

## Chapter 7. Right of Way Procedures

This chapter outlines project development requirements for any LPA acquiring right of way on any federal-aid local agency project. Right of way acquisition is broadly defined to include all real property interests for a public use, including temporary easements. Local agencies may proceed with their own right of way procedures that lead up to final right of way project co-certification\* by the certified local agency and ODOT, provided they comply with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended (*Uniform Act*), ODOT's *Right of Way Manual*, and the requirements discussed below. Right of way issues have statutory timeframes built into the process, so working the issues as early as feasible in the project delivery process is recommended.

Resources:  
- [ODOT Right of Way Manual](#)

ODOT has overall responsibility to FHWA for project right of way acquisition. Federal regulations require that ODOT performs the final right of way project certification and acceptance of the process used to acquire right of way, in conformance with ODOT's *Right of Way Manual*.

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**\*Note:** In this context, "right of way project co-certification" involves a project specific review of the right of way documentation and procedures used to secure rights of way for a particular project. As part of that review, the LPA submits a Right of Way Certification Form to ODOT for review and approval. This process is independent of a local agency becoming "certified" as discussed in Section B of this manual.

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The acquisition process is regulated by ODOT's *Right of Way Manual* to assure compliance with the federal and state laws, assure fair and equitable treatment of any persons whose property rights are impacted by the project, and encourage and expedite acquisitions by negotiations.

In the case of a conflict between ODOT's *Right of Way Manual* and this *LAG Manual*, ODOT's *Right of Way Manual* shall prevail.

### A. AUTHORIZATION FOR ACQUISITION OF RIGHT OF WAY

An LPA may acquire the necessary right of way on a project by utilizing its own staff, the staff of other local agencies, or consultants. An LPA may also utilize ODOT region right of way staff if available (see Subsection A.2 of this chapter). Authorization or approval to undertake any of the acquisition tasks must be given to the LPA by the ODOT Region Right of Way Manager before any of the tasks are initiated. Authorization and approval requirements are detailed below. Periodic reviews of procedures will be conducted on agencies acquiring right of way on federal-aid projects.

**A.1. Acquisition Services provided by LPA staff, Alternate Local Agency staff, or Consultants**

In order for an LPA to be authorized to acquire right of way using its own staff, consultants, or alternative local agency staff, the LPA must follow the procedures and meet the criteria in Chapter 10 of ODOT's *Right of Way Manual*. While the contract between the LPA and a consultant (or alternate local agency) is administered by the LPA, the Regional Local Agency Liaison and Region Right of Way staff should be consulted regarding contract language for any complex right of way activities to be undertaken. The ODOT *Right of Way Manual* should be used for guidance when establishing the consultant contracting requirements and expectations that ensure compliance with federal and state laws and regulations. If the LPA intends to hire a consultant to perform any right of way activities, the LPA must follow applicable consultant selection requirements; see Section C, Chapter 12 of this manual for details.

**A.2. Acquisition Services provided by ODOT Region Right of Way Staff**

If an LPA wants to request right of way acquisition services be performed by ODOT's Right of Way Section, the LPA shall request this as early as possible in the project development phase. The LPA shall advise ODOT's region right of way staff and Local Agency Liaison of the LPA's need for assistance. When ODOT is to perform the right of way project acquisition services, the Regional Local Agency Liaison shall coordinate with the Region Right of Way Manager and the LPA to ensure right of way acquisition services are included in the Intergovernmental Agreement and Right of Way Services Agreement. ODOT will furnish the LPA with an estimate of the cost, as well as other terms and conditions of ODOT's right of way services to be mutually agreed upon.

If ODOT's region right of way staff is experiencing heavy workloads, ODOT may not be able to perform acquisition activities on the LPA's project. In these cases, the LPA should reconsider, in consultation with and approval by ODOT's region right of way staff, whether they will conduct their own acquisition activities, retain a consultant, or engage with an alternate local agency for such acquisition services.

**B. RIGHT OF WAY SERVICES AGREEMENT**

As part of any state or federal-aid local agency project, an Intergovernmental Agreement and Right of Way Services Agreement must be executed, regardless of the need for right of way acquisition in the respective project. ODOT's Regional Local Agency Liaison and region right of way staff member must be consulted when the Right of Way Services Agreement is being completed. Execution of the Right of Way Services Agreement requires the signature of the State Right of Way Manager, among other ODOT representatives, as well as attorneys with the Oregon Department of Justice. To the extent the LPA seeks to utilize ODOT or the Department of Justice for any of its project's condemnation activity, the LPA must seek approval from the

Department of Justice through ODOT's Region Right of Way Manager before the Right of Way Services Agreement is sent for execution. Execution of the Right of Way Services Agreement can be a time consuming process, therefore it is recommended that proposals regarding the responsible party for any right of way task be discussed as early in the project development process as possible.

## C. RIGHT OF WAY ACQUISITION FUNDING

### C.1. Acquisition With Federal Funds

If federal funds are to be used in **any part** of the project, federal guidelines for acquisition of the right of way as identified in the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended, and further explained in the ODOT *Right of Way Manual*, must be followed. Additionally, authorization of federal funds for right of way requires FHWA approval of environmental documents and the completion of the following documents, in coordination with the Regional Local Agency Liaison:

- Intergovernmental Agreement;
- Right of Way Services Agreement;
- Estimate (in dollars) of probable project costs and expenses broken down by file. The right of way cost estimate shall be broken down into the following items:
  - Individual acquisition parcels (fee, permanent easement, temporary easement);
  - Impacted improvements (and a brief description of the improvements);
  - Damages/cost to cure;
  - Relocation;
  - Demolition;
  - Personnel and administration;
  - Title services;
  - Legal and contingencies and totals for all items (Right of Way Project Funding Estimate);
  - Legal descriptions; and
  - Relocation plan (if required - contact region right of way staff for assistance).

The legal descriptions should be written such that the areas to be acquired can be "made certain" by the description. All legal descriptions must carry the seal and signature of a Professional Land Surveyor.

The Real Estate Acquisition Guide for Local Public Agencies (LPA Guide) is available on the FHWA Office of Real Estate Services website.

The LPA Guide summarizes the regulations found in 49 CFR Part 24, and continues to be a valuable tool for Division and Federal Lands Highway Realty Officers, their partners at the State

Resources:

- [Real Estate Acquisition Guide for Local Public Agencies](#)

Departments of Transportation, and Local Public Agencies. The LPA Guide provides a road map of applicable federal laws and regulations by explaining the real estate acquisition and relocation process and how it is integrated into overall project development.

Once FHWA approval has been obtained, the Regional Local Agency Liaison will notify the LPA of authorization to acquire right of way. No acquisition costs are eligible for reimbursement prior to this authorization.

## **C.2. Acquisition With Local Agency Funds**

### **a. Local Agency Acquisition for STIP Projects**

After consultation with the Regional Local Agency Liaison, an LPA using its own funding for right of way acquisition can start its process without waiting for FHWA authorization, provided the following documents are available, or milestones met, for review and agreement by ODOT's Region Right of Way Manager:

- Legal descriptions (see prior section Acquisition with Federal Funds for minimum requirements);
- Relocation plan if relocation is required;
- Right of Way phase is fully identified and funded in the STIP;
- National Environmental Policy Act (NEPA) phase is completed; and
- Programming Estimate is completed.

All other rules and regulations pertaining to right of way acquisition and project certification shall apply.

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**NOTE:** When a state DOT or Agency proceeds with early acquisition using its own money and with no intention of seeking federal-aid credit or reimbursement, the FHWA must make certain that the Agency's actions do not affect the environmental analysis or review of the project, or bias the FHWA's decisions on the Project.

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### **b. Voluntary Right of Way Acquisition**

Voluntary acquisition differs from the donation process (see Donated Property). Voluntary acquisition typically occurs when property is already available for purchase, independent of any current project and the LPA acquires the property through a real property sales transaction.

Local agencies acquiring property using the voluntary acquisition process must follow all requirements set forth in 49 CFR 24.101(B)(1). The decision to proceed on the basis of voluntary acquisition and not use the agency's eminent domain authority must be made prior to commencing other right of way activities.

### **c. Historical Acquisitions of Right of Way**

Local agencies that have previously acquired property and wish to use such property as right of way for a federal-aid project must provide documentation that the property had been acquired in accordance with state and federal law, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended, Title 49 Part 24, ORS Chapter 35, Federal-Aid Policy Guide (FAPG), Code of Federal Regulations, the ODOT *Right of Way Manual*, and Title 23 CFR Part 710.

### **C.3. Acquisition in Advance of NEPA Clearance**

The following circumstances outline methods under which right of way can be acquired in advance of NEPA clearance:

#### **a. Use of Own Funds**

An agency may use its own funds to purchase right of way prior to NEPA clearance, as long as the requirements of 23 CFR 710.501(b) are met and they follow the MAP-21 requirements in ODOT's *Right of Way Manual*.

#### **b. Purchase under Protective Buying and Hardship**

With prior approval from FHWA's division office through ODOT's Right of Way Section, an agency may purchase right of way prior to NEPA clearance under the protective buying and hardship acquisition provisions, as per 23 CFR 710.503. These provisions are further explained in Chapters 2, 3 and 6 of ODOT's *Right of Way Manual*. Note, that while these purchases are in advance of formal NEPA clearance of the project, individual clearance via a Categorical Exclusion is required. Consequently, although the project has not yet been cleared, the individual parcels have been cleared.

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**NOTE:** Under each of these methods, the LPA cannot be reimbursed for these project costs; however, they may apply the purchase price (or if donated, the fair market value) as credit toward their share of project costs.

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If an LPA chooses to use one of the options above, they must first contact the Regional Local Agency Liaison, who will coordinate with ODOT's right of way staff.

#### D. APPRAISAL

Federal and state regulations require a public agency to appraise real property prior to its initiation of negotiation in right of way acquisition. The requirements pertaining to appraisal of property to be acquired are identified in ODOT's *Right of Way Manual*, Chapter 5. Appraisals must be completed by an appraiser on ODOT's Qualified Appraiser List, or by an agency staff appraiser that has been specifically approved for the project by ODOT's Region Right of Way Manager. Chapter 10.610 of ODOT's *Right of Way Manual* details the minimum requirements that must be met by an agency staff appraiser in order to be approved for appraisal tasks.

Appraisals shall be prepared according to Chapter 5 of ODOT's *Right of Way Manual* and ODOT's *Guide to Appraising Real Property*. ODOT appraisal report forms can be found online at ODOT's Right of Way Section website.

##### D.1. Administrative Determination of Just Compensation

Local agencies that have staff experienced in eminent domain appraisals may be authorized by ODOT to administratively establish just compensation for given properties. The administrative process is called an Administrative Determination of Just Compensation. This process is allowed under 49 CFR Part B 24.102(c) (2) and is detailed in the ODOT's *Right of Way Manual*, Section 5.545-5.550. It can only be completed and approved by qualified agency staff that are knowledgeable in real property valuation. Any request by an LPA for use of the Administrative Determination of Just Compensation must be made in writing to the Deputy State Right of Way Manager through the Region Right of Way Manager. Under current law, it cannot be used by a consultant under contract with the agency.

The Administrative Determination of Just Compensation process can only be used for uncomplicated takings that have a valuation not exceeding \$2,500 and that do not involve complex valuation problems, such as potential damages to the remainder property or unique improvements within the taking area that require special analysis.

In instances where the Administrative Determination of Just Compensation process is used, just compensation should be based on comparable sales. All data used to arrive at just compensation must be included in the project file. When the Administrative Determination of Just Compensation is used, it is essential that the LPA have an experienced staff person with authority to determine that the just compensation estimate is fair and equitable and approve it. See ODOT's *Right of Way Manual*, Chapter 5, for a complete discussion of the Administrative Determination of Just Compensation procedure.

## **D.2. Appraisal Review / Establishing Just Compensation**

Prior to just compensation being set by the LPA, each appraisal must go through an appraisal review. The requirements pertaining to appraisal review are available in Chapter 5 of ODOT's *Right of Way Manual*. The appraiser and review appraiser shall not be the same person on any given acquisition file.

The review appraiser should be knowledgeable about property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The review appraiser must be either an ODOT Right of Way Review Appraiser, a fee appraiser on ODOT's Qualified Appraiser List, or a permanent employee of the acquiring agency who is qualified to review appraisals according to Chapter 10 of ODOT's *Right of Way Manual*.

The review appraiser must inspect the property appraised and the comparable properties from which the appraiser(s) used to arrive at the fair market value of the acquisition.

It is the responsibility of the LPA to approve just compensation before initiating negotiations with an owner. The agency may not delegate the function of approving just compensation to someone outside the agency. The agency may empower a qualified staff review appraiser to approve the just compensation with their signature at the bottom of the Appraisal Review Form. If a non-staff reviewer is utilized, a line can be added following the reviewer's signature on the Appraisal Review Form for the signature of the agency staff person authorized to approve the just compensation amount.

## **E. TITLE**

The LPA will acquire evidence of the condition of title for all properties from which rights are to be acquired. It is strongly recommended that clear title to the acquisition area be obtained with title insurance for the area vested to the agency, though exceptions to clear title are allowed if considered reasonably acceptable. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

In general, the elements necessary to acquire the needed interest are the following:

- Acquisition instruments signed by all parties with an interest in the fee title or permanent easement;
- Releases from mortgages and deeds of trust as LPA determines to be reasonable, if the property will be for the LPA's use. If an LPA is buying property and intends to deed it to ODOT (e.g. property along a state highway), then ODOT must be consulted. In short, it is prudent for all property interests be cleared to avoid encumbering any roadway or highway with any interest that is detrimental to the agency;

- Releases of encumbrances, such as easements, which adversely impact the rights being acquired;
- Releases of priority liens, such as material liens, judgments, state tax liens and federal tax liens; and
- Property to be clear of hazardous materials. Property owners may be required to sign an exhibit to relieve agency's responsibility for cleanup of any hazardous materials subsequently found.

### F. NEGOTIATIONS

According to state statute, a public agency must adopt a resolution or ordinance of necessity to acquire any real property *prior* to the initiation of negotiations with the owner of the property.

Various requirements in negotiating an acquisition of property are found in ODOT's *Right of Way Manual, Chapter 6*. Among those requirements are the notices that must be sent to the owner of the property and the minimum time that is allotted to the owner of the property to consider the offer before condemnation can begin. An LPA, or its consultant, may not make any attempt to compel an agreement with a property owner to acquire right of way by deferring negotiations, advancing or deferring condemnation, or by utilizing any other coercive action.

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[Failure to establish condemnation authority prior to the initiation of negotiations can constitute a coercive action.](#)

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If an LPA uses a consultant fee negotiator, the negotiator must meet the applicable state real estate licensing requirements. ODOT's *Right of Way Manual* provides a good model for utilizing consultants for negotiations and other right of way functions.

In order for LPA staff to be approved by the Region Right of Way Manager to acquire property, they must follow the guidelines provided in Chapter 10.610, 10.620 and 10.630 of ODOT's *Right of Way Manual*.

A separation of functions maintains the integrity of the acquiring LPA's transactions. Thus, the appraisal, appraisal review and negotiations for a file are performed by three different persons. Recognizing the fact that the use of two separate individuals as appraiser and negotiator on a low-value taking can be both difficult and expensive, the use of a single individual to both appraise and negotiate a file is permitted where the value of the acquisition is \$2,500 or less, if first approved by the Region Right of Way Manager. It should be noted that the appraisal shall be reviewed prior to negotiations and the review appraiser shall be neither the appraiser nor the negotiator.



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Before initiating negotiations for real property, the agency shall establish the just compensation which shall not be less than the reviewed appraisal of the property, and shall make a written offer to acquire for that amount.

When negotiations are complete, the negotiator shall keep a project file with a signed statement for each acquisition that:

- The written agreement embodies all considerations agreed to by the negotiator and the property owner;
- The negotiator understands that the acquired property is for use in connection with a federal-aid transportation project;
- The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future; and
- The agreement has been reached without any type of coercion.

In addition, the LPA shall maintain a diary, wherein each individual involved in relocations, negotiations, or property management functions shall enter and initial a suitable description of each contact and other information concerning that function. Each entry shall clearly show the month, day and year of the contact, the name of the individual who made such contact; and the name(s) of the individual(s) contacted.

### **F.1. Making the Offer**

Contacting each property owner in person to initiate negotiations to acquire the necessary right of way is preferred, although negotiations can be initiated by certified mail. Chapter 6.405 of ODOT's *Right of Way Manual* outlines ODOT's own guidelines for making a valid offer and the contents of the acquisition packet, and it is recommended that those guidelines are followed on LPA projects as applicable.

Federal law provides that grantors must be given reasonable time to consider the offer of just compensation. State law further specifies that a minimum of 40-days must be given to grantors before condemnation action can be initiated (see ORS 35.346).

Within a reasonable period of time from initiating negotiations, the LPA must make follow-up contact to answer questions, negotiate any disparities between the parties in the opinion of value, and confirm the status of settling the file.

## F.2. Acquisition of Contaminated Properties

The LPA should take reasonable care to determine if properties needed for a project are contaminated. Appropriate levels of care are detailed in ODOT's *HazMat Program Manual*. In the case where properties being acquired by the LPA will become part of a state highway, the LPA must involve ODOT in the acquisition process as early as possible to ensure that the property will be in a condition from which ODOT will accept ownership. In some cases, grantors will be required to sign an agreement obligating them to clean up any hazardous materials discovered at a later time.

Resources:  
- [ODOT HazMat Program Manual](#)

## G. DONATED PROPERTY

In some instances, property owners may wish to donate their property. A donation of right of way is an acquisition of a property right that can be accepted only after the owners have been notified in writing by the LPA of their right to receive just compensation based on appraisal. If the property owner wishes to donate the necessary property, the property owner must sign a Donation Agreement Form indicating that their rights have been explained to them. The form must be saved in the file, and may also provide the option for the owner to waive their right to an appraisal. If an appraisal is still requested (e.g. for tax purposes), then the LPA must provide one. Donations from other government agencies are exempt from these requirements.

The LPA must take great care to make certain there is no real or perceived coercion involved when agreeing to a donation. ODOT recommends the LPA contact ODOT's Region Right of Way representative in the event an owner wishes to donate right of way.

Chapter 6.320 of ODOT's *Right of Way Manual* provides additional details regarding donations.

## H. CREDIT FOR REAL PROPERTY

The LPA may be credited an amount equal to the fair market value of that portion of the land or easements acquired for a project. If real property is used as credit against the LPA's share of the match, the LPA must apply to ODOT at the onset of the project and at a minimum provide documentation indicating the acquisition has been, is, or will be:

- lawfully obtained;
- incorporated into the project;
- not land described in 23 USC 138 (i.e. park lands);
- acquired in accordance with the provisions of 49 CFR Part 24;
- in compliance with the requirements of Title VI of the Civil Rights Act of 1964 (see

ODOT's Title VI website for details);

- based the project's construction needs in concurrence with FHWA, following consideration of all alternatives considered in the environmental assessment, and not based on the ownership of the property;
- approved by FHWA for use; and
- fair market value.

The fair market value shall not include any increase or decrease in the value of acquired properties caused by the project. The fair market value of land shall be established on the earliest occurrence of the effective date of the acquisition, or the date on which equitable title to the land vests in the state or LPA.

## I. ADMINISTRATIVE SETTLEMENTS

An administrative settlement or stipulated settlement is a negotiated settlement of a right of way acquisition that is typically in excess of the LPA's approved offer of just compensation. FHWA and ODOT encourage local agencies to carefully consider and utilize administrative settlements in appropriate situations.

The LPA shall document the following and make it available for review by ODOT:

- The responsible official who has the authority to approve administrative settlements.
- The procedure for handling administrative settlements.

Any administrative settlement which exceeds the LPA's approved just compensation must be documented and thoroughly justified in order to be eligible for federal-aid funds. The rationale for the settlement shall be set forth in writing. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the LPA has any doubt as to eligibility, it should obtain prior approval from ODOT through the Region Right of Way Manager.

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[FHWA and ODOT encourage local agencies to carefully consider and utilize the use of administrative settlements in appropriate situations.](#)

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The designated LPA representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information. At a minimum, the information to be considered consists of:

- All appraisals, including the owner's, and the probable range of testimony in a condemnation trial.

- The ability of the LPA to acquire the property and gain possession through the condemnation process to meet the construction schedule.
- The risk and impact of any potential construction delay pending acquisition and possession.
- The negotiator's recorded information, including file details and the owner's rationale for increased compensation.
- Recent court awards in cases involving similar acquisition and appraisal problems;
- The likelihood of obtaining an impartial jury in the local jurisdiction and the opinion of legal counsel where appropriate.
- The estimate of trial costs weighed against other factors.

## J. RELOCATION

The regulations governing relocation assistance are covered in Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended, and ODOT's *Right of Way Manual*, Chapter 8.

The majority of local agencies will find that it is not economically feasible to maintain staff to perform the relocation function. Local agencies that have qualified staff with appropriate training, education, licensing and experience may be approved by ODOT through the procedures process to provide relocation services as identified in Chapter 10.630 of ODOT's *Right of Way Manual*. Local agencies may contact the Regional Local Agency Liaison for advice on contracting with private consultants. ODOT does not maintain a list of qualified relocation consultants.

If a project includes relocation, the LPA should submit a relocation plan prior to right of way funding authorization. Local agencies should contact the Regional Local Agency Liaison, who will coordinate with the Region Right of Way Manager for assistance in preparing relocation plans and carrying out relocation activities.

## K. CONDEMNATION

The LPA must carry out the condemnation process under its own authority if the project right of way acquisition takes place on a non-ODOT facility. Prior to the initiation of negotiations, the LPA is responsible for securing its own resolution to acquire and condemn. Failure to do so prior to the initiation of negotiation can constitute a coercive action. The condemnation process shall be carried out in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and other applicable federal and state laws and regulations. The LPA 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. No owner shall be required to surrender possession of real property until the LPA has paid the agreed purchase price or has deposited into court, for the benefit of the owner, an amount not less than the just compensation determined by the LPA for the property.

If the LPA's project occurs on an ODOT facility, prior to the commencement of right of way acquisition activities, the LPA should coordinate with the Regional Local Agency Liaison and Right of Way representative to establish an Intergovernmental Agreement and Right of Way Services Agreement to identify the condemnation procedures. The coordination with the Region Right of Way representative must also include approval up front from the Department of Justice before any agreement is executed.

## L. RIGHT OF WAY CERTIFICATION

### L.1. Certification with Right of Way

Prior to submitting the PS&E Checklist, the LPA must complete the Right of Way Certification Form, developed and approved by FHWA. (See ODOT's *Right of Way Manual*, Chapters 2 and 3 and Appendix A to Chapter 2 for more detailed information). The purpose of the certification is to:

- Identify and affirm that no additional right of way and relocation assistance is required for construction of the project, with assurances that the acquisition and relocation have been completed in compliance with the Uniform Act, or identify the estimated availability of the properties that are not yet in possession and cleared for construction;
- Ensure that the right of way needed for the project has been cleared so there are no unnecessary delays or additional costs attributable to delays in accessing the right of way; and
- Identify the extent to which hazardous waste is present in the acquired right of way.

The right of way certification must be co-signed by the LPA and by ODOT's Region Right of Way Manager. The typical target date for submitting right of way certification should be approximately two to four weeks prior to the planned PS&E submittal date. This is highly variable and should be coordinated early on with the Regional Local Agency Liaison and right of way staff.

The Regional Local Agency Liaison will submit the certification request to the LPA and region right of way representative for consideration. The region right of way representative will visit the LPA, or its acquisition consultant, and review the acquisition files to determine if the right of way was acquired according to the Uniform Act.

If the Regional Local Agency Liaison, LPA and the region right of way representative determine that the project is ready for certification, the Region Right of Way Manager and LPA will co-sign

the certification form for transmittal to the Right of Way Headquarters Programming Coordinator. The Region Right of Way Manager will also provide the LPA and the Regional Local Agency Liaison with a letter detailing deficiencies if any were noted.

If the Regional Local Agency Liaison and the Region Right of Way Manager determine that the project cannot be certified, a letter will be provided to the LPA and the ODOT Certification Program Office, detailing the deficiencies encountered and the corrective action required before certification can be completed.

## **L.2. Certification with No Right of Way**

If it is determined that right of way acquisition is not required for a project, local agencies must complete the Right of Way Certification Form in consultation with the region right of way representative and submit it to the Regional Local Agency Liaison. Local agencies should exercise caution before making a determination that right of way acquisition is definitely not required. If an LPA determined right of way acquisition was not necessary and then subsequently found right of way acquisition was actually needed, the project will likely be delayed. In this situation, a Right of Way Project Funding Estimate must be prepared and the Regional Local Agency Liaison and the Region Right of Way Manager must be notified.

Right of way obtained through normal zoning, subdivision or building permit procedures may be incorporated into a federal-aid project without jeopardizing participation in other project costs.

## **M. PROPERTY MANAGEMENT**

If a local project is funded, either fully or partially with federal dollars, the acquiring LPA shall establish property management policies and procedures that will ensure control and administration of excess lands and improvements acquired for right of way purposes in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit. These procedures shall establish the following items:

- An inventory of all improvements acquired as a part of the right of way
- An accounting of excess properties acquired with federal-aid funding
- An accounting of the property management expenses and the rental payments received.
- An accounting of the disposition of improvements and the recovery payments received.
- The methods for accomplishing the clearing of right of way when such clearance is performed separately from the control for the physical construction of the project.
- The methods for managing the rodent control program.

- The methods for the preservation of the improvements and safety measures of the acquired property.
- The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

If the LPA permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the LPA on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

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When using FHWA funding to acquire property, the acquiring agency must establish property management policies and procedures to ensure control and administration of excess lands and improvements.

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In the event that right of way acquired with federal-aid funds becomes excess, the surplus right of way may be disposed of only after approval by ODOT's Right of Way Section. In this situation, the LPA must notify the Regional Local Agency Liaison, who will coordinate with the Region Right of Way Manager. If the disposal is to a private party, the LPA must determine fair market value (either through the appraisal process or by public sale) and either credit FHWA for the pro rata share of the proceeds of the sale or use the federal share of the net proceeds for activities eligible for funding under Title 23 of the United State Code for transportation purposes.

Federal regulations provide for the use of airspace for non-highway purposes above, at, or below the highway's established grade line, lying within the approved right of way limits. For information regarding right of way use agreement issues, refer to ODOT's *Right of Way Manual*.

If a non-highway use of the right of way is contemplated, the LPA should contact the Regional Local Agency Liaison, who will coordinate with the Region Right of Way Manager for more detailed policies and procedures that must be considered.

### N. DOCUMENT RETENTION

The acquiring LPA shall maintain all records of its right of way actions as required by state and federal law. The LPA shall be responsible to secure and maintain all project related documents and records generated from consultants retained on the LPA's behalf to perform the right of way acquisition services. Upon request, the Regional Local Agency Liaison will provide guidance regarding retaining appropriate and adequate records.

### O. ADA RAMPS

When the LPA project focuses on the repair and replacement of ADA ramps, the LPA should contact the Regional Local Agency Liaison and Region Right of Way representative regarding its plan for acquiring the necessary right of way for building the ramps. If the project includes the

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use of federal aid funding, all applicable federal and state laws must be followed when remediating the curb ramps. See Section C, Chapter 9 for design requirements.