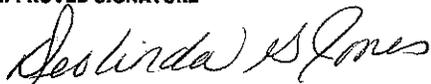




Right of Way

BULLETIN

SUBJECT Relinquishment of Project Right of Way to Local Public Agency	FINAL NUMBER RW08-01(B)	EFFECTIVE DATE 05/15/2008	VALIDATION DATE 07/22/2009	SUPERSEDES or RESCINDS NEW
	WEB LINK(S) <a href="http://egov.oregon.gov/ODOT/HWY/TECHSERV/techguidance.shtml">http://egov.oregon.gov/ODOT/HWY/TECHSERV/techguidance.shtml</a>			
TOPIC/PROGRAM Right of Way	APPROVED SIGNATURE  7/22/09 Deolinda G. Jones State Right of Way Manager			

**PURPOSE**

To establish uniform procedures for ODOT Right of Way staff for fulfilling an agreement obligation to convey, upon project completion, certain new right of way purchased in the name of the Oregon Department of Transportation (State) on behalf of a Local Public Agency (LPA).

**GUIDANCE**

This Right of Way Bulletin outlines a procedure for the conveyance of project-related right of way to a local public agency. This procedure has not previously been formalized.

**DEFINITIONS**

**Intergovernmental Agreement (IGA):** An agreement between two or more government agencies that clarifies each agency's obligations in regards to a construction project, jurisdictional transfer, etc. The terms of an agreement could include obligations that pertain to construction, funding, jurisdiction, maintenance, access control, highway designations, excess property, project right of way, and anything else that needs to be clarified and agreed upon in writing.

**Jurisdictional Transfer:** When a section of state highway (operating) right of way is no longer needed for state highway purposes, the State may transfer its interest (jurisdiction, maintenance, etc.) in the highway section to another governmental agency with the intent that the highway shall continue to be utilized for public road purposes. (NOTE: See Special Instructions on Page 5 for information on jurisdictional transfers)

**Local Public Agency (LPA):** Another governmental agency, i.e. City or County.

**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 are actively being used to support transportation uses.

**Project Related Right of Way:** Right of way that is part of an active or recently completed highway construction or improvement project.

**Relinquishment Deed:** A conveyance document used to convey a fee title (and/or easement) property interest that was acquired by the State, usually for a project, to an LPA for public road purposes.

**Reversion:** State highway interests transferred to an LPA for continued public roadway use shall contain a reversionary clause, which declares that any right of way being conveyed in which State has any title shall be vested in the LPA only so long as used for public road purposes. If said right of way is no longer used for public road purposes, it shall automatically revert to State. This reversionary requirement is to protect the constitutionally dedicated Highway Fund contribution to the original purchase of the property. If said right of way ceases to be used for a Highway Fund purpose, it reverts back to the State. At that time, the Right of Way Program Management Unit shall determine if the property is surplus to the State's needs and how the State holds interest in the property.

It is the State's policy to require the reversionary clause so that the State can make a determination, at the time the LPA is no longer using the property, whether to take it back and continue using the right of way for highway purposes, and furthering the constitutional use; or to surplus the property and sell it for fair market value, placing the proceeds in the State Highway Fund and preserving those assets for future highway use. The State has historically not included the reversionary clause only when the State has received the fair market value of the property being transferred. That fair market value doesn't have to be cash; it could also be saved future maintenance expenditures. If the State pencils out that the value of the asset is equal to any combination of return of value and savings of costs, then it would be possible to document that the State has received full fair market value. The return of value and savings of costs should be determined through a Cost Benefit Analysis.

**Right of Way Owned in Fee and/or Easement:** Right of way that was purchased by deed or other conveyance document, or through the exercise of the power of eminent domain.

## **BACKGROUND/REFERENCE**

ODOT enters into many types of intergovernmental agreements, for many different purposes. These agreements may include Cooperative Improvement, Construction Finance, Jurisdictional Transfer, etc. Any intergovernmental agreement that is related to a construction project can include an obligation that says ODOT will, upon completion of said project, convey to the LPA any new right of way purchased in ODOT's name on behalf of the LPA. In these instances, ODOT would have purchased the new right of way specifically for the project, with the express intent to convey the right of way to the LPA when the project is completed. A formal process for fulfilling this type of obligation has never been adopted, which has resulted in this agreement obligation not always being fulfilled.

## **EXPLANATION**

This procedure would be appropriate for right of way that fits the following criteria:

- \*\*Right of way purchased in fee (or easements) as part of a construction project.
- \*\*Right of way not intended for or designated as part of the state highway system.
- \*\*Usually newly constructed right of way intended to be used as a city street or county road.
- \*\*The intergovernmental agreement pertaining to said right of way would have contained an obligation for ODOT to convey to the LPA any new right of way purchased for the project. (NOTE: See agreement template for specific language)

***The Region Right of Way Manager is responsible for establishing an internal system in their respective office to identify the property and secure its conveyance to the appropriate LPA.***

### **RESPONSIBILITY:**

### **STEP ACTION:**

Region Right of Way  
Manager

- 1 **Initiate Relinquishment.** Upon project completion, request Region Right of Way Project Manager to coordinate the process of fulfilling the agreement obligation to convey the appropriate project related right of way to the LPA.

Region Right of Way  
Project Manager

- 2 **Consent for Relinquishment.** *If there is no agreement or the agreement doesn't specifically address the relinquishment of right of way to the LPA*, but there is a belief that the right of way was always intended to be conveyed to the LPA upon project completion, obtain consent from the following parties before proceeding with the Relinquishment: (NOTE: It would be best to obtain consent from these parties if there is an agreement but the project has been complete for 5-10 years or more.)

- a) LPA
- b) Region Manager
- c) District Manager

Consent from ODOT personnel should be obtained by filling out a Request to Relinquish form and submitting it to all parties listed on the form. Consent from City/County should be obtained by sending a similar form on Region letterhead. Always attach a map that outlines the portion of right of way to be relinquished.

(See Attachment A, B & C for samples of the forms; forms can be obtained from Right of Way Headquarters (HQ) Jurisdictional Transfer Specialist.)

**RESPONSIBILITY:**

**STEP ACTION:**

Region Right of Way  
Project Manager

- 3 **Request for Relinquishment.** Submit request to Right of Way HQ Jurisdictional Transfer Specialist for property to be conveyed to the LPA. The request should include the following:

- a) A copy of the Agreement, including exhibit maps; **OR** the signed approval forms and accompanying map, if there is no agreement that specifically addresses the relinquishment.
- b) Right of Way file numbers affected.
- c) **Indication of Level of Priority, indicating if completion of the exhibits and Relinquishment is URGENT, NORMAL, OR LOW PRIORITY. This will enable the HQ Right of Way Engineering Group to prioritize the work and balance the needs of all 5 regions more efficiently.**

Right of Way  
Headquarters (HQ)  
Jurisdictional Transfer  
Specialist

- 4 **Draft Exhibit Map & Description Request.** Send memo to the Right of Way Headquarters (HQ) Engineering Group requesting they prepare a formal exhibit map and description of the right of way (fee and/or easements) that needs to be conveyed. The Exhibit A description and Exhibit B map will be used as attachments to the recorded document.  
**NOTE:** *Region Right of Way Description Writers/Surveyors may consult with Right of Way HQ Engineering Group to create maps, if necessary.*

Region Right of Way  
Project Manager

- 7 Review draft exhibit map and draft description to be sure they accurately reflect what the region wants to be relinquished.

Right of Way HQ  
Engineering Group

- 8 **Final Exhibit Map & Description.** Revise exhibits as necessary and forward final versions of Exhibit A description and Exhibit B map to Region Right of Way Project Manager and Right of Way HQ Jurisdictional Transfer Specialist.

Right of Way HQ  
Jurisdictional Transfer  
Specialist

- 9 **Preparation of Relinquishment Deed.** Prepare Relinquishment Deed and attach the Exhibit A description and Exhibit B map.  
**NOTE:** *The Relinquishment Deed will contain a reversionary clause. To coincide with the exhibits, the Relinquishment Deed will also be named after the project number with an A on the end, i.e. 7247000A.*

- 10 **Approval of and Signature on Relinquishment Deed.**  
Prepare and submit memo for approval of HQ Right of Way Program Support Manager. The memo is addressed to the State Right of Way Manager, and requests signature on the Relinquishment Deed.
- Right of Way HQ Program Support Manager 11 After review and approval, forward the Relinquishment Deed to the Executive Assistant to State Right of Way Manager for the State Right of Way Manager's notarized signature.
- Executive Assistant to State Right of Way Manager 12 Obtain signature of State Right of Way Manager on Relinquishment Deed.
- 13 Notarize the Relinquishment Deed.
- 14 Return signed and notarized Relinquishment Deed to Right of Way HQ Jurisdictional Transfer Specialist.
- Right of Way HQ Jurisdictional Transfer Specialist 15 **LPA Acceptance of Relinquishment Deed.**  
Send original signed Relinquishment Deed to LPA for acceptance by obtaining LPA's authorized signature.
- 16 **Recording of Relinquishment Deed.**  
After acceptance by LPA, send Relinquishment Deed to county for recording.  
**NOTE:** Both the Exhibit A description and Exhibit B map are attached to Relinquishment Deed for recording.
- 17 **Distribution of Relinquishment Deed.**  
Upon receipt of original recorded Relinquishment Deed, send a copy of the recorded document, along with a transmittal letter, to the LPA Contact. Send copies of the transmittal letter and recorded Relinquishment Deed to the parties listed below. Transmittal letter provides phone number of District Maintenance office so the LPA can contact the State to obtain permits, as-built plans, or other relevant information.

List of recipients for distribution:

- LPA
- District Manager
- Region Right of Way Manager
- Region Agreements Coordinator
- Right of Way HQ Engineering
- Right of Way HQ Relinquishment File
- All Right of Way Files Affected
- Right of Way Project File

Send original recorded document to General Files/History Center.

### **SPECIAL INSTRUCTIONS**

This procedure would NOT be appropriate for sections of state highway that qualify for Jurisdictional Transfer. (For information on Jurisdictional Transfers, see the ODOT web site for the official ODOT procedure ROW 10-01-01, Roadway Jurisdictional Transfer Process).

This procedure would NOT be appropriate for sections of former state highway right of way that the State owns via County Resolution (resolved right of way), no longer needs for state highway purposes, and is not needed by an LPA for public road purposes.

(For information on abandoning property to abutting owners, see the ODOT web site for the official ODOT Technical Services, Right of Way Bulletin RW08-02(B), Abandonment of Former Right of Way to Abutting Property Owners).

This procedure would NOT be appropriate for parcels of state-owned property that qualify as excess or surplus property. (For information on surplus property, see the ODOT web site for the official ODOT Technical Services, Right of Way Bulletin RW06-01(B), Process for the Disposal of Surplus Property).

### **CONTACT INFORMATION**

Title: Program Support Manager  
Branch/Section: Right of Way  
Phone: (503) 986-3651  
E-mail: [Janie.S.Olson@odot.state.or.us](mailto:Janie.S.Olson@odot.state.or.us)

ATTACHMENT A

TECHNICAL SERVICES

INTEROFFICE MEMO

TO: \_\_\_ Region \_\_\_ Manager  
\_\_\_ District \_\_\_ Manager

DATE: July 21, 2009

FROM: Region \_\_\_ Right of Way Manager

SUBJECT: Tentative Relinquishment

This Office proposes to relinquish some right of way purchased for the project on the \_\_\_\_\_ Highway, No. \_\_\_\_\_ in \_\_\_\_\_ County, City of \_\_\_\_\_ to \_\_\_\_\_ approximately as shown on the attached map.

*Due to the fact that Misc. C & A Agreement No. \_\_\_\_\_ does not specifically address the relinquishment, we are requesting that your office indicate below whether or not the subject right of way is clear for such relinquishment.*

Clear for Relinquishment

Not Clear for Relinquishment

REMARKS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Note: Please return completed form to Region \_\_\_ Right of Way Office.

ATTACHMENT B

July 21, 2009

\_\_\_\_\_ County

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RE: Tentative Relinquishment

This Office proposes to relinquish some right of way purchased for the construction of \_\_\_\_\_ Road, in relation to the project in \_\_\_\_\_ County, to \_\_\_\_\_ County, approximately as shown on the attached map.

We are requesting that your office indicate below if \_\_\_\_\_ County is willing to accept said road for county road use.

Will accept

Will Not ACCEPT

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Note: Please return completed form to Region \_\_\_\_ Right of Way Office.

ATTACHMENT C

July 21, 2009

City of \_\_\_\_\_

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RE: Tentative Relinquishment

This Office proposes to relinquish some right of way purchased for the construction of \_\_\_\_\_ Street, in relation to the \_\_\_\_\_ project in the City of \_\_\_\_\_, to the City of \_\_\_\_\_, approximately as shown on the attached map.

We are requesting that your office indicate below if the City of \_\_\_\_\_ is willing to accept said street for city street use.

Will accept

Will Not ACCEPT

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Note: Please return completed form to Region \_\_\_\_ Right of Way Office.