Agency is letting the construction contract itself without involvement from ODOT.**

It is the Region Right of Way Manager's responsibility to determine whether the requirements and criteria have been followed to allow for Certification of the right of way. If they have not, the right of way must not be certified. A decision to proceed with the project in this instance would require approval of the Highway Division Deputy

Director in consultation with the affected Region Manager and the Chief Engineer as defined in the PD-02 Operation Notice.

Distribution of the Completed Right of Way Certification

The completed and signed Right of Way Certification is sent by the Region Right of Way Manager to the Right of Way Programming Coordinator in the Project Administration Unit. The Programming Coordinator provides the Certification to the Highway Finance Office (HFO) on full federal oversight projects. The HFO submits the Certification to FHWA as a part of the department's request for approval of PS&E and authorization to advertise the project. The Programming Coordinator also makes certain that a copy of the Certification is placed in the project file and provides a copy for Performance Measures.

The Region Right of Way Manager is also responsible for providing a copy of the Certification to the Project Team Leader and other Region staff as required in that Region's procedures. The Project Team Leader incorporates the Certification into the PS&E package that is sent to the Office of Pre-Letting at headquarters.

Intra-Departmental Communication in the Right of Way Certification Process

The importance of maintaining good communication over Certification of the right of way between all the departmental partners in the project development process as well as FHWA cannot be overemphasized. Problems with project development timelines on a given project that may result in the need for Certification Exceptions should be identified and addressed early on. Right-of-Way Certification Exceptions can and should be avoided in most instances by early communication with the Project Team.

The Region Right of Way Manager has an ongoing responsibility for communicating any change in the target dates for possession of any properties identified in Boxes 3 and 4 on the Certification. If the target dates will not be met, the Right of Way Manager is required to contact the ODOT Office of Procurement/Construction Contracting immediately. The Project Team Leader must also be notified. This is also required if a target date involving hazardous material remediation in Box 5 will not be met.

* For projects managed by the Oregon Bridge Delivery Partners, ODOT's Bridge Delivery Unit Technical Center Manager has delegated authority from the Statewide Right of Way Manager for all the responsibilities and accountabilities of the Region Right of Way Manager that are contained in Section 3.680 and Appendix B. This delegated authority is based on OBDP having an experienced employee that meets the minimum qualifications for a Region Right of Way Manager and is experienced with the Uniform Act and all applicable state and federal laws, ODOT's Right of Way Manual, and internal policies and procedures, who reviews all documents and gives assurance that they are ready for approval.

3.700 Other Property Acquisition Alternatives for Federal-Aid Highway Projects

Prior to any request for authorization for early, protective or hardship acquisition, the Region must obtain approval from Right of Way Administration.

3.710 Early Acquisition

ODOT may initiate acquisition of real property without federal funds at any time it has legal authority to do so based on program or project considerations:

1. Acquisition must comply with 49 CFR Part 24 (Uniform Act) requirements;

ODOT may receive a credit towards their share of project costs equal to fair market value of any land that:

a. is lawfully obtained by the state without any form of federal financial assistance;
b. is not land described in 23 U.S.C. 138 (public park, recreation area, wildlife and waterfowl refuge or historic site);
c. is acquired in accordance with the provisions of 49 CFR part 24;
d. is acquired in conformance with requirements of title VI of the Civil Rights Act of 1964;
e. is not already incorporated and used for transportation purposes;
f. will be incorporated into a federal-aid project; and
g. FHWA concurs with ODOT's determination that its acquisition of real property did not influence the environmental assessment for the project, including:

(1) the decision on need to construct the project;

(2) the consideration of alternatives; and

(3) the selection of the design or location.

Requirements for crediting of real property contributions include FHWA's acceptance of ODOT's certification stating compliance with each of the requirements outlined above, justification of contribution value and credit cannot exceed ODOT's pro-rata share of the project.

3.720 Protective Buying and Hardship Acquisition

Prior to final project environmental approval, federal funds may be authorized to provide reimbursement for advanced acquisition costs of qualified hardship and protective acquisitions (See R/W Manual, Chapter 5 –Acquisition – 5.355 and 5.370).

The following conditions must be met:

1. The project is in the approved STIP;
2. ODOT has complied with applicable public involvement requirements of 23 CFR parts 450 and 771;
3. A determination has been completed for any property subject to the provisions of 23 US.S.C. 138;
4. Procedures of the Advisory Council on Historic Preservation are completed for historic properties; and
5. Acquisition of property does not influence the environmental assessment of the project, including the decision relative to the need to construct the project or the selection of a specific location.