PERMANENT ADMINISTRATIVE ORDER

HWD 7-2019
CHAPTER 734
DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION

FILING CAPTION: Compensation for loss of an outdoor advertising sign resulting from a highway construction project

EFFECTIVE DATE: 11/27/2019
AGENCY APPROVED DATE: 11/22/2019

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FILED
11/26/2019 11:36 AM
ARCHIVES DIVISION
SECRETARY OF STATE
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RULES:

ADOPT: 734-064-0010

NOTICE FILED DATE: 08/29/2019

RULE SUMMARY: Relocation of, or compensation for, Outdoor Advertising Signs impacted by highway construction projects

CHANGES TO RULE:

734-064-0010
Definitions
As used in these division 64 rules, the following definitions will apply: ¶
(1) “Comparable Location” means a location for an Outdoor Advertising Sign (“OAS”) that: ¶
(a) Is on the same parcel of land or another parcel of land within the same market area with a similar Average Daily Traffic count, or in a similar market area acceptable to the Department of Transportation (“Department”) and the OAS Owner, and ¶
(b) Has the same or similar visibility within 500 feet of the original sign at the official milepoint of the intended highway as determined by the Department. ¶
(2) “Comparable Sale” means the sale of an OAS that a Specialist Appraiser has determined to have enough similar characteristics to the subject OAS to be included in the compensation determination of the subject OAS in their appraisal of a Partial or Total Loss. ¶
(3) “Compensation” means any payment to the OAS Owner as a result of a Partial or Total Loss to the OAS under this rule, and includes relocation payments and other in-kind value, or a combination of payments and in-kind value equal to the compensation due. ¶
(4) “Department” means the Oregon Department of Transportation. ¶
(5) "Full Compensation" means the Compensation for a Total Loss of an OAS and is the value of that OAS that would be paid by a willing buyer to a willing seller on the open market, and includes the sign structure and permit,
less the salvage value of the OAS.¶

(6) "Highway Project" means a new highway construction project which is supervised by the Department, and a construction project which is delivered by the Department on a state highway, including interstate highways. This does not include any Department of Transportation involvement in local agency projects.¶

(7) "OAS Owner" means the owner of the OAS structure and permit.¶

(8) "Outdoor Advertising Sign" or "OAS" means a sign structure as defined in ORS 377.710(21) that is permitted through ODOT.¶

(9) "Partial Loss"¶

(a) Means that due to a Highway Project:¶

(A) The face(s) of the OAS is substantially but not totally blocked in its current location; or¶

(B) The replacement location for the OAS is not a Comparable Location.¶

(b) Partial Loss is not the temporary blocking of the face(s) of an OAS during construction of the Highway Project, or the need for temporary removal of an OAS if the OAS can be replaced in its current location following completion of the Highway Project.¶

(10) "Partial Compensation" means the Compensation for a Partial Loss of an OAS and is the difference between the market value of the OAS before the Highway Project and the market value of the OAS after the Highway Project, as relocated to less than a Comparable Location or substantially blocked.¶

(11) "Specialist Appraiser" means state certified appraiser or state licensed appraiser under ORS 674.010 with experience in valuing an OAS.¶

(12) "Total Loss"¶

(a) Means that due to a Highway Project the OAS is unable to be relocated and either:¶

(A) Must be permanently removed from its location; or¶

(B) That the face(s) of the OAS would be totally blocked in its current location.¶

(b) Total Loss is not the temporary blocking of the face(s) of an OAS during construction of the Highway Project, or the need for temporary removal of an OAS if the OAS can be replaced in its current location following completion of the Highway Project.

Statutes/Other Implemented: ORS 377.700, 377.725, 377.756
734-064-0015

Sign Structure and Permit are Personal Property
The OAS structure and OAS permit are considered personal property for purposes of these rules. Any condemnation of real property interests, including but not limited to easements, shall be conducted under ORS Chapter 35.
Statutes/Other Implemented: ORS 377.700, 377.725, 377.756
ADOPT: 734-064-0020

NOTICE FILED DATE: 08/29/2019

RULE SUMMARY: Relocation of, or compensation for, Outdoor Advertising Signs impacted by highway construction projects

CHANGESTO RULE:

734-064-0020
Relocation of an Outdoor Advertising Sign Due to a Highway Project
(1) An OAS that is a Total or Partial Loss, and is removed or cannot be relocated on the same property, may only be relocated to another legal site and reconstructed in compliance with any existing restrictions on its current OAS permit. ¶

(2) If a Comparable Location site has been determined, reimbursement of the relocation expenses will be made to the OAS Owner, according to the process and procedure set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646, 42 USC 4601 et seq.) adopted by ORS 35. ¶

(3) Compensation must be offered to the OAS Owner if a Comparable Location for an OAS impacted by a Total or Partial Loss cannot be achieved.
Statutes/Other Implemented: ORS 377.700, 377.725, 377.756
CHANGES TO RULE:

734-064-0030

Compensation for Loss of an Outdoor Advertising Sign Due to a Highway Project

(1) When the Department has a Highway Project that may impact an OAS, it shall determine whether there will be a Total or Partial Loss to any OAS. The Department shall issue a written notice of its decision regarding a Total or Partial Loss or no impact to the OAS Owner. ¶

(2) The Department and the OAS Owner may negotiate regarding the Department's decision regarding a Total or Partial Loss or no impact, and may coordinate efforts to search for a Comparable Location and reasonable OAS modification options. If the Department and OAS Owner cannot reach agreement regarding a Total or Partial Loss or no impact, the OAS Owner may request a contested case hearing under ORS Chapter 183. A hearing request must be in writing and received by the Region Right of Way Manager within 30 days of the notice of decision. ¶

(3) If the Department determines that a Total or Partial Loss has occurred, then it will obtain an appraisal by a Specialist Appraiser to assist in determining the Compensation for the OAS if it is determined the Total Loss OAS cannot be relocated, or in any Partial Loss situation. This appraisal shall be based on a written report that conforms to the requirements of the Uniform Standards of Professional Appraisal Practice and OAR 161-025-0060. ¶

(4) Upon receipt and review of an appraisal, the Department shall provide a written offer of Compensation for an OAS that is found to be a Total or Partial Loss. ¶

(5) The Department and the OAS Owner may negotiate the value of the Compensation. If the Department and OAS Owner cannot reach agreement regarding the Compensation due, the Department shall provide written notice of the final offer of Compensation to the OAS Owner. If the OAS Owner does not agree with the final offer of Compensation, the OAS Owner may request a contested case hearing under ORS Chapter 183. A hearing request must be in writing and received by the Region Right of Way Manager within 30 days of the notice of decision. ¶

(6) Within 30 days of a request by the Department or its Specialist Appraiser, the OAS Owner shall provide any requested sales, lease, advertising, use agreements or any other relevant information, to assist the Department or its Specialist Appraiser in evaluating the OAS for Total or Partial Loss or appraising the Partial or Full Compensation. Sales, lease, advertising or other proprietary information will be considered Trade Secrets under ORS 192.345(2). ¶

(7) An OAS Owner cannot receive Compensation for a Total or Partial Loss of an OAS unless the OAS Owner has: ¶

(a) Made a good faith effort to acquire a relocation site, which includes, but is not limited to, engaging and seeking assistance from the Department in addition to the efforts undertaken by the OAS Owner to relocate the OAS, and has included the Department in communications with the local governing agency and others about efforts to relocate the OAS; and ¶

(b) Provided all the requested information to the Department or its Specialist Appraiser as required in these rules. ¶

(8) Full Compensation shall only be available upon surrender of the OAS permit, and any right to reconstruct or relocate the OAS, to the Department. All surrendered OAS permits that are a result of a Total Loss shall be retired and not be available for reissuance. ¶

(9) Partial Compensation may require surrender of the OAS permit if the new OAS location is not on a state highway, or may require modification of the permit for any lost OAS face(s) or other limitations as a result of a Partial Loss. ¶
(10) If the Department determines there is a Total Loss to one sign face of a two-sided OAS, the OAS Owner must seek to relocate the Total Loss sign face as required in these rules. If the single sign face cannot be relocated on the same property or on another legal site, the OAS Owner may receive Full Compensation for the loss of the single face of the OAS.
Statutes/Other Implemented: ORS 377.700, 377.725, 377.756
ADOPT: 734-064-0040
NOTICE FILED DATE: 08/29/2019

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CHANGE TO RULE:

734-064-0040
In-Kind Value
The Department and an OAS Owner may enter into alternative dispute resolution and a settlement agreement for Partial or Full Compensation through in-kind value. Alternatively, if the OAS Owner can successfully modify the OAS structure to mitigate a Partial Loss, the Department may agree to pay the actual cost to modify the OAS structure in lieu of Partial Compensation. Any such in-kind value agreement or modification agreement must be mutually agreed upon by both the Department and OAS Owner; otherwise, agreements will be settled through financial compensation under these rules.
Statutes/Other Implemented: ORS 377.700, 377.725, 377.756
ADOPT: 734-064-0050

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CHANGES TO RULE:

734-064-0050
Request for Outdoor Advertising Sign Permit within the STIP
ORS 377.725(4) requires an OAS Owner to sign an affidavit forgoing any claim for Full or Partial Compensation when applying for a permit to relocate or reconstruct an OAS in a location identified in a currently published Statewide Transportation Improvement Program (“STIP”). The department will notify the OAS Owner through the application process if a sign location is inside a published STIP. A location is in a published STIP if it could conceivably reside within the proposed beginning mile point and end mile points of the STIP listed Highway Project. The scope of the STIP shall be liberally construed to include the most property that conceivably could be needed for the project.
Statutes/Other Implemented: ORS 377.700, 377.725, 377.756
734-064-0060
Removal of Outdoor Advertising Sign through Written Notice
Coinciding with an offer for the real property made to the owner of the underlying land, the OAS Owner shall be made eligible for relocation benefits applicable to the OAS. Notice of eligibility for relocation benefits resulting from a Total or Partial Loss requires that the OAS be removed 90 days from the date of the Notice or 30 days after the Department has obtained legal possession of the underlying land through payment to the underlying land owner, whichever is later. If the OAS is not removed by the OAS Owner according to the Notice, the Department will assume possession of the sign and its permit, with any compensation to the OAS Owner to be determined through an administrative hearing under ORS 183. All costs incurred by the Department related to the removal are to be deducted from any Compensation or relocation expense reimbursement owed to the OAS Owner.
Statutes/Other Implemented: ORS 377.700, 377.725, 377.756
ADOPT: 734-064-0070

NOTICE FILED DATE: 08/29/2019

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CHANGES TO RULE:

734-064-0070
Request for Reconsideration upon Completion of Highway Project
(1) Notwithstanding ORS Chapter 183 and the rules in this division, an OAS owner may request reconsideration of the Department's notice of determination of Partial Loss or no impact within 60 days of the Department's mailing of a notice of the completion of the Highway Project to the OAS owner.¶

(2) Completion of the Highway Project under these rules shall be the date of the Department's issuance of a Third Notice following construction. The Department shall mail a notice of the completion of Highway Project to all OAS owners in the Highway Project area.¶

(3) In order to qualify for reconsideration under this rule, an OAS owner's request for reconsideration:
(a) Must be in writing and received by the Region Right of Way Manager within 60 days of the mailing of the notice of completion of the Highway Project to the OAS owner; and¶
(b) Must establish that the Highway Project, as constructed, substantially impacted visibility of the OAS within 500 feet of the OAS, and that these impacts were not considered in the Department's earlier notice of decision of Partial Loss or no impact. ¶

(4) The Department shall issue an order on whether the OAS Owner has met the requirements for reconsideration within 60 days. If the request for reconsideration is granted, the Department will re-initiate the process of determining Partial or Total Loss, relocation or providing Compensation for the OAS, as appropriate. If the request for reconsideration is denied, an OAS Owner may request a contested case hearing according to ORS 183 within 30 days of the mailing of the Department's denial. The contested case hearing on a denial shall be limited to determining whether the request for reconsideration meets the requirements of subsection 3 of this rule.

Statutes/Other Implemented: ORS 377.700, 377.725, 377.756