

How to Build your House with Bricks



"Eminent domain?! What happened to huffing
and puffing?"

Best Practices for Right of Way

Choosing the Perfect Spot – Right of Entries



Entry without permission for environmental and other investigatory items



I know we're building with straw when I hear
"It's a parking lot (but only for customers)"
"The biologist walked along with the land surveyors"



Every file is built assuming you will need condemnation. Do you want to explain how you got your biological data on the court stand when you did not have permission to enter for that purpose if you end up in a condemnation suit. A parking lot is not public and I've yet to have a lawyer tell me that the land survey statute (ORS 672.047 Right of entry by land surveyor) covers environmental



Entry with Verbal Permission



I know we're building with sticks when I hear
"We just knocked on the door and they said okay"



Basic rule of right of way – If it's not in writing it
didn't happen. It can be challenged and memories
can be different



Written signed entry from the owner of the property


Right of Entry form is used. A diary is kept and conversations with the owner are documented. Entry is only done with written permission from the owner or from the courts (ORS§ 35.220 Precondemnation entry on real property).



<https://www.oregon.gov/ODOT/ROW/Pages/ROW.aspx>

Choose Acquisition forms under resources (right side of menu)

Choose

 FORM 734-2997 Right of Entry

Site Plans- Right of Way Layout meeting



No legal descriptions are written



I know it's straw when I hear
"We're just buying temporary easements from a sketch map."



I tried to get approval for this once but FHWA takes the stance that it does not meet the requirements of § 24.102 Basic acquisition policies. (e) Summary statement (2) **A description and location identification of the real property** and the interest in the real property to be acquired.



Legal Descriptions and sketch maps are provided



You are building with Sticks when I don't hear that the right of way group and other interested parties met to weigh in prior to completion of the legal descriptions.



This is an acceptable way to run the process

Right of Way Layout meeting



Who – Right of Way, Engineering, Construction Specialist, Environmental

When – After the base map and design are at the point you can lay out basic lines but before written descriptions

What - Each file is looked at and each discipline comments and questions the line

How Long – Temporary Easement Time Frames



- Design shows a 10 foot temporary easement behind the sidewalk for sidewalk replacement
- That 10 feet takes out half the parking of the local minimart for the duration – right of way objects because of high costs
- Construction indicates they can live with 3 feet,
- Costs are minimized since with a little temporary striping you can replace the parking spots to full use during construction instead of damaging the building by not having enough parking for the use.
- Environmental points out need for turbidity monitoring on bridge job
- Right of Way notes owners own to the middle of the stream
- File is added to meet the need and revision avoided

Filing for the Building Permit - Authorization



Begin the work without right of way authorization



We're building with straw when I hear

"We're self-funding right of way"

"We'll just buy the property beforehand and contribute to the project "



In for a penny – in for a pound. If there is a drop of federal money anywhere in your project you must follow federal guidelines through every phase of the project. It does not matter that you are self funding right of way. If the project is in the STIP you cannot buy outside of the process. 49 CFR § 24.101 Applicability of acquisition requirements.



Part Way There



We have our descriptions
We have our estimate
We have our Right of Way Services Agreement
We have our Environmental Clearance
We are above the amount in the State Transportation
Improvement Plan
We don't need to deposit money – we're certified
We'll pass the resolution sometime in the future



STIP – Stop – we do not start with partial funding
\$ for Oversight – Stop – Even though you are
certified you still need to deposit the funds for
oversight
Resolution – Partial stop – This needs completed
and your council/board needs to commit to
obtaining the property.



All the bricks are there

Every piece of needed documentation is there.



- ✓ There are several different versions of an excel estimator form. You may use whichever one you chose.
- ✓ Contingencies and legal should be included and ODOT uses 30% as a base but it can be adjusted at your discretion.
- ✓ If you need examples email me and I will send Regina.Thompson@ODOT.State.OR.Us
- ✓ This step takes 6 weeks. Please adjust your schedule accordingly.
- ✓ If you add files in the future you need to re-authorize even if you don't need to add money
- ✓ If files are cancelled you will be asked to supply a reason during certification

Choosing Your Contractor to build your house-The Acquisition Process/Plan



You plan to get donations – for everything



We're building with straw when I hear
"We're going to go talk to the property owners and have them donate"



This may be appropriate when there is one owner and they have a vested interest in the project and they preferably are a government or quasi-government agency – i.e. school, city, county etc. Otherwise this is very high risk that it could be perceived as coercive which is forbidden by § 24.102 Basic acquisition policies. (h) Coercive action. Most often not appropriate. Still requires paperwork and process.



What I hear to think you are building with sticks
“We’ve hired a contractor. They will take care of everything.”

FHWA holds ODOT accountable.

Agency Responsibility that cannot be given to a contractor (plus other things)

- Setting Just Compensation 49 CFR § 24.102 Basic acquisition policies. (d) Establishment and offer of just compensation. Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property.
- Deciding how clear title needs to be – i.e do you clear the mortgage off every file or only those above \$10K or \$50K
- Settlement decisions
- Relocation Approvals
- Minimum Payment Policies





Everyone is Engaged- The local, the consultant and the funding agency.



Communication flows through the agency.

Check the RWSA for frequency of right of way reporting to funding agency – once a month, once a quarter

I appreciate when I see the consultants tracking reports if they are provided

Agents and Appraisers must be approved to work on the project – Appraisers must be on Qualified Appraiser List

<https://www.oregon.gov/ODOT/ROW/Pages/Appraisals.aspx>

Send Acquisition agent information to ODOT with resume for approval - ROW Manual 10.620 Acquisition

We can aid in potential solution discussions – feel free to call

Dealing with Overruns- Settlements



You take an extreme on either end



We're building with straw when I hear
"We will not give a dime more than the appraisal"
"Our Council doesn't want to ever condemn."



§ 24.1 Purpose. (a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;



What I hear to think you are building with sticks
“We’re settling above Just compensation on the first of
30 files”

Settlements can be justified but also beware of timing. Early settlements on a project may lead to overall higher costs.



General Observation – 65% of files settle on the money, 25% settle above and 10% require further action. Not true on individual projects but an overall look at all files in a program shows general themes such as this.



Settlement Considerations

A Justification memo is required – The higher the dollar value the more information. Small amounts can be just a couple sentences. Large amounts require more in-depth discussions

You can use the cost of court as a factor.



Settling above Just Compensation does not mean you owe previous agreements more money or you are being inconsistent. Settlements are business decisions. All owners received just compensation because that is what you initially offered.

Occupancy Permit- Certification

- Straw -



You have a Cert 3 – AKA “The Dirty Cert”

You do not have possession of all property and you will not have it by bid date

Requirements:

Holdouts (properties not in possession) must be called out in the plans and specification with the date you will obtain possession

Letter of Public Interest Finding is required and needs approved by FHWA

Offers must be made – this cannot be considered prior to appraisal and offer of the property

ODOT Right of Way Manual - APPENDIX A RIGHT OF WAY
CERTIFICATION DESIGN-BID-BUILD PROJECT DEVELOPMENT
FORMAT

You must recertify when all properties are cleared



Certification 2

Property is not in possession at PS&E date but will be prior to bid date. All relocation is done or will be done by bid date

- Condemnation is filed but waiting 30 days for possession
- You have signed documents and are in the process of closing.
- Condemnation and Court deposit is imminent
- Waiting for a title clearing document

Requires recertification when all items are cleared



Certification 1

Every property is in legal and physical possession

All relocations are completed

All encroachments are cleared or there is a plan – We are paying more attention in this area

Haz-Mat is addressed

Local signs, ODOT Countersigns

Plan sheets are attached – First page and general construction sheets

ODOT reviews files. Please allow two weeks in your schedule for file review.

A couple more things.....



If your property has a Marijuana Business – sales, grow site etc. The property cannot be purchased with Federal Funds. Notify your ODOT oversight and the files will be coded to use different funding.



Things that hold up certification

- Proof of Payment (copy of check, ledger run)
- Appraisal shows personal property in picture but no relocation offer made
- Not relocation summary included in offer, General Information Notices Missing, Statement of Negotiator (non-collusion)



Things that make me unhappy – Diary is incomplete and does not seem real - large gaps in time, sudden settlements, it is clear something else happened...

Use caution and have a right of way agent with you to avoid the perception of collusion when engaging with property owners during negotiation

For Local Agencies that are approved to do Administrative Determination of Value's – note the right of way manual clarified the dollar limit and it is \$2,500 not \$10,000

There is an alternative process for temporary easements for Driveway reconnections in ROW Manual 6.325 Alternative Temporary Easement Deeds for Projects with Driveway Reconnections/Road Approaches which allows this work without an appraisal. Review the section and seek permission from ODOT Regional Representative to use.

Helpful Links and Contact Information

<https://www.oregon.gov/ODOT/ROW/Pages/ROW.aspx>

Right hand side of page – forms including certification forms on right hand side of page under acquisition

<https://www.oregon.gov/ODOT/ROW/Documents/ROW-Manual.pdf>

Right of Way Manual

<https://www.govinfo.gov/content/pkg/CFR-2009-title49-vol1/pdf/CFR-2009-title49-vol1-part24.pdf>

Federal Regulations 49 CFR 24

https://www.oregonlegislature.gov/bills_laws/ors/ors035.html

State Statute ORS 35

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