

# CONDEMNATION AND ALTERNATE DISPUTE RESOLUTION

## CHAPTER 8

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# CONDEMNATION AND ALTERNATE DISPUTE RESOLUTION

## 8.100 INTRODUCTION

Eminent domain is the right of a government to appropriate private property for public use. Article 1, Section 18 of the Oregon Constitution provides, in part, that "Private property shall not be taken for public use ...without just compensation..." The Oregon Legislature has delegated authority to the Transportation Commission to condemn private property needed for airports, highways, and parks.

When it is not possible to acquire necessary property rights through negotiation, the Condemnation Specialist works in cooperation with other units to secure the property. Statutory condemnation procedure requires a judicial determination of the just compensation to be paid, offering property owners a trial before a jury. The court case is closed by a legal decision called a Final Judgment, which has the same effect as a deed and vests title in the condemning agency.

## 8.110 POLICIES

1. The Condemnation process shall be carried out in conformance to the Uniform Act and other applicable federal and state laws and regulations.

2. The Right of Way Section shall not advance the time of condemnation, nor defer negotiations or the deposit of funds into court for the use of an owner, nor take any other action coercive in nature to compel an agreement on the price to be paid for a property.

3. No owner shall be required to surrender possession of real property until ODOT has paid the agreed purchase price or has deposited into court, for the benefit of the owner, an amount not less than the Department's reviewed fair market value of the property.

4. The Right of Way Section and Trial Division have agreed that:

*a. The assigned trial attorney may grant opposing counsel no more than one extension of time of no more than 30 days within which to file a response to pleadings, without the Chief Trial Counsel's consent.*

*b. All condemnation settlements must have prior approval of both the Chief Trial Counsel and the Right of Way Operations Manager.*

c. Retaining of any additional appraiser or other expert witness is subject to the approval of the Chief Trial Counsel.

d. The Chief Trial Counsel is responsible to ensure the cost effectiveness of legal fees and costs. Each file will be documented regarding the hiring of witnesses, the assignment given to witnesses, and the precautions taken to avoid open-ended charges.

## 8.200 RESPONSIBILITIES

### 8.210 RIGHT OF WAY OPERATIONS MANAGER

The Right of Way Operations Manager is appointed by the Right of Way Manager and is delegated from the Manager the lead role in the Condemnation function. In Condemnation matters, it is the responsibility of the Operations Manager to:

1. Assist the Administration in any matters relating to Condemnation;
2. Provide Departmental leadership to the DOJ Trial Attorneys in all condemnation matters;
3. Provide and distribute Condemnation policies and procedural instructions, forms and other materials to other Right of Way Section and Region Staff involved in the Condemnation Process;
4. In cooperation with the DOJ/ODOT liaison and DOJ Trial Attorneys, review and authorize Condemnation settlement offers made by the Department and review and approve settlement offers received from owners' attorneys;
5. Review and approve DOJ Condemnation expenditures;
6. Supervise and provide needed support for all Operations Unit staff performing Condemnation functions.

### **8.220 RIGHT OF WAY DOJ/ODOT LIAISON**

The DOJ/ODOT Liaison is a Senior Right of Way Agent in the Right of Way Operations Unit who reports to the Operations Manager. The DOJ/ODOT Liaison has the following responsibilities:

1. Act as the primary day to day ODOT contact for the DOJ Trial Division regarding Condemnation files;
2. Take the lead role for the Right of Way Section on all Condemnation files from the time the RC (Recommendation for Condemnation) packets are received from the Regions;
3. Attempt further settlement contacts with the property owners and their attorneys, where feasible, prior to the Department's filing a Condemnation Complaint in Court;
4. Provide all needed assistance to the DOJ Condemnation Attorneys on Condemnation files;
5. Keep the Operations Manager up to date on all Condemnation files;
6. Attend pre-settlement and settlement hearings and other court functions as needed by DOJ and by the Operations Manager

### **8.230 PROGRAM SUPPORT UNIT MANAGER**

The Program Support Unit Manager reports to the Operations Manager, administers and oversees all the program areas within the Program Support Unit, a part of the Operations Unit, and supervises the Unit staff. In Condemnation matters, the responsibilities of this position include the following:

1. Respond to technical issues regarding title, payments, and condemnation actions;
2. Make decisions about what encumbrances need to be cleared before the taking of real property;
3. Schedule and assign work, provide final review of work products;
4. Supervise and train Unit staff involved in Condemnation support activities;
5. Assist DOJ and the Operations Manager in Condemnation matters as needed.

### **8.240 CONDEMNATION SPECIALIST**

The Condemnation Specialist is a member of the Program Support Unit whose responsibilities include:

1. Prepare all documents necessary to carry out the Condemnation process;

2. File Condemnation Complaints and other documents with the Courts as requested by DOJ;
3. Make deposits into Court as well as final judgment payments;
4. Review R/C packets sent in by the Regions for completeness, accuracy and compliance with statutory requirements, and, request necessary changes or corrections;
5. Assist the DOJ Trial Attorneys and the Operations Manager in Condemnation matters as needed;
6. Distribute copies of trial and settlement reports;
7. Enter and maintain all pertinent Condemnation data into RAIN database.

### **8.250 TITLE/CLOSING SPECIALIST**

The Title/Closing Specialist reports to the Program Support Unit Manager and has responsibility for all title-related activities on Condemnation files. This includes:

1. Order Supplemental Title Reports (STRs) to insure there have been no changes since the previous report;
2. Review Preliminary Title Reports (PTRs) and STRs, RC forms, copies of Easements;
3. Prepare Condemnation Title Report which lists defendants for files in Condemnation;
4. Order a Contiguous Property Report if necessary;
5. Serve as a Title resource to Regions and to other Operations Unit Condemnation staff.
6. Requests fund withdrawal from Court and dismissal of cases filed for condemnation and subsequently settled by Region, Alternate Dispute Resolution (ADR) or the DOJ/ODOT Liaison.

### **8.260 RIGHT OF WAY PROJECT ADMINISTRATION MANAGER**

The Project Administration Manager, as the head of the Appraisal Review function, does a special review for condemnation purposes and recommends the amount for the Final Offer Letter and for the Complaint.

### **8.270 RIGHT OF WAY CONSULTANTS**

On a given project, Right of Way Consultants may be used to perform some or all of the property acquisition and resulting initiation of Condemnation functions performed by Right of Way Agents and/or Right of Way Project Managers and discussed in this chapter. The extent of consultant use and level of

responsibility will be detailed in the consultant contract. When consultants are used, they are expected to follow the policies and procedures detailed in this chapter for the particular functions they are performing unless otherwise directed within the terms of the contract.

### **8.300 PROCEDURES**

There are several procedures during the condemnation process which must be followed in order to file a condemnation action.

#### **8.310 CONDEMNATION RESOLUTION**

Upon receipt of property descriptions from the Region Description writers, a resolution of necessity will be prepared for submission to the Transportation Commission, stating the purpose of project acquisition and declaring the need for the described real property. Adoption of the resolution by the Commission allows the Right of Way Section to initiate negotiations and to subsequently file a condemnation complaint on any of those properties for which a negotiated acquisition is not possible. If there is a subsequent revised description, it must be approved by the Commission by resolution.

#### **8.320 INITIATION OF CONDEMNATION**

If an acquisition agent cannot secure an agreement (with executed deeds and releases) from a property owner, the agent prepares a Recommendation for Condemnation or R/C (See Sec. 5.655 to 5.680). The Region Manager reviews the recommendation and if approved, forwards it to Headquarters.

*A Contiguous Property Report and a supplemental title report when deemed necessary by the Title Specialist, is secured. The Title Specialist prepares a Condemnation Title Report listing interests and encumbrances of record.*

The Project Administration Unit Manager does a special review for condemnation purposes and recommends the dollar amount for the Final Offer Letter and for the Complaint. The DOJ/ODOT Liaison reviews the file and recommends an administrative settlement or approves the issuance of a Final Offer Letter.

#### **8.330 FINAL OFFER LETTER**

The Final Offer Letter is prepared by the Condemnation Specialist, signed by the Right of Way Manager and mailed to all parties with interests in the property that will be named in the condemnation complaint. It may be appropriate to provide a copy of the appraisal with the Final Offer Letter to an interest holder with substantial monetary or collateral value at stake in the following situations:

1. Acquisition of an entire property with a mortgage or other substantial financial encumbrances to be cleared;
2. An acquisition with substantial economic damages to the remainder property with a mortgage or other substantial financial encumbrances to be cleared.

The Condemnation Specialist also forwards a copy to the acquisition agent.

When the R/C packet is sent in, the Region states whether the acquisition agent will contact the property owners following the Final Offer Letter or whether the contact should be made by the DOJ/ODOT Liaison. One of these staff contacts the property owners to determine if the Final Offer letter was received and whether they accept or reject this written offer. The Condemnation Specialist is then notified of their response, by telephone or e-mail, followed by a Report of Personal Interview Form 374-3708. The responses of parties with major interest in the property are of greatest importance.

#### **8.340 COMPLAINT**

Upon notification that property owners have rejected the Final Offer Letter and provided that all owners have had at least 40 days to consider the initial written offer, the Condemnation Coordinator prepares the condemnation complaint. The Condemnation Specialist completes a draft of the Condemnation Complaint in proper legal form, attaching papers required for initiating the court action. The draft Complaint with attachments is forwarded to the Department of Justice Trial Division for review. Upon review by DOJ, the final Complaint is prepared and forwarded to DOJ for signature.

The Assistant Attorney General handling the case examines the file, signs the complaint, and returns it to the Condemnation Specialist. After obtaining a verbal update from the title company and providing there are NO changes since the last title report, the Condemnation Specialist sends the complaint to the

appropriate court for filing and distributes copies to the Region.

### **8.350 DEPOSIT AND POSSESSION**

The Condemnation Specialist prepares a voucher for the deposit of money into court and enters the information into TEAMS. Upon receipt of the check from Financial Services, and after verifying the filing date and case number of the Complaint, the Condemnation Specialist prepares and sends a possession letter, with a 30-day notice when required, to the property owners and deposits the money into court. Copies of the possession letter and the complaint are sent to the Region Right of Way Office. The Region takes possession of the property at the time possession is allowed.

### **8.360 SERVICE OF SUMMONS**

The Acquisition/Condemnation Specialist arranges to have the defendant property owners served the court summons through a legal process service company.

### **8.370 COURT PROCESS**

The owners' attorney answers the complaint. The court sets a trial date, holds the trial and enters a judgment vesting title in the State based on the compensation determined by the court. The Condemnation Specialist orders title insurance when title is vested and prepares Vouchers for payments in excess of the sum already deposited. Upon receipt of the check from Highway Finance, the Condemnation Specialist forwards it for deposit into court.

Settlements on a file, resulting in a Stipulated Final Judgment, are also paid through the courts and processed by the Condemnation Specialist.

### **8.380 CASE LOAD MANAGEMENT**

In order to assure close coordination between the Right of Way Section and the Trial Division, the personnel of both agencies will comply with condemnation policy 4 of this chapter.

The assigned trial attorney is responsible for keeping the State Right of Way Manager and the Operations Manager informed regarding condemnation activities. This is typically done through the ODOT/DOJ Liaison who works closely with the trial attorney. Copies of any condemnation reports prepared by the trial attorney should be included in the Right of Way file. These include Reports of Trial and Settlement Reports which

explain why the results are reasonable, prudent and in the public interest. After the Right of Way Manager signs the settlement report, copies are also distributed by the Condemnation Specialist to DOJ, the Region Right of Way Office and to FHWA on federal-aid projects. A copy is also provided to the Property Management unit if excess property is a part of the acquisition.

### **8.400 ALTERNATE DISPUTE RESOLUTION PROGRAM**

The Right of Way Section carries out an Alternate Dispute Resolution (ADR) program as a tool in resolving negotiation impasses. The Right of Way Section may, when it is in the State's best interests, offer owners the option of non-binding mediation using a third-party mediator agreed upon by both sides from the Section's approved list. This Program is separate from the Condemnation program and focuses on resolving impasses to negotiated settlements prior to the start of Condemnation. However, the program can also be used with the concurrence of DOJ at any point in the Condemnation process.

### **8.410 RESPONSIBILITIES**

#### **8.415 ALTERNATE DISPUTE RESOLUTION COORDINATOR**

The Alternate Dispute Resolution Coordinator is a member of the Operations Unit and reports to the Operations Manager.

The ADR Coordinator has extensive legal knowledge and background in eminent domain law, mediation, and negotiations. The responsibilities of the position include:

1. Work with Region Right of Way staff and the DOJ/ODOT Liaison during projects in reviewing files to assess whether mediation should be offered to property owners in an attempt at reaching a settlement;
2. Maintain a list of qualified mediators;
3. At the request of Region Right of Way staff or DOJ, work with property owners and other involved agencies in problem solving issues and in determining the viability of mediation as a means of resolving the file;
4. Set up and participate in mediations between ODOT and DOJ staff and property owners and their attorneys;

5. Act as the lead contact between the mediator, ODOT and property owners and their attorneys during the ADR process;
6. Document the mediation process and results in the file;
7. Provide follow up and oversight on all ODOT obligations resulting from the mediation.