

APPRAISAL

CHAPTER 4

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APPRAISAL

4.100 INTRODUCTION

The Fifth Amendment of the Constitution of the United States guarantees that no person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Article I of the Oregon Constitution's Bill of Rights gives a similar guarantee.

Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 expands upon the basic rights of property owners, requiring a public agency to appraise real property prior to its acquisition as a basis for determining just compensation.

The Uniform Act, as amended, along with current federal regulations provides a framework under which the appraisal process is to be conducted. It is the objective of the Right of Way Section to comply with all applicable laws and regulations in the appraising of real property for acquisition.

4.120 POLICIES

4.125 Compliance with Federal Regulations

To the greatest extent practicable under state law, appraisal policy and procedures set forth in this chapter are intended to comply with 49 CFR Part 24 and 23 CFR Part 710.

4.126 Compliance with Oregon Department of Transportation - Highway Division Appraisal Guide

All appraisals must meet the criteria and standards as set forth in the Guide to Appraising Real Property. This manual is for use in Oregon Department of Transportation projects and for projects sponsored by Local Public Agencies.

4.127 Conflict of Interest

The appraiser of a parcel with a value of over \$2,500 or more may not be assigned to acquire that property. Additional comments regarding conflict of interest may be seen in sections 2.120(9) and 5.145.

4.130 Necessity of Appraisal

Real Property shall be appraised before the initiation of negotiations with an owner. Two exceptions are those

instances when (a) the appraisal requirement has been waived by the property owner through the donation process or (b) the agency determines that an appraisal is unnecessary because the appraisal problem is uncomplicated and the fair market value is estimated to be \$20,000 or less. These exceptions are pursuant to 49 CFR 24.102(c).

4.135 Valuation Basis

Acquired property rights will be appraised at fair market value. Appraisals shall contain sufficient data and analysis to explain, substantiate, and thereby document the conclusions of the report. Easements and encumbrances affecting the use and development of the property being appraised will be considered. The property will be appraised as though free and clear of all liens, bond assessments and indebtedness. The property will be appraised to its highest and best use.

The appraiser shall disregard any increase or decrease in the fair market value of real property, which is caused by the public improvement for which such property is to be acquired, or by the likelihood that the property would be acquired for such improvement. Value diminution due to physical deterioration within the reasonable control of the owner must be considered in determining the compensation for the property.

4.140 Opportunity to Accompany

The appraiser shall provide to the owner a written notice of not less than 15 days of a pending inspection of the property for appraisal purposes. The notice will include an invitation for the owner, or the owner's representative, to accompany the appraiser during the inspection. The owner may elect to waive the inspection or the date of the inspection. The appraiser shall document the written notice and the property owner's response.

4.145 Just Compensation and Minimum Payment

The head of the agency shall establish an amount which it believes to be just compensation for the acquisition of real property before the initiation of negotiations with an owner. Just compensation is typically based on the fair market value of the acquisition. Added to the market value is the amount of severance damages, if any, which can be offset by the amount of any special benefits.

The minimum compensation payment is set at \$350. Where the market value of the taking is less than \$350, just compensation will be set at the minimum payment amount by the Appraisal Reviewer or, in the case of an Administrative Determination of Just Compensation, by the Region Right of Way Manager or designee giving approval.

4.150 Relocation Compensation

Appraisers shall not give consideration to, nor include in their appraisals, any allowance for relocation assistance benefits.

4.155 Damages and Special Benefits

When only a part of a property is to be acquired, just compensation will be based on the value of the part to be acquired and consideration of damages and special benefits to the remainder.

4.160 Fixtures, Equipment and Signs

When fixtures, equipment, and signs are situated in the acquisition area or affected by the acquisition, a determination will be made whether the items are personalty, realty, or appurtenances. Those items which are realty or appurtenances will be valued in the appraisal report. Separate specialty appraisals will be prepared for fixtures, equipment, and signs, when appropriate. (See 4.610) Those items which are personalty will be identified and listed in the appraisal report. This listing will be utilized to distinguish which items would be treated as personal property from those that would be considered real property.

4.170 Appraiser Qualifications

The Section requires that fee appraisers have the following minimum qualifications:

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

Staff appraisers must meet the first three criteria. Staff appraisers should be given assignments corresponding to their abilities and experience, and be given opportunities for formal as well as on-the-job training to develop their appraisal skills.

4.175 Use of Staff and Fee Appraisers

Staff appraisers shall be assigned as much of the Region's appraisal work as practicable. Fee appraisers may be employed as the workload requires.

4.180 Review

A qualified Review Appraiser shall review all appraisals to assure that the appraisals meet applicable standards and to establish just compensation to be offered an owner for the acquisition of real property. (See also 4.315)

4.185 Confidentiality of Appraisal Reports and Information

Oregon Public Records law states that every person has a right to inspect any record of a state agency unless the record is excluded from disclosure by ORS 192.501 to 192.505. NOTE: Except as provided in ORS 35.346, appraisal reports and related information are subject to litigation and all files on a R/W project are considered confidential until any and all litigation on the project is settled.

4.200 RESPONSIBILITIES

4.210 RIGHT OF WAY PROJECT ADMINISTRATION MANAGER

The Right of Way Manager appoints the Project Administration Unit Manager. It is the responsibility of the Project Administration Manager to:

1. Assist the Administration in any matters relating to appraisals.
2. Prepares and distribute policy and procedural instructions, forms, and other materials necessary to ensure appraisals of professional quality.
3. Coordinate appraisal and appraisal review policy and procedures with applicable state and federal laws to assure payment of just compensation and maximum federal participation in project costs.
4. Have each appraisal reviewed for accuracy, completeness, and adequacy of documentation and to see that deficiencies are corrected.
5. Establish qualifying criteria for fee appraisers and periodically evaluate each appraiser (See Sec. 4.170)
6. Recommend in-service training or other courses in appraisal principles and practices for Region and Section staff to the Right of Way Manager.

4.220 REVIEW APPRAISER

A Review Appraiser is a Senior Right of Way Agent who works under the supervision of the Project

Administration Manager to review appraisals for the Section. The Review Appraiser:

1. Assists region Right of Way personnel and fee appraisers with valuation issues.
2. Shall examine all appraisals to assure that they meet State appraisal requirements and shall, prior to acceptance, seek correction or revision of those which do not.
3. If unable to approve or recommend approval of an appraisal as adequate support for compensation, may develop appraisal documentation in accordance with accepted appraisal standards to support a recommended just compensation if it is determined that it is not practical to obtain additional appraisals.
4. Prepares the Review Appraiser's certification setting forth the recommended just compensation of the property in a signed written statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Damages or benefits to any remaining property shall also be identified in the statement.
5. Examines all remedies submitted to satisfy the closure of access with an existing permit. This process is based on the provisions of OAR 731-051-0500.

4.230 REGION RIGHT OF WAY MANAGER

The region Right of Way Manager is responsible for the appraisal of properties in the region. This includes planning, staffing, setting priorities and training of staff in order to carry out an effective appraisal program.

4.240 RIGHT OF WAY PROJECT MANAGER

The Region Right of Way Manager may designate a Senior Right of Way Agent to serve as Project Manager to assist with the appraisal function. The Project Manager:

1. Views the project area with the project Review Appraiser to identify valuation problems, the number and type of reports needed, and to estimate costs of any needed fee appraisals.
2. Identifies all on-premise signs in acquisition areas and assigns them to an appraiser for valuation.
3. Analyzes each file for prior acquisitions, obligations, or restrictions which should be recognized in the appraisal.
4. Assigns appraisals (See Section 4.560) to region staff whenever possible; but if necessary, obtains fee appraisals, using proper contracting procedures. (See Contracting Chapter).
5. Assists staff appraisers and encourages their development through on-the-job and formal training.

6. Coordinates with the Review Appraiser assigned to the project to complete a classification letter for fixtures and equipment. Once the classification letter is reviewed, the specialty report can be prepared based on the classifications assigned in the letter.
7. Secures specialty reports when appropriate. Provides the specialty reports to the real property appraiser with instructions for proper consideration of contributory value.
8. Utilizes the Appraisal Review Check List to ascertain that the appraisal follows the acceptable standards. Forwards completed appraisals to the Appraisal Unit for review. Enters appraisal information into RAIN.
9. Reviews appraisals as directed by the Region Right of Way Manager when authorized to do so by the Project Administration Manager, or as allowed for Minimum Payment Appraisals (See Sec. 4.525)
10. Is responsible at the initiation of the appraisal phase for the delivery to property owners and affected tenants of the General Information Notice (See Sec. 6.310), acquisition and relocation brochures, and a copy of the right of way map, marked preliminary, showing the property to be acquired. Staff appraisers may be instructed to deliver these notices to the owners and/or occupants of properties they appraise. When the owner or occupant is unavailable or a fee appraiser has been contracted to appraise a property, the Project Manager shall mail the required notice packet. If the occupant will be displaced, the packet must be mailed by CERTIFIED mail.

The Project Manager shall be aware of the individual needs of the different groups of people - minority and non-minority - and use methods which will ensure that highway program services, benefits, and opportunities are provided equally to persons affected by the programs.

4.250 APPRAISER

The appraiser is responsible for arriving at a documented opinion of fair market value for the property. To do so, the appraiser:

1. Checks assessor's records for property information, including assessed valuation and the previous five-year sales history.
2. Contacts property owners or their designated representative to offer the opportunity to accompany the appraiser on property inspections. Refer to Section 4.140 for procedure. Staff appraisers advise them of the

proposed project. The appraiser should contact affected occupants also, if appropriate.

3. Asks owners and tenants to identify tenant or third party-owned improvements for which values must be segregated. A list of the improvements should be presented to owner and tenants for their signatures to identify which party owns the various improvements and equipment.
4. Inspects properties in the field, noting the area, rights, or interests to be acquired and the probable effects on any remainder property.
5. Researches area for market data of comparable properties and verifies the information.
6. Estimates fair market value through appropriate valuation approaches on the proper forms and in the required format, including separate valuation for tenant or third-party-owned improvements.
7. Retains adequate information and material to prepare any required revisions or to assist in pre-trial conferences or for court testimony.
8. Completes all appraisals in accordance with instructions in the "Guide to Appraising Real Property."

The appraisal responsibilities and procedures as detailed in this chapter extend to ODOT Staff appraisers as well as to fee appraisers doing work for under contract for federal or state funded projects.

4.300 PROCEDURES

4.305 Appraisal Background

The appraisal of real property to be acquired for public projects presents unique appraisal problems not found in standard real property appraisal situations. This can be attributed to a variety of appraisal concepts, which are largely determined by law. The Section's appraisals must meet stringent standards of thoroughness, accuracy, and appropriate methodology in order to withstand the rigors of potential condemnation proceedings and to assure the rights of the property owner.

4.310 Just Compensation

Since just compensation must be paid for private property taken for a public purpose, the State obtains one or more appraisals of the property being acquired and establishes an estimate of just compensation to be offered to the property owner.

When an entire property is being acquired, the estimate of just compensation is the same as the approved estimate of fair market value developed in the appraisal process. When only a portion of a larger parcel is being acquired, the estimate of just

compensation is the market value of the land and improvements acquired plus damages offset by special benefits to the portion of the larger parcel remaining from the acquisition of the right of way.

4.315 Fair Market Value

All appraisals shall be made on the basis of fair market value. For the purpose of real property acquisition by the State, fair market value is defined as the amount of money, in cash, that property would bring if offered for sale by one who desired but was not obliged to sell, and was bought by one willing but not obliged to buy. It is the actual value of the property on the date of the taking, with all its adaptations to general and special uses, that is to be considered.

However, nothing shall be allowed for prospective value, speculative value or possible value based upon future expenditures and improvements". Refer, also, to Highway Comm. v. Superbilt Mfg. Co. (1955) 204 OR 393,412, 281 P2d 707.

It is important to maintain a clear distinction between fair market value and "just compensation." The appraisal or Administrative Waiver Valuation always estimates fair market value. Just compensation is established for the agency by the Appraisal Reviewer on all appraisals and by the Region Right of Way Manager (or other authorized Right of Way staff) on Appraisal Waiver Valuations. In some instances fair market value and just compensation may not be the same (see 4.145).

4.320 Larger Parcel

Essential to the field of eminent domain appraising is the concept of the larger parcel. The larger parcel impacted by a right of way acquisition may be the entire property under appraisal, may only be a portion of the property, or may be several related parcels.

The larger parcel is that property under appraisal containing the following elements:

1. Unity of title. In order for one or more tracts of land to be considered to be part of the same larger parcel they must enjoy the same quality of ownership. The fact that owners have an interest in the parcel, a part of which is not taken, is not sufficient unity of ownership to support a claim for damages to that parcel. This is an issue which may require a legal determination.
2. Contiguity. For a remainder area to be considered part of the larger parcel it generally must be physically contiguous with the acquisition area. However, exceptions may be made, depending upon the nature of the

operation being performed on the non-contiguous sites.

3. Unity of use. For a remainder area to be considered part of the larger parcel it must be in the same use or an integrated use with the acquisition area. This is an appraisal question and requires a determination by the appraiser.

4.325 Highest and Best Use Considerations

An appraiser must appraise property to its highest and best use. Highest and best use is that reasonable and probable use of the property as of the date of valuation, which is most likely to produce the greatest net return to the land and improvements. Elements to be considered in determining the highest and best use include, among others: comprehensive plan, zoning and building restrictions, size of the land and its suitability for development, supply and demand, and neighborhood trends.

For partial acquisitions the appraiser needs to consider highest and best use twice, once as the property exists before the acquisition and once as the property would exist after the acquisition. A change in the highest and best use of the remainder area due to the acquisition might result in a finding of damages or benefits to the remainder area; or, a material change in the intensity of use within a highest and best use could also be the basis for finding damages or benefits, such as the remainder area changing from a balanced economic farm unit to an unbalanced unit.

It is important in the highest and best use consideration not to value the land for one use and the improvements for another use and combine the two elements into a value for the entire property. This violates the consistent use theory. Improvements are to be valued to the extent they contribute to the highest and best use of the property or for their value for removal, whichever is greater

4.326 Consistent use

An appraiser must follow consistent use theory in the highest and best use analysis and subsequent property valuation. Consistent use theory states that land cannot be valued on one highest and best use while the improvements are valued based on another highest and best use. As an example, if a residence is located in a commercial area, the property cannot be appraised based on a residential use for the improvements plus commercial use for the underlying land. The value must be based upon its highest and best use – either as a residence with commercial potential based on sales of similar properties with similar potential, or as a commercial site giving little to no value to the improvements. Improvements are

to be valued to the extent they contribute to the highest and best use of the property or for their value for removal, whichever is greater. There may in fact be a deduction in value because of the required demolition costs of the house which might have to be removed in order to develop the commercial site.

4.327 Interim Use

A building or other improvement may have an interim, or temporary, use when the property's transition to its highest and best use is deferred. Using the example from 4.326, the present market may not be suitable for immediate development of the property to its commercial highest and best use. The appraiser may find that the residence is suitable for deriving a short term rental income that can act to offset taxes and other holding costs that may occur while the optimal time for commercial re-development approaches. Interim uses are by their nature short term. A long term interim use exceeding five years raises a serious question as to whether the appraiser's highest and best use conclusion is remote and speculative.

The best method for determining whether the interim residence actually contributes to the value of the property as a whole is to analyze comparable sales of properties in the same economic position. If adequate comparable sales are not available, the appraiser may utilize an appropriate method to find a present value for a temporary income stream from the residential use. This income stream must be market based. The resulting present value can be added to the commercial land value only if the land value recognizes the delay in development to a commercial site. It would be a violation of consistent use theory to simply add the present value of the temporary residential use to a commercial land value reflective of immediate development to its highest and best commercial use.

4.330 Entire Acquisitions

Entire acquisitions involve a straightforward appraisal approach utilizing sales comparison, cost, and income approaches, as appropriate for the type of property being considered.

4.335 Partial Acquisitions

Because partial acquisitions involve the acquisition of only a portion of a larger tract, leaving a remainder, the estimate of market value is generally a more complex assignment than is valuing an entire acquisition. The standard procedure for partial acquisitions is to appraise on a before-and-after basis. After the land and improvements within the acquisition area have

been valued, the appraiser must determine the value of the remainder after the acquisition. To determine the value of the remainder, the appraiser shall:

1. Assume the project has been completed according to plan.
2. Recognize the highest and best use for the remaining property.
3. Show by sales data or other applicable techniques, the market value of the remaining property based upon its highest and best use.

To assist the appraiser in valuing the remainder land the Project Manager should maintain a current listing of sales involving properties from which a right of way acquisition has been made in order to measure, by market data, the value of remainder properties.

4.340 Before and After Appraisals

A partial acquisition which is complex or involves a substantial portion of the larger parcel requires the appraiser to first value the entire larger parcel as it exists prior to the acquisition. Then, the value of the part to be acquired, as a part of the larger parcel, is calculated. The next step is to appraise the remainder property as it will be after the project is completed. Any difference between the value of the entire property, less the value of the acquisition, and the value of the remainder after the taking, indicates the project has caused damages or benefits to the remainder. The value of the part acquired, as a part of the larger parcel, plus damages offset by special benefits, if any, would be the appraiser's estimate of market value.

A chart outlining the steps in the Before and After appraisal can be found in Exhibit B at the end of this chapter. Refer to the "Guide to Appraising Real Property" published by the Right of Way Section for detailed information on the individual components of the Before and After Appraisal form.

4.345 Taking and Damages Appraisals

When damages are minimal and can be accurately measured in and of themselves (and there are no special benefits) certain right of way acquisitions do not merit the Before and After approach. Instances when the taking and damages format is appropriate include:

- a. When the effect of an acquisition is minimal in comparison with the larger parcel.
- b. The highest and best use of the property will not change.

- c. A Before and After appraisal will not add significant additional clarity to the report.

4.350 Prior Sales of The Subject Property

Since just compensation is measured in terms of market value, the best evidence of value of the subject property is a recent market sale of the subject itself. The appraiser is to research the sales history of the subject for the previous five years, analyze any sale to determine whether it is relevant to a current indication of value, and report the conclusion of the analysis in the appraisal.

4.355 Approaches to Value

Standard real estate appraisal practice employs three basic methods of estimating value: the sales comparison, cost, and income approaches. In eminent domain appraising all three approaches are used in estimating fair market value. When adequate market sales data are available to reliably support the market value for the appraisal problem, the sales comparison approach is the only approach that is required. If more than one approach to value is used, the appraiser shall analyze and reconcile the approaches sufficiently to support the opinion of value.

4.360 Sales Comparison Approach

Comparisons of bona fide comparable sales transactions to the subject property comprise the basis of the sales comparison approach. As the appraiser analyzes sales, each sale needs to be adjusted to the subject, as appropriate, and an indicated value of the subject is developed for each sale. The individual value indications of each sale then must be reconciled to arrive at an estimate of market value for the subject property. Elements of comparison to be considered are:

1. Highest and best use.
2. Conditions of sale. Extenuating circumstances of the sale need to be considered. Such things as length of time on the market, special financing and buyer's and seller's motives are examples of conditions to address in the analysis.
3. Time interval between sale date and date of valuation. This comparison can show a decrease in value as well as an increase or no change at all.
4. Location. This is one of the most important factors and must be judged carefully. The appraiser will want to examine the sales while

observing such things as pride/appearance in the neighborhood, price range of properties near the sale property, proximity of services, etc.

5. Physical characteristics. The physical differences between the subject and comparable sales must be recognized and adjustments made to reflect those differences.
6. Fixtures. As identified and discussed in 4.395, items identified as fixtures are considered part of the real property and are to be included in the valuation of the real property based upon their contributory value. Comparable sales must either contain equivalent fixtures that offer the same contributory value or adjustments must be made to reflect the differences with the subject regarding the presence or absence of fixtures. In appraisals of improved commercial and industrial property, and residential property when indicated, fixtures are to be identified for the subject property and, on the sales sheets, for each comparable sale. (see also 4.160 and 4.610)
7. Economic similarities and dissimilarities. The appraiser must verify sale prices, the terms and conditions of the sale, and determine whether it is representative of the market. Verification of sales data shall be done with the buyer, seller or the real estate broker or salesperson actually involved in the transaction and in that order of preference. In selecting comparable sales to be used in valuing the subject, greatest emphasis should be given to those sales which are similar in as many features as possible. The basis for and magnitude of the adjustment for each element of comparison must be stated separately and supported, when necessary, rather than reciting all the elements of comparison and stating a cumulative adjustment. The sales must be sufficiently described to allow the person reading the report to understand the conclusions drawn by the appraiser. Distress sales, sales to a condemning agency, forced sales, sales including property exchanges, sheriff sales, foreclosure sales, sales between family members, offers to buy or sell, and sales involving unreasonable financing terms are often unreliable indicators of market value and should not be used for comparative purposes. However, these transactions may be used as secondary support for the bona fide market indicators.

4.365 Cost Approach

The cost approach is probably the least reliable of the three approaches and has limited applicability in appraising properties for eminent domain purposes. It could be used in cases where market data is not

available or for "special use" properties. In this approach, the fair market value of the land is added to the depreciated replacement or reproduction cost of the improvements to arrive at a value for the entire property. It is mandatory to account for all forms of depreciation - physical deterioration, economic obsolescence and functional obsolescence.

The use of cost services must be done with care. The appraiser should show each step taken in using the service. The section, page, date of the page and calculations should be included in the report. The appraiser may also use information in the cost service books to estimate accrued depreciation; however, the appraiser must pay attention to the possibility of abnormal functional obsolescence or some degree of economic obsolescence because the tables in the cost service books reflect only normal physical deterioration and functional obsolescence. Thus, it is best to estimate depreciation from available market evidence.

4.370 Income Approach

The income approach should be used to value properties which exchange in the real estate market for investment purposes. The basis for the analysis is the potential income the property may produce, not the income produced by the business.

1. There are basic elements, which must be considered to perform the income approach analysis. They include:
 2. Gross Income Estimate - Actual income to the property should be estimated from comparable gross rental data found in the market for comparable income-producing properties (market rent).
 3. Vacancy and Collection Losses - This should be based on verified data of comparable rental properties.
 4. Fixed and Operating Expenses - Actual expenses should be verified with the property owner and may be relied upon if supported by comparable expense data from similar income properties. The appraiser must include documentation for the amounts for fixed and operating expenses, reserve for replacements, management costs and other appropriate deductions to be applied.
 5. Interest and Capitalization Rate - The interest rate must be clearly supported by an analysis of similar sales to determine the interest rate demanded in the open market. Further, it is imperative the rate used in the income approach be current. In order to establish the capitalization rate, the appraiser must determine the remaining economic life of the improvements. The remaining economic life should be based on a

reasoned explanation of the appraiser's thought process leading to the conclusion.

4.380 Land Valuation

In eminent domain appraising the land value of the larger parcel is valued to its highest and best use as if vacant and ready for development. The appraiser must determine the appropriate unit of comparison and apply the market data approach to obtain the land value.

4.385 Irrigated Lands

The Project Manager or the appraiser must investigate to determine whether a private water right is involved, and if so, the State Engineer Permit number needs to be obtained; or, if an irrigation district is involved, the bonded indebtedness per acre of the district needs to be obtained. The appraiser must consider these findings in the selection and analysis of sales to be considered in the sales comparison approach.

When irrigated land is being appraised, the Project Manager should determine whether the property owner has other lands to which the irrigation rights can be transferred. If there are no other lands available, the Project Manager should direct the appraiser to value the property as irrigated land.

In the case where the property owner has remaining lands to which the irrigation rights may be transferred, the Project Manager shall instruct the appraiser to value the land to be acquired as both irrigated and non-irrigated. The appraiser must address, also, the costs to transfer the rights to other lands and any costs involved to physically divert or provide the water to those lands. The costs to transfer the water rights and divert the water must be less than the value of the water rights plus any damages to the remainder property. The actual compensation will depend on whether the water rights will be transferred or the State will acquire the rights.

4.390 Improvement Valuation

When acquiring any interest in real property, the State shall offer to acquire at least an equal interest (contributory value) in all buildings, structures, or other improvements located upon the real property to be acquired. In the case of a partial acquisition, this means any improvement, which may be adversely affected by the use to which the acquired property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

Just compensation for a tenant-owned improvement is the amount to which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater.

Salvage value is defined as the probable sale price of an item that will be sold and removed from subject property at the buyer's expense. This includes allowing reasonable time to find a buyer knowledgeable of the uses of the item, uses of the serviceable components and any scrap value.

4.395 Fixtures

Fixtures are personal property which has been attached to the land or structure thereon in such a manner that they may be considered realty. The application of the following three tests determines whether an item is a fixture:

1. Intention.
This test considers evidence of a party's intention in bringing an item onto real property. If the intention at that time was to make the item a permanent part of the realty and this is supported by evidence of some degree of adaptation or annexation, then the item is considered a fixture. The intent which is considered by this test is that which is readily perceived or inferred, not any uncommunicated or hidden intention.
2. Adaptation.
The test for adaptation focuses on whether an item is adapted to and necessary for the primary use of the realty. The elements generally considered in evaluating the adaptation of an item to the use of the realty consist of the following:
 - a. Consequential loss of value of an item if removed.
 - b. Need for the item in order to accomplish the purpose to which the realty is devoted.
 - c. Permanency of dedication of the item to the use of the real property.
3. Annexation.
This test is concerned with the permanency and firmness of an item's physical attachment to the real property. In order to be considered a fixture due to annexation alone, the item must be so firmly annexed that it could not be removed without substantial injury to itself or the realty. However, a lesser degree of attachment, or a complete lack of attachment does not necessarily preclude an item from being considered a fixture. In those cases the tests of adaptation and

intention must be applied to determine whether an item is a fixture.

Tenant-owned improvements concluded to be fixtures are treated as realty and must be appraised for purchase, even though the landlord-tenant agreement may require their removal at its expiration.

Personal property not concluded to be a fixture remains personalty and is not to be considered in the appraisal.

4.400 Fencing and Fencing Allowances

Like any other improvement, fencing situated within the acquisition area is to be valued on the basis of its contributory value to the highest and best use of the land, recognizing functional utility, depreciation, and possible interim value.

However, on property containing livestock it is important that the remainder area have the fencing restored to prevent the animals from entering the operating right of way. To do this the appraiser needs to determine a reasonable amount of money to provide to the owner so that the owner or a fencing contractor can install the new fencing prior to the removal of the fencing affected by the project.

In deriving a fencing allowance, the appraiser needs to discuss fencing needs with the property owner and prepare a fencing specification sheet detailing the type, amount and quality of fencing required to enclose the remainder, and a time frame for completion of the work. The specifications should include the type and gauge of the wire, the type and spacing of posts to be used and the type and number of gates to be included. The appraiser needs to then secure one or more bids from qualified fencing contractors based on the fencing specification sheet and incorporate the bid into the appraisal as the allowance for fencing.

4.405 Signs Outdoor Advertising and Others

Except for off-premise signs, including outdoor advertising signs (See glossary for definition), signs situated on property to be acquired, including any signs which will overhang or encroach upon the state highway right of way, need to be appraised either by the realty appraiser or by a specialty appraiser, depending on the complexity of the assignment. For a discussion of the sign appraisal format see Sec. 4.615. The value of a sign is to be incorporated by the realty appraiser into the real estate appraisal to the extent of its contributory value to the real estate.

Off-premise advertising signs, including all of their component parts, are to be treated as personal property and moved under relocation procedures. See Sec. 6.860-6.875 for relocation benefits for outdoor advertising sign.

4.410 Trees and Crops

Trees growing within the acquisition area are part of the realty and need to be appraised for their contributory value to the land and should not be considered separately from the land itself. Trees growing within the existing right of way adjacent to the proposed right of way cannot be considered in determining compensation.

An appraisal involving growing crops shall be performed on the basis of the land value including the crops. If the acquisition occurs after harvesting, the appraisal must be adjusted to the current value of the land, excluding any crop value previously assigned.

Timberlands being appraised generally require a specialty report. (See Sec. 4.620).

4.415 Domestic Water Supplies

When a domestic water supply is situated within an acquisition area, or might be jeopardized by construction of the project, the Region Right of Way Manager shall request the Project Leader to have water quantity and quality tests performed. The test results provide a benchmark in determining the extent of the States liability if claims for water supply damage due to the project are filed against the State.

If a domestic water source is to be entirely or partially acquired, the Project Manager or designated agent should secure an estimate of the cost to provide a new comparable replacement well from a well drilling contractor. The real property appraiser must consider this cost estimate in light of depreciation or other relevant factors to arrive at an estimate of the contributory value of the water source being acquired. The appraiser must determine whether the loss of the water source causes any damages to the remainder, and if so, whether a cost-to-cure can be applied to mitigate damages. Examples of a cost-to-cure include drilling a new well if legally permissible, or connecting the remainder to an existing public water system. Generally the cost to replace the water system should not exceed the value of the system being acquired plus damages to the remainder attributable to the loss of the water system.

4.420 Septic Systems

When all or part of a septic system is situated within an acquisition area, an analysis similar to that for a domestic water supply may be done. The contributory value of the septic system should be estimated. This will require a contractor's estimate. Damages to the remainder property due to the loss of the system need to be analyzed, and a cost-to-cure applied if appropriate and permissible. Determining the feasibility of replacing the system requires coordination with the local public agency sanitarian.

4.425 Utilities

As a part of the appraisal process the Project Manager is to examine the provisions made in the construction plans for utility relocation. Because utilities are generally relocated as a part of a project, the Project Manager may direct the appraiser to assume that existing utilities will be available after the project is completed, and therefore they are not appropriate items for the appraiser to value.

However, in an entire acquisition containing a utility owned by the grantors, (such as a well or a wind powered generator) the appraiser must consider this facility as an improvement to be appraised for its contributory value to the land.

4.426 Mobile Homes

Mobile homes, with the exception of travel trailers, are generally considered real property by the Dept. of Transportation. However, when the land beneath the mobile home is not owned by the mobile home owner, such as in a mobile home park, and the mobile home owner pays a licensing fee and personal property taxes, the mobile home may be treated as personal property. Refer to Section 6.800 in the Relocation Section.

4.430 Damages

Although just compensation includes compensating a property owner for damages to the remainder resulting from the acquisition, there are many situations which adversely impact the remainder property for which no compensation can be allowed.

One example is a loss of value to the remainder when the loss is attributable to the exercise of police powers. Police powers involve the government's right to promote order, safety, health, and the general welfare of society within constitutional limits. This can directly affect property valuation by regulating or prohibiting certain uses of the property. The loss of value under

eminent domain is due to a transfer of ownership to the public, while the loss of value under police powers is due to regulation. Since no acquisition of property is involved under police powers, no compensation can be paid to owners for a loss of value. The exercise of police and eminent domain powers can occur concurrently and care must be taken to distinguish the effects of each. (See Section 4.450)

Damages to the remainder are divided into two classifications: compensable and non-compensable.

4.440 Compensable Damages

A loss in value of the remainder property is compensable if it is caused by or related to the taking of property or property rights, or the manner in which the public improvement is constructed, if it includes:

1. Dividing a property into two or more parts. This includes dividing buildings or other improvements on the property.
2. Reducing the remainder area into small parcels no longer having economic utility. (See Section 4.470)
3. Creating oddly shaped remainder areas having diminished value.
4. Creating a landlocked remainder.
5. The loss of reasonable access to the highway system.
6. Proximity of the highway to buildings in the after situation.
7. Change of grade or loss of view if the loss results in a decrease in market value.
8. The loss of off-street parking.
9. A loss in value because of a change in highest and best use.

If there is no loss in value, then no damage has occurred. Any loss in value must be supported and documented by market evidence in the appraisal.

4.445 Costs-to-Cure

A partial acquisition can leave a remainder property unusable or substantially impaired. However, often the adverse effects can be reasonably diminished or completely mitigated by specific modifications to the remainder property. A cost-to-cure is an estimate of those costs an owner would incur if all the necessary modifications were made. This often requires that a specialty report or contractor estimate or bid be prepared for consideration by the real property appraiser in the measurement of damages (See Sec. 4.625).

The decision to utilize a cost-to-cure to estimate damages to a remainder should be based on the

reasonableness of performing the cost-to-cure. Damages must be estimated prior to determining the cost-to-cure. If the cost-to-cure estimate is greater than the amount of damages created by the project, it is inappropriate for the cost-to-cure to be applied. A cost-to-cure may be used only to offset greater damages. In some situations a cost-to-cure will include replacement value for item(s) also valued in the part to be acquired, thus caution must be exercised to avoid double compensation. Also, the cost-to-cure must be limited so as not to provide betterment to the remainder (unless the enhancement would be due to zoning or building codes, etc.)

The cost-to-cure estimate is applicable only for measuring the extent of damages to the remainder. It is not to be applied if the cure is dependent upon actions taking place outside the control of the property owner. As an example, it is not appropriate to cure damages resulting from a deficiency in the size of a remainder by assuming the owner could acquire adjacent land.

Examples of situations in which costs-to-cure might be employed include:

1. Fencing is severed, jeopardizing its security function. Security can mean to restrain livestock, for example, or it can mean to protect inventory or avoid liability.
2. A building is severed.
3. Access to property or buildings is eliminated but can be restored by relocating the access. (See Secs. 4.480 and 4.481)
4. An improvement can be moved to mitigate damages to the remainder. It is not proper to consider relocation of structures to decrease proximity to the project.
5. A water supply or sewage system is acquired and can be replaced in some fashion.
6. A drain line can be installed to prevent flooding on the remainder.

4.450 Non-compensable Damages

A loss in value of the remainder property is non-compensable if it is caused by or related to:

1. Remote and speculative damages:
 - a. Any aesthetic or sentimental losses perceived by the owner.
 - b. Any damages caused by the acquisition and construction on the lands of others. The damages must be a result of an acquisition from the damaged property.

- c. Annoyances or inconveniences suffered by the public generally, such as an increase in noise, dust and fumes, or circuitry of travel.
2. Damages to business. The following factors generally cause increased cost to businesses but cannot be compensated for in the appraisal process:
 - a. Business losses during construction.
 - b. Loss of good will.
 - c. Expenses incurred in moving personal property to a replacement site.
 - d. Loss of trade, business, or future profits.
 - e. Increased costs in operating the business, except as it affects the market value of the real property.
 - f. Costs of plans and specifications for proposed improvements now obsolete due to the acquisition; also loss of prospective use of the property based upon those plans.
 - g. Damages arising out of an owner's inability to relocate into an acceptable substitute location.
 - h. Loss of profit from the sale of vacant land if it were subdivided. The appraiser cannot find higher damages by asserting the vacant land would be more valuable if subdivided, since it is speculative as to when and for how much the lots would be sold. The highest and best use of the larger parcel would consider the aggregate of the lots and not at the value of the sum of the components.
 - i. Inconvenience and expenses incident to the surrender of possession.
 3. Police powers. A loss in value to the subject property is non-compensable if, by the proper exercise of police powers, it is caused by:
 - a. Zoning regulations.
 - b. Changes in traffic patterns, such as the creation of one way streets; installing median barriers; establishing traffic lanes and restricting on-street parking; increasing or decreasing traffic volumes and regulating speeds; limiting left-turns, U-turns and crossovers; temporary and permanent diversions and rerouting of traffic, including the inconveniences resulting from circuitry of travel.
 4. Access restrictions. (See Section 4.480) A loss in value due to restriction of access is non-compensable if it is caused by or relates to:
 - a. Disallowing access directly to a newly located limited access highway.

- b. Not having access to a widened highway if there was no prior access.
- c. Access restrictions if access to the highway system is reasonable, including if access is provided by means of a frontage road.
- d. A loss of access if access is not allowed at each and every point along the highway, so long as reasonable access is provided.

4.455 Benefits

If the owner's remainder property increases in value as a result of the project, the owner has been benefited and compensation may be modified by offsetting the benefits against any damages previously determined by the appraiser. Not all benefits can be used to offset damages.

Benefits are divided into two categories, general and special. Only special benefits can be applied against damages.

4.460 General Benefits

An increase in value of the remainder property as a result of the project is a general benefit if the benefit accrues to the neighborhood or community at large, including those who do not abut on the new improvement. If a benefit is determined to be general, it cannot be used to offset damages to the remainder.

4.465 Special Benefits

An increase in value to the remainder property as a result of the project is a special benefit if it results from the remainders special relationship to the project and is not realized by the community as a whole.

The benefit may be a direct result of the acquisition, such as by the creation of additional frontage or changing a creek channel creating more usable land. The project could create special ingress and egress or establish access where none existed before. A change of grade could be a special benefit to the remainder if it increased the market value of the land.

If the remainder is provided with a higher and better use as a result of the project, this would most likely be viewed as a special benefit. The appraiser must determine that the higher and better use is special to the property and is not equally enjoyed by properties that do not abut or proximate to the project. If a property receives both general and special benefits, only the special benefits may be used to offset damages.

A special benefit to one tract of land abutting the project does not become general merely because a like benefit is enjoyed by many tracts that are contiguous or in near proximity to the project. The benefit may be special to all of the abutting or proximate remainder parcels.

In situations where the distinction between general and special benefits is difficult, the appraiser should seek the advice of the Project Manager and the Project Administration Manager for further direction.

4.470 Uneconomic Remnants

An uneconomic remnant is the remaining part of the subject property in which the owner is left with an interest that the State determines has little or no utility or value to the owner. If the acquisition of only a portion of property would leave the owner with an uneconomic remnant, the State shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. The determination of whether or not a remainder is considered an uneconomic remnant is made by the Review Appraiser. The State will not condemn for an uneconomic remnant.

4.480 Access Considerations

Under Oregon law, access to the state highway system is subject to ODOT's regulatory authority. Closures, restrictions, and relocations of accesses are done under this authority. Access rights may also be acquired under ODOT's eminent domain powers, but the rights acquired are still subject to ODOT's overriding authority to regulate access. Oregon courts have generally held that access control does not constitute a compensable taking under the Oregon Constitution, because of this regulatory authority.

Exceptions

Loss of access is compensable only when an existing reservation or grant of access is closed, or when a property is left with no reasonable access. Reasonable access for appraisal purposes is any access that allows some remaining economic use of the property, not necessarily the existing use or the existing highest and best use.

Project related access control

The Right of Way Project Manager instructs both staff and fee appraisers regarding the nature and degree of access control on a project. Appraisal instructions must include locations before and after the project of access reservations, permitted approaches, grandfathered approaches, and illegal approaches.

Non-project access control

A District Office may initiate access closures unrelated to a right of way project. Upon receipt of a notice of closure, the Region Right of Way Manager will determine whether there will be a taking of a compensable access right or the closure of an access for which a permit has been issued. A taking requires an appraisal. Closure of a permitted access requires an OAR Division 51 remedy analysis.

Appraising access rights for compensable access closures

The closure of an existing reservation or grant of access, or the loss of reasonable access to a property normally requires a before and after appraisal to analyze the impacts of the loss of access on the property. A thorough analysis of the before and after situations is required. The access characteristics both on the property and off the property must be considered in the before and after situations; this includes a review of the internal circulation and external accessibility.

Damages due to the access closure are compensable in these situations, and must be documented and/or explained. Special benefits must be measured.

A taking and damage appraisal may be appropriate in some situations, but concurrence of the Project Administration Unit Manager or Appraisal Reviewer will be needed before this format may be used. The taking and damage appraisal must employ the same thought processes as in a before and after appraisal.

Value finding appraisals and administrative determinations of value may be applicable in certain circumstances where it is obvious that no damages result from the loss of access. Appraisal Review concurrence is necessary before beginning a value finding or administrative determination on a file with compensable access control.

Appraisals with non-compensable access closures

An appraisal of property that does not involve closure of a reservation or grant of access or loss of reasonable access must recognize that damages due to access changes are not compensable. The appraiser will distinguish between compensable damages due to the taking and non-compensable damages resulting from the loss or control of access.

The appraiser must mentally separate the taking from the changes in access by determining what the effects of the changes would be if ODOT's regulatory authority were used prior to, and totally separate from, the project. Those effects are non-compensable. The appraiser would assume that the access changes have already been made, and the appraisal would measure the effect of the taking alone in valuing the property.

Factors other than access may require a before and after appraisal. Since the before and after format automatically measures damages due to access control along with all other damages, the appraiser must identify damages due to loss or change of access as non-compensable.

Taking and damage appraisals, value finding appraisals, and administrative determinations should neither address nor measure non-compensable damages.

"Access control only" files

Loss or change of access is non-compensable. No value can be attributed to access restrictions or changes in access in an appraisal, unless there is a closure of a reservation or grant of access or loss of reasonable access. Appraisers may not report a nominal value, or any other value for loss of access. This includes files that are "access control only".

If an access reservation is being closed, a Before and After appraisal should be completed to document any changes in value to the property. If the appraisal shows no loss in value, the appraiser should state the value of the access closure as "\$0". For statewide consistency, Appraisal Review will establish just compensation in these situations.

Closures of accesses are compensable only when an existing reservation or grant of access is closed, when a property is left with no reasonable access, or when a property is landlocked. Reasonable access for appraisal purposes is any access that allows some remaining economic use of the property, not necessarily the existing use or the existing highest and best use.

4.481 ACCESS REMEDIES UNDER OAR 734-051-0500 (SR 86)

Under OAR 734-051-500 closure of an access having an existing permit may result in the offer of an administrative remedy. If the Right of Way Section determines that such a remedy would address issues created by such closure which relate to real property value, utility and use, then a remedy may be considered. Regulatory closure of an access for

which a permit has not been issued is not eligible for a remedy under this provision. Offers of remedies are totally discretionary on the part of the Department and are not subject to a contested case appeal.

The process of determining a remedy is separate from the appraisal process for an acquisition. The remedy may be determined by the appraiser at the time the property appraisal is being completed, but neither the remedy, nor discussion of the remedy, will be part of the appraisal. The remedy is not part of the just compensation to be offered to the grantor.

Remedies are intended to mitigate out of pocket costs an owner may incur in reestablishing alternate access due to the loss of a legally permitted access. Remedies are intended to restore functional access to the property. They are not intended to compensate for damages to the remainder property, or to "make the property whole."

Remedies may be monetary and/or non-monetary, and are benefits to a property that which would address issues related to real property value, utility or uses.

They include the equivalent value of:

- Actual physical reconnection of an approach to the highway or some other public facility;
- Construction of public roads or other public facilities, including frontage or utility roads, city streets, alleys or county roads;
- Improvements or modifications to the real property served or intended to be served by the approach, including paving of parking, restriping of lanes or parking, relocation of other traffic barriers and other items that directly address the impact to the property of the closure or denial; and
- Improvements or modifications to highways or other public facilities, including medians or other traffic channelization, signing or signal installation.
- Remedies include any benefits derived by the property by virtue of highway improvements and highway modifications, whether or not related to the specific closure.
- Remedies will be limited to those necessary needed to serve existing uses or other uses reasonably allowed uses given the existing zoning of the property and other factors, including physical or geographical constraints.

Remedies do not include:

- Reimbursement for attorney fees;
- Relocation expenses;
- Lost profits;
- Lost opportunities; or
- Costs not specifically related to value, utility or use of the property itself.

Remedies will be based on cost estimates from private contractors (preferred method), or prepared by agents knowledgeable about typical costs.

Documentation of remedies is not required to be as extensive as for an appraisal, but must be sufficient to provide a reasonable basis for determining the remedy amount. A narrative explanation of the situation and the remedy will be sent to the Appraisal Unit for review. Remedies should not be reported on appraisal forms.

(NOTE: Costs related to administrative access remedies under OAR 731-051-500 are not eligible for federal reimbursement.)

4.500 APPRAISAL REPORTS

ODOT has standardized appraisal forms. The forms may be found in the "Guide to Appraising Real Property."

4.505 Definition of an Appraisal

The Uniform Act defines an appraisal as: "...a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information."

Appraisal reports should contain, as a minimum, the following elements:

1. The purpose of the appraisal including a statement of value to be estimated and the rights or interests being appraised.
2. Identification of the property and its ownership, including at least a 5-year delineation of title.
3. A statement of appropriate contingent and limiting conditions, if any.
4. An adequate description of the neighborhood, the property, the portion of the property or interest therein being acquired, and the remainder(s) if any; also, include discussion of the comprehensive plan and zoning requirements.

5. Photographs of the subject property including all principal above ground improvements or unusual features affecting the value of the property to be acquired or damaged.
6. An identification or listing of the buildings, structures, and other improvements on the land as well as the fixtures which are determined to be a part of the real property to be acquired.
7. An estimate of fair market value for or resulting from the acquisition. In the case of a partial acquisition, where appropriate, a reasonable allocation of the estimate of fair market value for the real property to be acquired and for damages and/or special benefits to remaining real property.
8. The data and analyses or reference thereto to explain, substantiate, and thereby document the estimate of fair market value.
9. The effective date of the appraisal, including the date of value (usually the date of the last inspection) and the date the report is written (completed).
10. The certification, signature, and date of signature of the appraiser.
11. Other descriptive material (maps, charts, plans, photographs).
12. The Federal-aid project number and parcel identification.
13. A statement of known and/or observed encumbrances, if any.

Additional requirements and guidelines for appraisals on federally funded projects are contained in applicable portions of the Code of Federal Regulations.

4.510 Property Inspection

Staff or fee appraisers must provide the owner or a designated representative an opportunity to accompany the appraiser during the inspection of the property being appraised. The appraiser's (both staff and fee) contact with the owner or representative must be documented in accordance with ORS 35.346 and the "Guide to Appraising Real Property." (See Section 4.140.)

4.515 Accurate Information

An appraiser must attempt to obtain current and accurate data regarding the property to be appraised, including title, site, improvement, and highest and best use information:

1. Staking: Where staking of the proposed right of way is necessary for a proper evaluation of an acquisition, the appraiser should ask the Project

Manager to request the Project Leader to have the staking done.

2. Changes In Ownership: An appraiser may discover that ownership's shown on the right of way map are incorrect. It is the appraiser's responsibility to notify the Project Manager in such cases so that new descriptions and/or title information may be obtained. Requests for new descriptions are sent in writing to the appropriate Region Description writers. The new title information should be sent to the Title and Closing Specialist in the Right of Way Operations Unit and should be accompanied by copies of documents showing the change in ownership.

4.520 Acceptable Formats

All appraisal reports must be written in compliance with the procedures found in the Right of Way Section's "Guide to Appraising Real Property." The level of documentation required and the format of acceptable appraisals vary by the complexity and scale of the appraisal problem. The Project Manager must approve the choice of format from the following:

4.525 Minimum Payment Appraisal for Local Public Agencies

This form is used only for acquisitions by those Local Public Agencies which are unable to utilize the "Appraisal Waiver Valuation (a.k.a. Administrative Determination of Just Compensation)" process as outlined in Section 4.545. When the value of the property to be acquired is estimated to be \$2,500 or less, the appraisal may be prepared on the Minimum Payment Appraisal Form 734-3960. However, the minimum payment cannot be less than \$350. (See 4.145, see also 4.550)

After unit values have been established for the project area by a sales study and/or appraisals of more significant files, an appraiser shall be assigned to appraise fair market value for the low value files. Each opinion shall be based upon the developed market data and shall be submitted on Form 734-3960. Negotiations may be conducted based upon the minimum payment appraisal after the appraisal has been reviewed.

Should the appraiser's final conclusion of value exceed the \$2500 limitation, a value finding or standard form appraisal must be prepared and submitted for review.

4.530 Value Finding Appraisal

The Value Finding Appraisal Report #15 may be used for the valuation of uncomplicated acquisitions.

Uncomplicated acquisitions are those with no major improvements either within or materially affected by the acquisition. Damages, if any, must be curable by nominal cost-to-cure measures.

Comparable sales data, improvement data, and cost-to-cure support must be attached to the appraisal. However, when land unit values have been established for a project by a reviewed project data book or sales study and/or reviewed appraisals of comparable properties, these may be referred to instead of attached.

4.540 Appraisal Forms - Taking and Damages or Before and After

Refer to the "Guide to Appraising Real Property" for selection of the appropriate forms for the appraisal assignment. See Sections 4.340 and 4.345.

4.545 Appraisal Waiver Valuation (a.k.a. Administrative Determination of Just Compensation)

As an alternative to securing an appraisal or direct donation (described in Section 5.320), the State may administratively establish just compensation to acquire right of way via an administrative valuation process. This process is allowed under 49CFR Part B 24.102(c)(2) and under ORS 35.346(2). It can only be completed by and approved by department staff that are knowledgeable in the real property valuation process and must comply with the following:

Standards

- The Appraisal Waiver Valuation process (a.k.a. Administrative Determination of Just Compensation) is to be used only for uncomplicated takings and can not involve complex appraisal problems such as potential damages that require complex analysis or unique improvements in the taking area requiring special analysis. Decisions on complexity of appraisal issues and whether or not to use the Appraisal Waiver Valuation process are made by the Region Right of Way Manager, or their designee. The person making this decision must be qualified and competent in judging the project's impacts on real property and for making fair market value estimates of the real property to be acquired.
- The process can be used by ODOT up to \$20,000. Use of this process must follow the

conditions set forth in these standards. Waiver valuations above \$10,000 must be developed in compliance with regulation, 49 CFR Part B, 24.102(c)(2), whereby the appraisal waiver valuation process may be used so long as the agency has the property owner's approval. The valuation report must include a signed statement indicating approval from the property owner that a Waiver Valuation can be prepared by the Agency to establish Just Compensation.

All Waiver Valuations may be prepared by a Senior Right of Way Agent or delegated to a Right of Way Agent who is experienced in appraisal processes. Approval of the estimate of fair market value and determination of Just Compensation will be by the Region Right of Way Manager, or designee.

The Waiver Valuation concludes with an estimate of market value for the acquisition. As a part of the approval, the Manager or designee makes the final determination of just compensation for the agency. If the Waiver Valuation concludes with a market value less than the minimum payment level identified in 4.145, the Manager will establish just compensation at the minimum payment level as a part of the approval.

In unusual circumstances, such as small projects in isolated locations, with prior concurrence of the Region Right of Way Manager, an offer may be extended prior to the written approval and signature of the Region Right of Way Manager or their designated agent.

- 15-Day Notice – Prior to inspecting the property, the agent should provide not less than 15 days' notice to the owner of the planned property inspection. The owner and/or designated representatives should be given the opportunity to accompany the agent on the inspection of the property. While this notice and inspection offer is not a legal requirement for completion of a Waiver Valuation, the practice helps ensure a thorough inspection of the acquisition area and facilitates the negotiations with the owner. In circumstances where time is of the essence, the Region Right of Way Manager may decide to waive the 15-day notice requirement.
- Inspection – Any Agent assigned to do an Appraisal Waiver Valuation will view the property prior to its completion. Physical inspection, while not required, is encouraged and should only be completed with the owner's permission.
- Appraisal Waiver Valuation report – The report will be completed using Form 734-2216 and will include the following:

- *Clear, concise language, understandable to the owner.*
- *Copies of the applicable section of the R/W map and the exhibit A.*
- *Photos of the acquisition area and of any improvements acquired or affected.*
- *Market information should be referenced for all opinions of value.*
Market information includes, but is not limited to, sales data, established values, cost factor book data, informed opinions, listings, and verified sales.
- *Signature of the agent completing the compensation determination and of the Region Right of Way Manager or designated agent approving the report.*

- A copy of the Waiver Valuation will accompany the acquisition offer. Review by the Region Right of Way Manager as required in these Standards must be completed prior to forwarding to the owner.
- In addition to using the Appraisal Waiver Valuation up to \$20,000, certain “cost to cure” type allowances may be made for land improvement features impacted by the project that of necessity must be replaced. These allowances would be for items typically identified in the project design as requiring re-establishment, either as part of project construction or the Right of Way agreement with the property owner. The allowances should be based on bids provided by qualified contractors and approved by the Region Right of Way Manager. Some examples of allowances of this type are for re-establishment of fencing to contain livestock or re-establishment of drainage or irrigation facilities. These “cost-to-cure” type allowances are not included in the \$20,000 limit. Other types of specialty reports—such as signs, timber, fixtures, and equipment—must be included in the \$20,000 limit as they are part of the taking and would not of necessity be replaced.
- No one making or approving a Waiver Valuation shall have any interest, direct or indirect, in the real property being valued for the Agency that would in any way conflict with the preparation or review of the valuation.

Levels of Documentation

All pertinent documentation should be retained in the file or be referenced when contained in other ODOT records. The level of documentation should be

consistent with the valuation problem. It is important not to over work a valuation problem and lose the cost savings and efficiency benefits of using the form, but it is equally important that we do not establish an arbitrary estimate of value. If the Waiver Valuation is part of a larger project, consistency with the valuations of other properties on the project must be maintained.

Accuracy and consistency need to be maintained on all Waiver Valuations. They can only be done once values for the project are known, or once property values of similar properties in the area in question have been established. Commitment to maintaining a high work quality standard and assuring fair and equitable treatment of all property owners and displacees in conformance with the Uniform Act is a requirement of each Appraisal Waiver Valuation.

Approval/Review

- Any review or approval of the Appraisal Waiver Valuation will include a check for consistency and uniformity; any discrepancies are to be brought to the Region Right of Way Manager’s attention and resolved.
- Prior to signing, the Region Right of Way Manager or designated Agent will check the math in the report, and review the information used to support the conclusions of value. Any need to re-inspect the subject or verify supporting data is left to the discretion of the reviewer.
- The Manager or designated Agent will send a copy of the approved report to the Appraisal Unit in Salem, and will record the appropriate value information in RAIN.
- Only Appraisal Waiver Valuations which are to be the bases of value for a condemnation filing require a review by the Appraisal Review Unit.

Use in Condemnation

Waiver Valuations submitted for condemnation will be forwarded through Appraisal Review to check for compliance with the Appraisal Waiver Valuation standards. The Waiver Valuation and the documentation used in its preparation will be reviewed for consistency, compliance with these Standards and to assess the appropriateness of the Just Compensation value that was determined. A request by the Region Right of Way Manager may be made for a review of the Waiver Valuation any time prior to the condemnation filing. Additional market information may be requested by the Reviewer to support the opinion of value by the valuator.

Regions should be prepared to provide appraisals or award appraisal contracts once condemnations have been filed. Appraisals will normally be required for trial preparation.

Annual Process Review

At the end of each calendar year, the Right of Way Project Administration Manager will complete a review of the Appraisal Waiver Valuation process for the year. This will include a review of the files where condemnation filings were made on Waiver Valuations. This report will be made at management team meeting with recommendations for improvements

4.547 Appraisal Waiver Valuation - Use of Consultants

Consultants hired by the State or by Local Agencies cannot utilize the Appraisal Waiver Valuation process. Current state appraisal licensing law contains provisions that effectively preclude anyone other than agency staff from doing an Appraisal Waiver Valuation.

4.550 Appraisal Waiver Valuation Process for Local Public Agencies

Local Public Agencies that have staff experienced in eminent domain appraisal may be authorized to use the Appraisal Waiver Valuation up to \$10,000. Use of this process must follow the conditions set forth in the standards outlined in the Right of Way manual, specifically Section 4.545. (See 4.525)

Any request by a Local Public Agency for use of the Appraisal Waiver Valuation must be made in writing to the Right of Way Project Administration Manager.

4.555 Number of Appraisals Required

1. Real Property Appraisals

At least one appraisal report or Administrative Determination of Just Compensation for each property to be acquired must be secured before negotiations are begun. On files with high market value or involving complex or controversial issues, two appraisals may be secured.

2. Specialty Reports

When a separate valuation of fixtures, equipment or other specialty items is necessary, at least one specialty report is required. More than one

appraisal can be secured on files with high market value or involving complex or controversial issues.

3. Additional Appraisals and Specialty Reports

The need for additional appraisals subsequent to the initial appraisal review shall be discussed between the Project Manager and the Appraisal Reviewer. If an additional appraisal is necessary, a written request stating the reasoning shall be submitted to the Region Right of Way Manager for approval.

4. Obtaining A New Appraisal Instead Of A Revision

If a required appraisal revision is so great as to constitute a new appraisal, or if the original appraisal contained deficiencies or omissions and could not be corrected, the Project Manager should obtain the Region Right of Way Manager's approval to solicit proposals for a new appraisal. If the original appraisal could not be corrected, that appraiser should be excluded from writing a new appraisal.

4.560 Appraisal Assignments and Specifications

The Project Manager is to complete an Appraisal Specifications Form 734-3746 for staff and fee appraisers for each appraisal assignment so that they will be aware of the appraisal requirements. The assignment should also include a deadline for turning in a completed report. Paragraph (11) of the Appraisal Specifications form can be modified to include a due date for staff appraisers; for fee appraisers the due date is stated in the Appraisal File Register Form 734-2033. The Project Manager must also enter the appraisal assignment information in RAIN.

4.565 Property Management Appraisals

All appraisals of ODOT property declared surplus to ODOT's needs shall follow normal appraisal techniques and meet the standards prescribed in Chapter 4 of this Manual. Surplus property may be appraised for three different valuations. These valuations are the Fair Market Value, the Assemblage Value and the Enhancement Value. Surplus property will be appraised for two values, the Fair Market Value and the Assemblage Value. The Enhancement Value will be appraised for when appropriate.

1. Fair Market Value. This reflects a value for the surplus property as if it stood alone in the market place often by using comparable sales.

2. Assemblage Value. This value is determined by using an “across the fence” approach. This method requires determining the value of the adjacent property and how the assembling of the properties affects the value of the surplus property.

Enhancement value. Enhancement value is the additional property value a State owned property would provide to an adjacent property if both properties were assembled. This increase in value of the adjacent property is the enhancement value for the State owned property.

This value is determined through the use of the “Before and After” appraisal approach, assuming both properties have been assembled.

4.600 Specialty Reports

After a region receives authorization from the Right of Way Section Programming Coordinator to appraise property that is needed for a project, the Project Manager should view, with the assigned Review Appraiser, the properties needed to determine what types of specialty reports will be required. These may include fixtures and equipment, sign, timber, cost-to-cure reports, or hazardous waste reports. Upon their review, these specialty reports are transmitted to the real property appraiser(s) for inclusion, as appropriate, into the appraisal.

It must be noted that if any appraisal relies in any way on a written report, opinion or estimate of any other person(s), a copy of the written report, opinion or estimate must be provided with the appraisal. If any appraisal provided relies in any way on an unwritten report, opinion or estimate of any other person(s), the party providing the appraisal must also provide the name and address of the person(s) who provided the unwritten report, opinion or estimate with the appraisal. (ORS 35.346 as amended)

4.610 Fixture and Equipment Reports

When the project manager determines a fixture and equipment classification/inventory report is needed, the Right of Way Project Manager or an assigned agent contacts and meets with the property owner(s) to determine the type of operation, its products and services. The agent inquires whether the business will relocate after the acquisition and obtains copies of leases or rental agreements. The Right of Way Project Manager then assigns an agent or contracts with a qualified specialist to prepare a fixture and equipment classification/inventory report. The report shall include an inventory list, photo record and classification letter.

Once the report is prepared, the Project Manager shall forward it to the Appraisal Reviewer. After the Region has received a response from the Appraisal Reviewer, the report will be provided to the real property appraiser for consideration. Refer to the “Guide to Appraising Real Property”, section 5, for specific procedures and reference to the classification letter. Refer to Sections 4.160 and 4.395 and to the “Guide to Appraising Real Property – Section 5” for additional information. Refer to Exhibit A at the end of this chapter for an example of the Fixture & Equipment Report.

4.615 Sign Reports

The Project Manager assigns an agent or contracts with a private sign expert to prepare sign appraisal reports when they are needed.

A sign is generally appraised by the cost approach to determine the depreciated reproduction or replacement cost of the sign. However, the real property appraiser should carefully analyze the contributory value of an on-premise sign when it no longer is relevant to the highest and best use of the real property being appraised.

These reports are prepared on the Sign Appraisal Report Form #19 and must contain sufficient photos to document the type and condition of the sign(s). The report must be presented to the appraiser for analysis of contributory value. See the “Guide to Appraising Real Property” for additional information.

4.620 Timber Reports

When a property is improved with a timber stand, the Project Manager must determine the need for and obtain a specialty report from an agent or a private contractor to estimate the value of the timber. The real property appraiser then estimates the contribution of the timber value to the entire property. This may be the market value of the timber, depending upon the highest and best use of the entire property. The concluded value must consider all costs involved in order to determine a net value. The need for the report is determined by the highest and best use of the property. Contributory value of trees on properties with a highest and best use other than timber land will be determined by market data.

Also, the Project Manager might obtain a timber appraisal when the acquisition creates landlocked parcels of reforestation land. The real property appraiser can use the timber appraisal in considering damages to the landlocked remainder and whether to apply a cost-to-cure of building an access road into landlocked parcels to mitigate damages.

A timber appraisal also might be used to estimate an amount to be realized from the sale of timber which could be used to offset costs of clearing the right of way.

A timber appraisal shall contain the following information as a minimum:

1. The merchantable timber categorized into types of trees with a brief description of the condition of the timber, the quantities in thousands of board feet of the various types of trees, a value per unit, a subtotal value of each type of tree, and a total value of the timber stand. Logging costs are to be deducted to arrive at the net value of the timber.
2. A description of the understory and reproduction found on the property, with its value.
3. A description of the land, with comments concerning its productivity for forest products.

4.625 Cost-to-Cure Reports

The Project Manager may need to obtain a variety of reports estimating the cost to effect cures to damages which would be caused by the acquisition of land and/or improvements or by the proposed construction. These reports may be assigned to qualified agents or contracted with specialists, such as architects, building contractors, landscapers or landscape architects, appraisers, engineers, sanitarians, refrigeration contractors, etc. These estimates must be in sufficient detail to enable the appraiser and reviewer to make meaningful comparisons among the reports. Sometimes it may be necessary to have plans or sketches and specifications prepared so that the cost-to-cure reports are made on the same basis.

4.626 Hazardous Waste

Please refer to ODOT Policy ENV 16-01 and Procedure ENV 16-02.

The evidence of contaminants or hazardous waste on properties to be acquired will require testing and an attempt to avoid the property. If the property cannot be avoided, the Project Manager, with the Review Appraiser, will determine one of the following courses of action:

- a. If the owner is willing and able to perform, or contract, the site cleanup in a timely manner and other issues will not lead to condemnation, the Project Manager will obtain a Hazardous Materials Agreement signed by the owner and the parcel will be appraised as a clean site.

- b. If the owner is uncertain or noncommittal about cleaning the site, or the project timeline is too short to accommodate a cleanup, Level 2 investigation shall be requested. The property will be appraised as both clean and contaminated. The offer will be for the value as contaminated. Also, the offer as clean, along with the associated responsibilities, will be presented.
- c. If the owner is unable or unwilling to perform the cleanup and/or there are other issues which will lead the acquisition to condemnation, the Project Manager will obtain a Level 2 investigation and the property will be appraised only as contaminated.

Refer to "Guide to Appraising Real Property" Section 2, paragraph 65.

4.700 APPRAISAL REVIEW

Applicable laws, regulations and Section policy require that all appraisals and specialty reports be reviewed prior to the initiation of negotiations. The Right of Way Project Administration Unit maintains a qualified staff of Reviewing Appraisers who do most of these reviews. The Right of Way Manager or Project Administration Manager may give the Region Right of Way Manager or Project Manager the authority to review specific appraisals in the field if workload or manpower limitations preclude review by Appraisal Review staff.

4.710 Review Objectives

The Review Appraiser considers all factors pertinent to estimating just compensation for a property. The Reviewer examines an appraisal to assure that it:

1. Is clearly reasoned, completely documented, mathematically correct and accurate, free from errors or omissions, and in accordance with the Section's appraisal requirements.
2. Follows acceptable appraisal techniques and is based on correct assumptions as to facts, law and the nature of the proposed construction.
3. Contains or refers to information which explains and substantiates the estimate of fair market value, and where appropriate, a separate allocation for damages to remaining property.
4. Identifies or lists buildings, structures, improvements and the fixtures which were considered part of the real property.
5. Is consistent with the range of values reviewed for other properties in the area to assure uniform and equitable treatment.

4.720 Review Procedures

Review procedures are briefly outlined in Section 4.220, the Review Appraiser's Responsibilities.

The Appraisal Reviewer must document, by memos to the file or in the appraisal review, all efforts made to have appraisers correct deficiencies in their reports. The Reviewer must make a reasonable effort to reconcile substantial differences of value opinion when considering two or more appraisals of a property. If neither appraisal is acceptable, or if it is not possible to reconcile divergent views, the Reviewer may make an independent finding of value, but must support it with documented evidence. If this is not feasible, the Reviewer should request authority from the Project Administration Manager for the Project Manager to secure another appraisal.

Any new or revised appraisal, including one provided by a property owner, must also be reviewed. In addition, a new review may be made if the Appraisal Reviewer believes there was an error in judgment or analysis in a previous review, or if new information becomes available. To the greatest extent possible, the Reviewer is expected to remain open-minded and objective in estimating just compensation.

4.730 Review of Specialty Appraisals

Specialty appraisals, such as those valuing fixtures or costs-to-cure may be reviewed by the Review Appraiser before the Project Manager submits them to the appraiser for incorporation into the real property appraisal. Reviewing specialty reports is similar to reviewing the real property appraisals. The reviewer examines the report to determine whether it complies with federal and state appraisal guidelines; follows accepted principles and techniques for valuing the subject of the report; explains and documents fully the conclusions of the specialist; and provides an estimate of compensation after consideration of compensable and non-compensable items. In the cases where the specialty report is not reviewed by the Review Appraiser, the Project Manager will provide the specialty report to the real property appraiser to be included in the real property appraisal. The specialty report will then be reviewed in conjunction with real property appraisal.

It is the responsibility of the Project Manager to forward a copy of the classification letter for fixture and equipment appraisals to the Project Administration Unit for review of the categories before providing the report to the real property appraiser. Once the categories are reviewed the entire specialty report can be provided to the real property appraiser.

4.740 Appraisal Review Form 734-3753

The Appraisal Reviewer records the review findings and estimate of just compensation on the Appraisal Review Sheet Form 734-3753. If substantial differences exist between appraisals of a property the reviewer must state how they were reconciled, the reasons for accepting one opinion over another and should document the decision with any pertinent data.

If the Appraisal Reviewer makes an independent finding of value, different from any appraisal, this estimate of just compensation must also be allocated as required on the review form. The Reviewer must also cite information, which supports this independent finding.

4.750 Condemnation Appraisal Review Process

Before the Final Offer Letter is delivered to the property owner on a file recommended for condemnation, the Project Administration Manager must re-examine the appraisal for completeness and accuracy. This includes determining whether any issues developed during the negotiation period would require the appraiser to update the appraisal, or whether market conditions have remained stable so that the appraisal is not obsolete.

The Manager should also check to see that the appraisal is based on the latest legal description.

If the Project Administration Manager finds a problem with the appraisal, the Region Right of Way Manager is contacted so that an updated appraisal can be obtained, and a decision is made with Right of Way Administration whether to delay the Letter of Offer until the revision is obtained and reviewed

If the appraisal is acceptable, the Project Administration Manager recommends an amount for the Letter of Offer on the R/C form and forwards the file to the Right of Way Operations Manager for further processing.

CHAPTER 4
EXHIBIT A
Fixture & Equipment Report

TO:

FROM:

Right of Way Agent

SUBJECT: FIXTURE & EQUIPMENT REPORT

File No.:

Section:

Highway:

County:

For the purpose of establishing the property basis to be used by the real estate appraisers in estimating just compensation, the subject property has been inspected and pictures taken of those items which are not normally found in real property and/or which are peculiar to the specific operation conducted upon subject property.

Based upon the manner of annexation of attachment to the realty, the adaptation of the item to the realty and the apparent intention at the time of annexation or attachment, preliminary determinations are set forth on the following pages.

- I. The following items are so attached as to be considered part of the REAL PROPERTY itself, and while of a nature somewhat peculiar to subject property, they would normally be included in the values as found by the real estate appraiser. The real estate appraiser should adjust the comparable sales data to reflect the contributory value of these items.

STATE I.D.

ITEM

- II. The following items are considered to be FIXTURES due to:
- a. Method of annexation or attachment to the real property.
 - b. It is necessary and adapted to the primary use of the realty.
 - c. The apparent intention at the time of annexation or attachment was to make the item a permanent part of the realty.

STATE I.D. **ITEM**

III. The following items are classified as PERSONAL PROPERTY.

These items may in no manner be attached to the real property or they may be attached in such a manner that they can be removed without a material loss of value to either the real property or the item.

They may be bolted, connected by pipes to service connections, plugged into electrical outlets or similarly fastened to the real property. They can be removed by uncoupling, unplugging, or otherwise disconnected with no material loss of value to the item or to the real property to which they are attached, nor are they an integral part of the function to which the realty is devoted without which all or part of the remaining fixtures could not be used to perform this function. They are not stand-by parts or attachments for any equipment which has been construed to be a part of the real property.

<u>STATE I.D.</u>	<u>ITEM</u>
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Note:

<u>STATE I.D.</u>	<u>DESCRIPTION</u>	<u>COST NEW</u>	<u>PRESENT VALUE</u>	<u>SALVAGE VALUE</u>
01		\$	\$	\$
02.		\$	\$	\$
03.		\$	\$	\$
04.		\$	\$	\$

NOTE: Data sources for the Fixtures & Equipment evaluation included the following:

- 1.
- 2.
- 3.

State ID# _____
ITEM _____
Manner of Attachment: _____
Describe bldg. modification to
accommodate item: _____
Other Connections: plumbing, venting,
 drains, special wiring
Can item be removed without material
damage to the real property or item? yes no
Installed by _____
Owned by _____
If removed, is the item readily
adaptable to other uses? yes no
Would the item have little value out-
side the context of its current use? yes no
Without this item would the utility of
other fixtures or the use of the
realty be significantly impaired yes no
Is the item permanently devoted to the
activity conducted on the property yes no
Is the item specially designed to fit
the location? yes no
Does it appear that the item was
intended to remain until its useful-
ness or that of the realty has passed yes
no
Classification: fixture,
 personal property, realty.

State ID# _____
ITEM _____
Manner of Attachment: _____
Describe bldg. modification to
accommodate item: _____
Other Connections: plumbing, venting,
 drains, special wiring
Can item be removed without material
damage to the real property or item? yes no
Installed by _____
Owned by _____
If removed, is the item readily
adaptable to other uses? yes no
Would the item have little value out-
side the context of its current use? yes no
Without this item would the utility of
other fixtures or the use of the
realty be significantly impaired yes no
Is the item permanently devoted to the
activity conducted on the property yes no
Is the item specially designed to fit
the location? yes no
Does it appear that the item was
intended to remain until its useful-
ness or that of the realty has passed yes
no
Classification: fixture,
 personal property, realty.

State ID# _____
ITEM _____
Manner of Attachment: _____
Describe bldg. modification to
accommodate item: _____
Other Connections: plumbing, venting,
 drains, special wiring
Can item be removed without material
damage to the real property or item? yes no
Installed by _____
Owned by _____
If removed, is the item readily
adaptable to other uses? yes no
Would the item have little value out-
side the context of its current use? yes no
Without this item would the utility of
other fixtures or the use of the
realty be significantly impaired yes no
Is the item permanently devoted to the
activity conducted on the property yes no
Is the item specially designed to fit
the location? yes no
Does it appear that the item was
intended to remain until its useful-
ness or that of the realty has passed yes
no
Classification: fixture,
 personal property, realty.

**CHAPTER 4
EXHIBIT B
BEFORE & AFTER APPRAISAL PROCESS FLOW CHART**

1	<u>Value of the Whole Before the Acquisition:</u>		\$
	• Land:	\$	
	• Improvements:	\$	
2	<u>Value of Part Acquired As Part of the Whole:</u>		\$
	• Land:	\$	
	• Improvements	\$	
3	<u>Value of the Remainder As Part of the Whole:</u> (1 minus 2)		\$
	• Land:	\$	
	• Improvements:	\$	
4	<u>Value of the Remainder After the Acquisition Disregarding Special Benefits:</u>		\$
	• Land:	\$	
	• Improvements	\$	
5	<u>Severance Damages:</u> (3 minus 4)		\$
	• Land:	\$	
	• Improvements:	\$	
6	<u>Value of the Remainder After the Acquisition and Considering Special Benefits:</u>		\$
7	<u>Special Benefits</u> (6 minus 4)		\$
	• Land:	\$	
	• Improvements:	\$	
8	<u>Net Damages or Net Special Benefits:</u> (5 minus 7) <i>Note: cannot be less than -0-</i>		\$
9	Total Just Compensation:		\$