



# Right of Way BULLETIN

<b>SUBJECT</b> Guidelines for the Appraisal of Easements	<b>FINAL NUMBER</b> RW15-01(B)	<b>EFFECTIVE DATE</b> 5/01/2015	<b>VALIDATION DATE</b>	<b>SUPERSEDES</b> NEW
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<b>TOPIC/PROGRAM</b> Right of Way-Appraisal Guidelines	<b>APPROVED SIGNATURE</b>  Original signed by: Joseph A. Gray State Right of Way Manager			

## PURPOSE/BACKGROUND

This Technical Services Bulletin is prepared to provide assistance to Staff and Consultant Real Property Appraisers when valuing permanent and temporary easements acquired by the Oregon Department of Transportation. This bulletin is adjunct to the State of Oregon’s **ODOT Right of Way Manual** and **ODOT Guide to Appraising Real Property**.

## GUIDANCE/RESPONSIBILITIES

### Guideline to Valuing Permanent Easements

In the State of Oregon; “where a part only of a larger tract of land is taken for a public road under the power of eminent domain, the owner is entitled to the market value of the land and improvements actually taken, and also an amount equal to the depreciation in market value of the remainder of the land caused by the road.” Pape et.al. Vs. Linn County, (1931), 135 Or. 430, 436-437, 296 P. 65.

Easements are to be valued as takings, recognizing the “before” utility of the land and the “after” utility of the land being subject to the easement. The value of the easement is equal to the difference between the value of the larger parcel before the acquisition of the permanent easement, less the value of that same larger parcel after the acquisition of the permanent easement. In making an appraisal that includes an easement acquisition, the appraiser must have a clear understanding of the specific terms of the easement involved, as the burden on the land upon which the easement is imposed (the servient estate) and the impact on the value of the affected land will vary according to the character of the easement. Full consideration should be given to the rights remaining to the owner.

Example: The appraiser is to determine the value of a permanent easement for the purpose of constructing slopes and installing overhead utilities. Subject to codes and zoning, if the grades are such that the slopes and utilities have little or no impact to the property (e.g. parking, landscaping, signage, etc.), the change of the property’s remaining use is minimal. This

evaluation would result in an application of a lower value of the easement. Conversely, if the easement precludes significant uses by the property owner (e.g. parking, landscaping, signage, etc.) that would otherwise be reasonable and likely, the value of the easement could justify a higher value.

The appraiser shall always seek direct market data to value permanent easements. The preferred method for valuing a permanent easement is to employ any available market data indicating a value difference between unencumbered parcels and parcels encumbered with a permanent easement.

When direct market data (comparable sales, rents, etc.) is not available to support a permanent easement value, an alternative approach is to develop an opinion of the percentage of fee value attributed to the easement being acquired. The percentage is derived by analyzing the impact to the real property as a result of the rights and uses to be acquired within the easement. The appraisal report should include sufficient discussion supporting the appraiser's opinion.

The analysis should also include any damage to the remainder property caused by the acquisition of the easement and the proposed use of the easement area. Damages can be curable, incurable, or a combination of both. When the damage to the remainder is curable, the appraiser shall consider a cost to cure. The damage is typically the lesser of either the loss in value to the remainder or the cost to cure.

When valuing a proposed easement, the appraiser shall consider the degree to which the property is encumbered by existing easements and determine the magnitude of the change that results from the creation of the new easement.

Example: If an existing slope easement was estimated and acquired at 20% of fee, and a new easement is estimated at 40%, then the value of the easement being acquired is (40% of 80%=) 32%.

When multiple easements are acquired on a single property (Right of Way File) as part of the project, the easement with the greatest impact on the property value shall be considered first. Each subsequent easement shall be valued in the same descending order of impact.

Example: If acquiring a Permanent Easement for Signs (Parcel 1) that overlaps a Permanent Easement for Slopes (Parcel 2), the slope easement value should reflect a reduction in value for the sign easement. In other words, the market value of the sign easement should be estimated first because it involves the installation of ODOT improvements within the easement. In this example, the presence of the State's facilities (the sign) is the greater encumbrance of the two easements. Then, the easement for slopes would be valued with the new "before" value of the slope easement reflecting the loss in value resulting from the sign easement, if any.

When ODOT is acquiring multiple rights from the same subject property, it is important that the analysis NOT result in compensation that exceeds the actual impact on market value of the

combined rights being acquired. For example, if there are multiple easements being acquired, the diminution in value from the most restrictive permanent easement should be applied to the remainder before any other easements are valued.

The typical order of analysis when valuing easements is as follows:

- value the subject property less the fee taking;
- value the permanent easements;
- value the temporary easements.

There could be appraisal assignments where the order of valuation is different.

### **Guideline to Valuing Temporary Easements**

Temporary Easements (TE's) shall be valued by measuring the loss in utility and desirability of the encumbered area, and other affected portions of the larger parcel, for the defined period of the TE. The appraisal assignment should identify the size, shape and use of the easement being acquired. Details of the project should be made available to the appraiser indicating the timeline of use; the construction of any improvements by ODOT or its contractors; and the removal and/or replacement of any real property components during the course of the temporary easement use.

Appraisal of Temporary Easements will be supported by market information. Adequate discussion, data and analysis will be included in the appraisal report to provide the report user with a clear understanding of the appraisal assignment, project and resulting market value opinion. Assigning an arbitrary fixed percentage for any given type of easement is not an acceptable practice.

Care should be taken to avoid double compensation when multiple easements are being acquired. Consideration should be given to pre-existing easements when analyzing the loss in utility from the proposed temporary easement. Damages and special benefits must also be considered.

ODOT policy requires that valuation analysis should reflect the loss in utility to the property for the period that the Temporary Easement is used for the specified Project purpose. In addition, the appraiser must reasonably consider any impact that the Temporary Easement may have on the market value of the subject property during the period that it is not used.

When valuing a Temporary Easement, the following items must be considered:

- 1) Impacts within the temporary easement area can have impact for the duration of the occupancy/use by the contractor, the duration of the anticipated construction time of the project, or the duration of the encumbrance of the temporary easement on the property.
- 2) Temporary easements that impact only during the contractor occupation may include driveway reconnection easements, construction of curbs, removal of items, etc. Although a contractor may be on a temporary easement area during different times, (Example: removal, grading, sub-grade, and paving) the appraiser may consider merely

the total of time the area is disturbed for construction, when making the calculation for compensation. Unless otherwise indicated, the appraiser is to assume that reasonable access is provided to the property during construction.

- 3) Temporary easements that impact during the duration of the anticipated construction for the project may include temporary detour(s), slope cuts, (slope fills require permanent easement) borrow easements, work and turn areas on parking lots, construction of retaining walls, etc.
- 4) Temporary easements that impact marketability/market value of the property for the entire duration of the TE should be considered, regardless of the duration of the actual time the TE is used.
- 5) Temporary easements that may result in damage to remainder outside the actual temporary easement area include temporary loss of access or use of part or all of the property, or other damages to the remainder.
- 6) Appraisal reports must include explanation of the duration used and why that duration was utilized. Different durations may apply to different temporary easement areas on an individual property.

The impact of the Temporary Easement is similar to economic or market rent. The main component that needs to be analyzed is the impact on the use of the property while the Temporary Easement is being used. It is ODOT policy to compensate the property owner for the actual period that the project prevents the owner from using the property. The appraiser shall contact the Senior Right of Way Agent/Project Manager to determine the projected period of use. In addition, the appraiser must consider the impact that the easement may have on the market value for the unused period of the Temporary Easement. The appraisal shall not describe the period of non-use as a "cloud on title", but shall describe measure and report the impact of the period of non-use on the market value of the subject property.

### **Preferred Method**

Valuing a Temporary Easement typically involves the estimate of the market rent of the easement area. The opinion of market rent is then applied to the property owner's "before" fee market value for the estimated period of use. When valuing a Temporary Easement:

- 1) The appraiser should collect and confirm comparable rents of similar properties.
- 2) The rental basis of the comparable rents should be defined and appropriate adjustments made to bring them to a consistent basis for comparison to the subject.
- 3) Comparable Rents should be as current as possible.
- 4) Properties used to support the rent estimate should be subject to similar market influences as the subject property and have a similar highest and best use.
- 5) Comparable Rent data sheets (signed by the appraiser) must be completed for each comparable and included in the appraisal report. The report should contain sufficient information on each rent comparable so that the reader can follow the analysis and find each property.
- 6) If the Temporary Easement is of a relatively short term, the rent is often NOT discounted to a present value.

- 7) In estimating market value for temporary easements, the appraiser must consider the impact on the use of the area of the property in the temporary easement and the impact of the temporary easement on the remainder.

### **Alternate Method**

Often, the land area impacted by the Temporary Easement is small and the term of the Temporary Easement is so short that an alternative “short cut” to the procedure outlined above is acceptable. The “nominal” nature of the value of the Temporary Easement dictates that the short cut method is a better business practice due to cost and time savings when the value of the TE is anticipated to be small. In this alternative methodology the following guidelines should be used:

- 1) The market value of the real property estate being appraised shall be supported by comparable sales.
- 2) Market value of the site shall reflect the condition of the subject property as of the date of appraisal, and will reflect the value of the utility of the land and improvement subject to the TE.
- 3) Rent is estimated by applying a reasonable rate of return to the market value of the owner’s interest. The rate should be market based and reflect the utility and use of the property. For example, if the subject is grazing land, rates of return on grazing land should be used to impute rent for property that has grazing land utility. The appraiser should avoid using unsupported opinions or arbitrary fixed percentages for any given property type.
- 4) When using this methodology, the analysis and reporting should include similar information and analysis as listed in the preferred method (items 1-7) in the previous discussion, except that comparable sales are included in the report instead of comparable rents.

### **Easement Valuation Reporting**

Easement appraisals should be fully documented in an appraisal report format that provides adequate support. Because of the unique nature of easement valuation and complexity of the analysis, these types of appraisals require additional discussion and documentation. If the appraiser considers the report format inadequate for their analysis, the appraiser shall contact the Senior Right of Way Agent/Project Manager to determine the appropriate appraisal report format.

When valuing easements, the appraiser is encouraged to network with other professionals to develop a better understanding of the appraisal problem and potential solutions. When there are multiple appraisers on a project, the appraisers are encouraged to engage in open communication with each other, and to consult with other technical specialists to obtain valuable input.

## ***DEFINITIONS***

### **Permanent Easement**

A permanent easement provides a permanent right to use the property of another for specified uses in perpetuity.

### **Temporary Easement**

A temporary easement provides a temporary right to use the property of another for specific uses and for a specific period of time.

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