



# **ODOT Right of Way Manual**

# Manual Updates

Date	Section/Page	Description of Change
09/11/2020	Ch. 3	Correct terminology to clarify that Map- 21= Early Acquisition and Advanced Acquisition=Hardship Buys and protective purchases
09/17/2020	6.323	Clarification added for developer donations when acquiring from a neighbor
09/17/2020	P. 302 (N/A currently)	Information added re: railroads issuing permits v. TEs
10/01/2020	5.240	Item #2, remove “on premise” as that is no longer in effect
04/20/2021	Multiple pages	Corrected all abbreviated references to “Right of Way” as “ROW” for consistency.
02/02/2022	8.787	Edits to language for 8.787 - Professional Move Services.
04/12/2022	5.145 & 6.325	Change minimum payment amount to \$750.
05/31/2022	P. 297	Remove Chapter 12 (Railroad) and replace here with link to the new manual. <a href="https://www.oregon.gov/odot/ROW/Pages/Railroad.aspx">https://www.oregon.gov/odot/ROW/Pages/Railroad.aspx</a>
03/27/2023	6.323	Add language regarding developer donations vs. acquisitions
04/27/2023	6.435	Update the language of cost to cure.
04/27/2023	6.545	Update the cost to cure language
04/27/2023	P. 173	Update the cost to cure language
04/27/2023	P. 194	Update the cost to cure language
06/11/2023	P. 56	Revise Certification 3 language
12/12/2023	8.804	Update language of outdoor signs off premise as PPO.
12/13/2023	? (page 252)	Update Activities allowed for property management projects in the r/w phase
06/06/2024	? (page 31-33)	Update roles for state right of way manager, deputy state right of way manager and programs manager
07/09/2024	? (page 114)	Increase Administrative Valuations from \$2,500 to \$5,000
12/09/2024	8.807	Added all new language for outdoor signs regarding compensation.
12/09/2024	8.809	Added modification paragraph at the end of the section regarding partial loss/partial compensation.
12/09/2024	13.310	Added new section regarding full or partial loss of an OAS.

12/09/2024	6.650	Added all new language for Outdoor Advertising Signs.
12/10/2024	3.322	Added paragraph for Projects with Files Including Marijuana Operations
12/10/2024	6.335	Added reference section for projects w/files including marijuana operations.
12/11/2024	8.105	Add reference section for projects w/files including marijuana operations.
06/10/2025	Various	Revisions for CFR updates; corrections. See change log presented to RWLT 05/13/2025.
06/10/2025	2.580 – 2.587 (p. 55 – 56)	Major updates and edits to Certification sections in Chapter 2
06/10/2025	Appendix A to Chapter 2 (p. 69)	Edits to Appendix A – Right of Way Certification
06/10/2025	Chapter 8 Relocation (p. 196 – 306)	Major edits to Chapter 8 – Relocation for CFR updates including benefit amounts, temporary relocations, move benefit options, reverse mortgage calculations
06/10/2025	Chapter 9 (p. 305)	Major updates to Chapter 9 - Property Management
07/29/2025	6.426 (p. 157)	Update hold harmless clause.

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## Chapter 1 – General Agency Organization

### Introduction

The **Oregon Department of Transportation (ODOT)** began life in 1913 when the Oregon Legislature created the Oregon Highway Commission to “get Oregon out of the mud.” Today, the ODOT works to provide a safe, efficient transportation system that supports economic opportunity and livable communities for Oregonians. We develop programs related to Oregon’s system of highways, roads, and bridges; railways; public transportation services; transportation safety programs; driver and vehicle licensing. motor carrier regulation.

**Mission for ODOT:** ODOT provides a safe and reliable multimodal transportation system that connects people and helps Oregon’s communities and economy thrive.

**Our Values:** These principles inform decision making and guide our behavior in working with each other, our partners and the communities we serve:

1. **Integrity:** We are accountable and transparent with public funds and hold ourselves to the highest ethical standards.
2. **Safety:** We share ownership and responsibility for ensuring safety in all that we do.
3. **Equity:** We embrace diversity and foster a culture of inclusion.
4. **Excellence:** We use our skills and expertise to continuously strive to be more efficient, effective and innovation.
5. **Unity:** We work together as One ODOT to provide better solutions and ensure alignment in our work.

### 1.100 Right of Way Section Mission

The mission of the right of way section is timely and cost-effective acquisition of real property necessary for the improvement of Oregon’s transportation system and to maximize the return on the highway trust fund’s real property investment through management and sale of Highway Division excess property.

### 1.101 Right of Way Section Values

We are dedicated to providing timely access to the real property necessary for construction of transportation improvements and for maintenance of existing facilities.

We are dedicated to ensuring that real property is acquired in conformance with the Fifth and Fourteenth Amendment to the United State Constitution and Section 18 of Article 1 of the Oregon Constitution.

We are dedicated to ensuring that persons required to sell land or to move because of the acquisition of their property are treated fairly, equitably, and humanely.

We are dedicated to quality, excellence, and cost effectiveness in our work.

We are dedicated to open, honest, and professional dealings with employees, the public, user groups, the legislature, local governments, contractors, consultants, and other groups.

We are dedicated to use the public resources entrusted to us wisely and to project and enhance those assets.

We recognize that employees are our most important resource. We are dedicated to providing them the resource and support necessary to do their job and reach their full potential.

We are also dedicated to providing clear expectations and feedback, recognizing and rewarding performance, communicating important information and decisions, and providing a safe working environment.

### **1.110 Policies**

23 USC 106 allows FHWA to delegate certain decision-making authority to ODOT. These authorities are listed in the Stewardship and Oversight Agreement (see [Addendum](#)). ODOT is responsible for the listed decisions and maintaining policies and procedures regarding its decision-making process. FHWA provides guidance and oversight, and in some cases, may assume the authority for some projects. The Stewardship Agreement, this manual, 23 CFR 710, and 49 CFR 24 govern right of way acquisitions. In addition, the following have additional requirements to be met:

1. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)
2. 23 CFR parts 635, 1.23, 810, 770 and 710
3. 49 CFR Part 24
4. Title VI of the 1964 Civil Rights Act, and related amendments
5. Stewardship and Oversight Agreement between FHWA and ODOT
6. Oregon Revised Statutes (ORS) 35, 55, 366.320 through 366.450, 731, and 734
7. Constitution of Oregon, Article 1, Section 18
8. Constitution of the United States of America, Amendment 5 and 14

### **1.120 Roles and Responsibilities**

#### **1.121 Federal Highways Administration/Stewardship Agreement**

Title 23 of the United States Code of Federal Regulations (USC) governs the Federal-aid Highway Program. FHWA uses the State Departments of Transportation through a Stewardship and Oversight Agreement (see [Addendum](#)) to carry out the federal-aid transportation programs within their respective states. Division offices in each of the states are established to provide oversight and coordination of the Federal-aid programs.

ODOT entered into an agreement with FHWA to provide stewardship and oversight of the right of way program on behalf of FHWA. Stewardship includes the efficient and effective management of public funds that have been entrusted to FHWA. Oversight includes the act of ensuring the Federal Highway Program is delivered in conformance with applicable laws, policies, and regulations.

### **1.122 Oregon Transportation Commission**

It is the function of the Oregon Transportation Commission (OTC) to establish policies for the operation of the Department of Transportation. The five-member commission, which is appointed by the governor, has the responsibility to coordinate and administer programs relating to highways, motor vehicles, public transit, and such other programs related to transportation as may be assigned by law so the Department.

### **1.123 Oregon Department of Transportation**

ODOT is responsible for carrying out the direction and policies of the OTC in conjunction with the delegated authority provided through the Stewardship and Oversight Agreement with FHWA. The major divisions of the Department are Central Services, Driver and Motor Vehicle Services, Highway, Motor Carrier Transportation, Public Transit, Rail, Transportation Development, and Transportation Safety.

### **1.124 Director of Transportation**

The director of transportation, appointed by the governor, serves as chief administrative officer for the Department.

The director is responsible to the commission for coordinating ODOT programs with other public agencies and the private sector, such as the Public Utility Commission and transit districts, railroads, airlines, intercity bus companies, and trucking interests. the general public.

Primary duties include setting priorities for a balanced development of transportation programs to achieve an equitable allocation of resources; planning for future operations; establishing managerial controls to carry out policies adopted by the Oregon Transportation Commission, representing Oregon's interests on transportation issues in Congress and the State Legislature.

### **1.125 Highway Division**

The deputy director administers the Highway Division. The Highway Division consists of five region offices and associated region Technical Centers, Strategic Business Services, Office of Maintenance and Operations, and Technical Services.

The Highway Division is responsible for the construction, improvement, maintenance and operation of the system of state highways, bridges, and bicycle paths.

### **1.126 Technical Services Branch**

The Technical Services Branch manager administers the technical service branch of the Highway Division.

The Technical Services Branch is responsible for technical leadership of the state transportation system. To carry out this responsibility, the Branch provides long term strategic management of the state highway system by:

1. Maintaining an inventory of transportation infrastructure assets, such as bridges, culverts, pavement, guardrails and other assets, and using this information to analyze and plan for the present and future needs of the system.

2. Providing technical training and ongoing development through formal courses, mentoring, and other technical tools, such as up-to-date manuals, policies, guidelines, and checklists. These tools are effective for local governments and contractors, as well as ODOT's technical staff.
3. Incorporating continuous learning about best practices by learning what ODOT and its providers do best and what can be improved and sharing this information with all of ODOT and its providers, including regions and contractors.
4. Providing leadership regarding best technical practices in discipline-specific areas for the Department through research, attending national conferences, and participation in discipline-specific trade organizations.
5. Establishing regular communication links between Technical Services and region Technical Centers with the Technical Leadership Committee and other discipline-specific leadership teams.
6. Conducting quality assurance reviews of selected projects to monitor the Department's overall project delivery program.
7. Controlling access to state highways.
8. Overseeing the occupancy of highway rights of way by utilities.
9. Controlling outdoor advertising signs along state highways.

## **1.200 Right of Way Section Organization**

### **1.201 Introduction**

The right of way section is part of the Highway Division Technical Services Branch of ODOT. It is responsible for the administration of the Department's eminent domain program and policies. In cooperation with the Federal Highway Administration (FHWA), the right of way section implements Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The Section provides necessary training to regional staff, local public agencies (LPA) and consultants in the requirements of Public Law 91-646 and all ODOT eminent domain policy.

The right of way section is responsible for oversight of all Department right of way activities, including real property appraisal, property acquisition, occupant relocation and project-related property management. It is charged with ensuring compliance with federal and state laws and regulations and maintaining quality assurance. The Section also provides direct project support to the five ODOT regions in the areas of project authorization and funding, appraisal and relocation review, settlement approval, condemnation and mediation, title and escrow services, acquisition specialty services, utility relocation oversight, and access management/research. It functions as the liaison between FHWA and the five ODOT regions. The Section oversees and monitors all regional right of way activity for compliance with federal and state laws. Finally, the Section is responsible for other statewide ODOT programs not directly related to transportation projects. These include the outdoor advertising sign program, the ODOT management home purchase program, and non-project related property management.



### **1.210 Obligations**

The right of way section shall:

1. Promote and advance the mission, initiatives, and programs of ODOT.
2. Cooperate with federal, state and local agencies in providing its services.
3. Comply with all state and federal laws and rules in the management of the Section and in the implementation of the right of way program.
4. Comply with applicable collective bargaining contracts and Department manuals and policies regarding personnel issues.
5. Prohibit any employee who has a financial or other personal interest in real property that ODOT is seeking from acquiring or disposing of, from appraising, negotiating for, or being involved in the acquisition or disposal of that property; prohibit any employee who has a financial or other personal interest in an ODOT contract from negotiating, making, or accepting that contract; prohibit any person who has a conflicting financial or other personal interest in an ODOT contract or real property that ODOT is seeking to acquire or dispose of, from performing services for the right of way section related to such contract or real property.
6. Provide training opportunities for all right of way section employees to develop skills and knowledge necessary for performance in current positions and career advancement.

### **1.220 Organization**

The right of way section is comprised of two office units, right of way operations and right of way programs, under individual unit managers. Both unit managers' report directly to the state right of way manager.

Each unit is responsible for different program areas as identified in [Sections 1.222 – 1.224](#). Detailed descriptions of each program are found in the following chapters in this manual.

### **1.230 Roles and Responsibilities**

#### **1.231 State Right of Way Manager**

The state right of way manager is the lead administrator of the right of way section and is responsible for administering and overseeing the activities of the statewide right of way program.

Delegation and signature authority has been given to the state right of way manager for all program areas in the Section. The state right of way manager has sub-delegated responsibilities in each program area as shown in [Sections 1.222 – 1.225](#) and as detailed in the subsequent chapters of this manual.

The state right of way manager may represent the Highway Division by appearing before legislative committees, various boards and commissions, and other state agencies.

The state right of way manager supervises the right of way administrative services staff, which provides clerical support services for the Section and is responsible for administering and overseeing the following programs:

1. Outdoor advertising sign program.
2. Right of way access management and research.

### **1.232 Deputy State Right of Way Manager**

The deputy state right of way manager is appointed by the state right of way manager and is responsible for administering and overseeing the operations unit programs and staff. The operations unit programs consist of:

1. Oversight of the statewide land acquisition program.
2. Condemnation/DOJ Liaison (see [Chapter 7](#)).
3. Alternate Dispute Resolution (see [Chapter 7](#)).
4. Appraisal (see [Chapter 5](#)).
  - a. Appraisal Review.
  - b. Appraisal policies and standards.
5. Relocation (see [Chapter 8](#)).
  - a. Relocation review.
  - b. Relocation policies and standards.
6. Right of Way Project Authorization (see [Chapter 3](#)).
  - a. Project funding and authorization.
  - b. Project certification coordination.
7. Local Public Agency program.
8. Consultant contract administration and payment.
9. Section performance measures.
10. Title services.
11. Right of Way Information Tracking System (RITS) administration.
12. Utility relocations and reimbursements.
13. Acquisitions involving railroad rights of way.

Under sub-delegated authority from the state right of way manager, the right of way operations manager has settlement approval authority for the purchase of rights of way in the following circumstances:

1. Settlements greater than \$100,000 and more than 20% over the just compensation amount, or

2. Settlements which are the result of the Section's Alternate Dispute Resolution (ADR) process, or
3. Settlements made through the condemnation processes.

The right of way operations manager is the liaison between the regional offices and the right of way section, and substitutes for the state right of way manager as needed in the administration of all Section activities.

### **1.233 Right of Way Programs Manager**

The right of way programs manager is appointed by the state right of way manager and is responsible for administering and overseeing the functions of the right of way program unit and for supervising the Unit staff. The unit programs consist of:

1. Non-project property management (see [Chapter 9](#)).
2. Section 9 program.
3. ADA Program.

Under sub-delegated authority from the state right of way manager, the right of way programs manager has settlement approval authority for the purchase of rights of way in the following circumstances:

1. Settlements greater than \$100,000 and more than 20% over the just compensation amount, or
2. Settlements which are the result of the Section's Alternate Dispute Resolution (ADR) process, or
3. Settlements made through the condemnation processes.

The right of way programs manager has authority to approve settlements as detailed in Section 1.222 in the absence of the right of way operations manager and substitutes for the state right of way manager as needed in the administration of all Section activities. The right of way operations manager is the liaison between the regional offices and the right of way section for the ADA program.

### **1.234 Right of Way Management & Policy Advisors**

In the right of way section, there are two positions that are responsible for assisting unit managers in administering and overseeing the functions of each right of way unit and for managing projects, some of which are assigned to the unit staff. The right of way management & policy advisor positions report to the deputy state right of way manager.

### **1.235 Region Right of Way Offices**

The five ODOT regions each have right of way staff to deliver the needed appraisal, acquisition, relocation, and project-related property management functions. Regions' staff may be supervised by the region right of way manager, with their work directed by the region right of way program manager, or staff is supervised, and their work is directed by the region right of way manager.

The region right of way offices are located in Portland, Salem, Roseburg/White City, Bend, and La Grande. The region right of way staff responsibilities include, but are not limited to:

1. Serving on project teams.
2. Conducting project-scoping activities.
3. Conducting property appraisals.
4. Acquiring property.
5. Relocating people, businesses, and personal property from acquired property.
6. Acting as right of way liaison with local area governments by providing oversight of local projects.
7. Contracting for right of way services.

### **1.300      Region Right of Way Office Operation**

#### **1.301      Introduction**

Each of the ODOT regions maintains a right of way office and staff to carry out the region's right of way operations. The staff is under the direct authority of the region tech center manager. The right of way section administration, however, has departmental and FHWA authority over all right of way policy and procedural issues. Because of this, the section maintains oversight of the region right of way office activities and ensures compliance by means of section review and approval functions as detailed in the right of way manual and by quality assurance audits.

#### **1.310      Policies**

The following policies apply to work done by region right of way staff:

All right of way functions and procedures shall be carried out in conformance with federal and state laws and policies, as detailed in the right of way manual and as interpreted by the right of way section administration.

To enable quick access to current information, right of way records shall be maintained and updated as required in RITS.

#### **1.320      Responsibilities**

##### **1.321      Region Right of Way/Program Manager**

The region right of way manager reports to the region technical center manager and is responsible for administering and overseeing the functions of the regional right of way office and supervising office staff. The region right of way program manager is appointed by the region right of way manager and is responsible for administering and overseeing the right of way functions of the office.

The region right of way manager or program manager is responsible for the implementation of all phases of the region right of way program and for carrying out the program in compliance with right of way section policy. The region right of way manager or program manager may

delegate responsibilities to right of way agents, senior right of way agents and/or administrative support staff.

Upon approval by the state right of way manager, the region right of way manager/region right of way program manager has the authority to approve final reports and accept agreements, conveyance documents and all other documents relating to acquisition of property the OTC or its delegee has authorized by resolution within the following limits and parameters:

1. Any monetary settlement for the reviewed or approved amount.
2. Any monetary settlement under \$100,000 total price, regardless of the percentage increase.
3. Any monetary settlement within 20% of the reviewed or approved amount.
4. A properly documented letter of justification must accompany any settlement over the reviewed or approved amount and must detail why the settlement is in the best interest of the state.
5. Major negotiated construction obligations and other state obligations approved by region that comprise a portion of the settlement over the reviewed amount shall be appropriately valued, included in the final settlement total as part of the letter of justification, and are subject to the above limits. Construction obligations may not offset damages or result in double compensation for items acquired which were included in the appraisal review.
6. Taking title subject to encumbrances as outlined in [Section 6.610](#).

(Information regarding specific region responsibilities and activities in any of these program areas can be found in subsequent chapters of this manual.)

### **1.322 Region Senior Right of Way Agents**

Senior agents are responsible for all right of way project management functions in the region. They assign work to staff right of way agents, provide oversight and training, and monitor work quality, as well as work assignments and project deadlines. They may be responsible for consultant oversight and other duties as indicated by the right of way program manager.

### **1.323 Region Right of Way Agents**

Right of way agents are responsible for carrying out the right of way functions for the region, including appraisal, acquisition, relocation and project-related property management activities, as assigned by the senior agents and/or the right of way program manager.

### **1.324 Administrative Support Staff**

The right of way administrative support structure varies from region to region. Sufficient administrative support should be available to meet the region right of way office needs.

## **Chapter 2 – Right of Way Project Management**

### **2.100 Introduction**

The mission of ODOT's right of way section is the timely and cost-effective acquisition of real property for the improvement of Oregon's transportation system, right of way project management is responsible for the day-to-day efforts to support that mission. As a project team member, the right of way project manager is an integral part of all major activities and decisions required from a project's initial identification through certifying that the all the necessary right of way has been acquired while ensuring and protecting the rights afforded to property owners under the U.S. Constitution and the Uniform Act.

Timely communication to the public, affected property owners, project personnel, local agencies, and other right of way personnel is crucial to the success of project management.

### **2.110 Policies**

Right of way work shall be performed in compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970 as amended, state laws, civil rights laws, and other applicable state and federal regulations.

Each region or area will carry out its right of way project management liaison activities to facilitate planning and maximize cooperation between sections.

Right of way cost estimates are for planning or programming purposes only. Estimate details for individual files are confidential and cannot be released to other ODOT units or the public, including property owners.

Right of way project management activities will conform to ODOT's PD-03 project development access management sub teams.

### **2.120 Right of Way Project Manager Responsibilities**

The right of way project manager oversees, coordinates and manages the right of way process on projects as assigned.

As a core member of the project development team, the right of way project manager:

1. Participates in all project team meetings and contributes to the development and implementation of realistic project scopes, schedules and budgets.
2. Supports the project by attending public hearings, answering property owners' questions and concerns, providing right of way reports and estimates for the environmental process, participating on access sub teams, and ensuring acquisition information is maintained in RITS.
3. Oversees, coordinates and manages all aspects of the right of way acquisition portion in the development of highway projects including those involving utilities, outdoor advertising signs and surplus property.

4. Is responsible for assigning and overseeing all tasks in appraising, acquisition, and relocating displaced property occupants and clearing rights of way, including the removal of property improvements and hazardous materials. This work involves contracting with the private sector, as well as making work assignments.
5. Has the responsibility for the budget, scope, schedule and final delivery of a right of way project.
6. Assists in forecasting and amending budget data in the biennial process for updating the Statewide Transportation Improvement Program (STIP).
7. Actively participates in scoping trips to identify potential right of way impacts, represent property owner concerns, and inform the project team about right of way delivery timelines and potential costs during project development. Is responsible for examining the scheduling format throughout project development. This is to protect right of way timelines and recommend critical modifications to the schedule, as needed.
8. Sets up the project in RITS, makes assignments, and confirms RITS is up to date with all necessary project documents. Provides preliminary and revised cost estimates during project refinement.
9. Formulates the programming estimate for authorization approval in order to begin the acquisition stage.
10. Works with agreement writers through the creation and execution of Intergovernmental Agreements and Right of Way Services Agreements.
11. Administers contracts with consultants and confirms the deliverables of the contracts are fulfilled.
12. Prepares the certification document for signature by the region right of way manager/program manager.

## **2.200 Planning and Management Systems Phase**

### **2.210 Oregon Transportation Management System (OTMS)**

The purpose of the planning and management systems phase is to identify transportation needs and develop prioritized lists of future projects for inclusion in the STIP.

Project development is an ongoing process. Projects are nominated by the OTC, ODOT, Area Commissions on Transportation (ACTs), local governments and the general public.

The assessments conducted during this phase are based on objectively identifying the condition of roads, bridges, and intersections which are in most need of repair along with anticipated transportation needs.

The phase includes such activities as: corridor, local transportation system, and regional transportation planning.

The process begins with a problem or deficiency, and then proposed projects are compared against each other and prioritized according to their relative importance and feasibility.

Two major activities occur during the planning and management systems phase:

1. Transportation system planning - a process which outlines transportation strategies and future projects for a specific geographic region.
2. Management system analysis - a computerized assessment program which organizes and prioritizes information about transportation facilities.

Management systems which rank the data include:

- a. Bridge Management System (BMS)
- b. Congestion Management System (CMS)
- c. Intermodal Management System (IMS)
- d. Pavement Management System (PMS)
- e. Public Transportation Management System (PTMS)
- f. Safety Management System (SMS)
- g. Traffic Monitoring System for Highways (TMS-H)

Initial public involvement occurs during this phase, as well as the preliminary designation of responsibilities in an Intergovernmental Agreement.

There is no direct right of way involvement during this early stage, but the resulting prioritized project lists will have a bearing on right of way responsibilities in later stages.

## **2.300 Program Development Phase**

The program development phase moves selected projects from the prioritized lists and adds them to the STIP. Refinement plans may be required if a preferred solution is not evident. Otherwise, design alternatives are developed and evaluated, their major features and costs are outlined, and they are prioritized.

Three major activities occur during the program development phase:

1. The identification of potential projects.
2. Preliminary feasibility analyses.
3. The prioritization and selection of projects to be included in the STIP.

Right of way involvement in this phase includes evaluating projects to determine right of way impacts and to develop preliminary cost and time estimates for acquisition, relocation, and demolition and access management issues.

## **2.310 Statewide Transportation Improvement Program (STIP)**

During the program development phase, projects needed on the state highway system to meet performance measures, carry out corridor plans or the regional and local transportation system plans are identified.

Proposed projects are evaluated, major features and costs are defined, and they are prioritized for selection. The focus is to move selected projects from the prioritized list and schedule them in the STIP.



The STIP is a four-year program of projects which is updated at two-year intervals and requires input for right of way costs.

The program cycle begins with the receipt of project recommendations. The STIP continues as a draft (DSTIP) until it has been accepted by the OTC. The approved STIP document is released, and a new DSTIP is then started for the next four-year program.

The STIP coordinator prepares the draft statewide program, assigns funding, and verifies that statewide program goals are met. (See [Section 2.370](#).)

Several iterations within the management systems, regional management and statewide coordination activities may be necessary before the OTC approves the STIP.

Only those projects selected for inclusion in the STIP continue through the Project Design Alternative Selection and Design Phases of the Project Development Process.

### **2.320 Preliminary Feasibility Analysis**

During the prioritization and selection of projects for consideration in the STIP, project scoping teams conduct initial reconnaissance.

Proposed projects are evaluated to determine whether topographical, environmental, community, and fiscal constraints would prevent a project's success. The project team then develops a project scope and project prospectus.

Early in the project development phase, the environmental services section initiates a baseline report process, which is multi-discipline survey work to determine if significant or sensitive resources are located in the project area.

The study area will be broad enough to encompass all potential design alternatives including right of way, construction easements, access roads, staging areas, agency-supplied material sources and temporary structures.

The baseline report will be provided to designers and the project team to assist in developing project alternatives that avoid or minimize impacts to the environment.

Projects are classified by potential environmental impacts as determined by the National Environmental Policy Act (NEPA).

This Act, which was passed in 1969, established national environmental policy and goals for the protection, maintenance, and enhancement of the environment. NEPA requires federal and state agencies to examine the environmental consequences of major proposed actions, such as building a new transportation facility, and to conduct a decision-making process that incorporates public input.

NEPA requires federal and state agencies to use a systematic process to provide environmental impact information to federal, state, local, and Indian Nation officials as well as citizens before decisions are made to take major actions that may significantly affect the environment. Any project may receive federal funding or have state funds converted to federal funding at any time, therefore, agencies are required to study, develop, and describe impacts and alternatives and obtain public input to recommended courses of action under federal funding rules and guidelines.

### 2.330 Environmental Classifications

ODOT's environmental services section is responsible for categorizing projects into one of three classes based on environmental impacts to the human or natural environment.

Class 1 projects have the potential for significant environmental impacts due to the large amounts of new right of way required for construction or other significant impacts. Typically, this class includes new highways and major realignments.

Class 1 projects require the preparation of an Environmental Impact Statement (EIS). They also involve the formation of Citizens' Advisory Committees (CAC), public outreach, formal design alternative development, screening, a public hearing, and input/approval from various jurisdictional agencies. This process may take from two to four years to complete and results in a Record of Decision.

Class 2 projects generally do not have a significant impact on the environment and typically involve minor design alternatives with minor right of way requirements.

These projects are categorically excluded from the need for a NEPA evaluation and document but may require permits or approvals from regulatory agencies.

Class 3 projects are those for which the significance of environmental impacts is not immediately apparent, such as improvement to an existing facility.

These projects require the preparation of an Environmental Assessment (EA) to determine if an EIS is required. If no EIS is required, a Finding of No Significant Impact (FONSI) is issued.

The EA process includes public involvement, alternative design development, screening, a public hearing and input/approval from various regulatory agencies. This process may take one and one half to three years to complete.

Commencement and extent of the right of way input varies with the classification of the project. Almost no investigation or input may be needed on Class 2 projects. A Class 1 project involving a corridor selection, or a Class 3 project might require considerable research and commentary as well as a formal right of way report.

### 2.331 Input by Classification

For Classes 1 and 3, the baseline report survey assesses the existing conditions of the biology, archeology, historic properties and wetlands within the project area against potential project impact. Typically, consideration of environmental impacts follows a sequencing concept:

**Avoidance** – Avoidance of the resource is the highest priority.

**Minimization** – If the resource cannot be avoided, then minimized harm is required to the resource to the maximum extent possible and practicable.

**Mitigation** – Where the resource cannot be avoided, and where minimization leaves harm to the resource, measures are implemented to mitigate or offset the harm.

The Environmental Baseline Report provides the context for the project development team to design and screen project alternatives for a range of possibilities.

### **2.350 Creating a Business Case**

A project Business Case, scoping report, and a schedule are developed for each project included in the STIP. A Business Case is a formal summary of a proposed purpose, need and strategy to solve a problem.

The process incorporates the initial environmental considerations along with estimates on project costs, potential solutions and proposed sources of funding.

A project leader assembles a project team that identifies the work to be done to deliver a project with the specified features and functions to solve a problem or deficiency. The team agrees to a project scope and produces all cost estimates for the work.

This Business Case resides in a location for viewing by anyone with access to the system. The Draft Project Business Case is periodically updated until it is accepted.

### **2.351 Scoping Report**

The project scoping report is made up of the comments provided by each discipline that is part of the project team.

Following project scoping, the region right of way representative on the team, generally a right of way project manager, describes the impact the project will have on private property. Based on that impact, the right of way project manager will also provide an estimate of the cost for acquiring the right of way.

If the right of way estimate in the scoping report was produced by others, the right of way project manager is required to submit a liaison cost estimate after confirming the accuracy of the component numbers. The form requires input on the number of files, acreages, relocations, improvements, damages, demolition, costs to cure, legal and contingencies costs, and personnel costs. This information is captured in RITS.

The party responsible for providing the right of way descriptions (state, consultant or agency) is required to submit an estimate of costs.

Scoping reports should also include activity responsibilities, permits and clearances and a sub-category for right of way items, such as the number of acquisitions, as well as the type and number of business and residential relocations.

Until the final alignment is selected, the number and level of impact is subject to change.

It is extremely important that the costs and scopes of projects reviewed in the first two years of the next STIP are accurate. Underestimation of costs can jeopardize the delivery of a project.

**Note:** On all projects, right of way acquisition may not begin until FHWA approves the environmental document, and the right of way acquisition phase is authorized, unless exceptions such as advanced acquisition are in place.

### **2.360 Project Scoping**

Scoping consists of integrating the project problem statement, on-site observations, design standards, access management standards and accident history with a proposed, well thought out solution, supported by the best cost estimate possible.

Once a list of potential projects is developed, a scoping trip is arranged to view the projects. In some instances, a desk scope of the potential projects will take place in lieu of a scoping trip. The amount of right of way participation will vary with the project type, complexity, time schedule and the level of impacts.

Based on the preliminary project footprint, the assessment of right of way impacts result in a cost estimate, approximating the anticipated costs of land and damages to improvements. In addition, relocation and demolition costs, anticipated time to acquire, personnel costs, legal costs, and contingencies must be calculated.

Scoping preparation for the right of way team member should consist of several research steps. This planning and preparation will be the basis for all further project investigation and cost development.

The right of way project manager can and should use information such as old right of way maps, project sketches, property boundaries, zoning, information regarding the type and age of property improvements, and the current trends land values to estimate a project cost for right of way acquisition. The right of way project manager also makes an estimate of the number of displacements that might occur. A brief summary of the area and its residential and business replacement availability is prepared. If it appears there might be a problem with the quality or quantity of replacement housing, the right of way project manager should advise the team and propose remedies.

After the cost estimate is developed and submitted, any documents and specific data used to develop the information should be uploaded to ProjectWise for access and use by the scoping and project teams, and to RITS for use in generating other cost refinements, right of way programming estimates and reference. After the project is set up, contents of the region project folder not prepared in RITS should be uploaded there.

Multiple drafts of estimates can be prepared in RITS.

### **2.361 Railroad and Utilities**

If a right of way utilities' representative is not included on the scoping trip, the right of way project manager should record any project goals which would significantly impact railroads or utilities.

Regional utility personnel should be informed promptly as construction coordination and scheduling may significantly influence the timeframe for the project. Railroad and utility relocations are handled through a separate program. (See [23 CFR 645](#) and [646](#); see also <https://www.oregon.gov/odot/ROW/Pages/Railroad.aspx>)

### **2.362 Functional Replacement**

Publicly owned properties including land and/or facilities may be subject to the functional replacement provisions of CFR Title 23. Instead of paying fair market value for the real property, the state may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility (see [23 CFR 710.509](#)).

### **2.363 Land Services Justifications**

The right of way project manager may also be asked to provide right of way cost estimates to justify frontage roads, access roads, cattle or equipment passes, major installations for irrigation and/or restoration of water supplies.

As a team member, the right of way project manager may encounter situations in which a land service facility, such as a frontage road, would prevent major damages created by the project, but is not part of the proposed project design. In this case, the right of way project manager should inform the team to ensure that design options are included.

The potential damages to the property without the facility are weighed by the team against the costs of the facility to the project and a decision is made.

Documents used in developing the estimates are found in RITS.

Once the project is scoped, the prospectus developed, and a funding source is assigned, it is included in the STIP. The right of way project manager is expected to provide budgets and estimates for periodically updating the STIP.

### **2.370 Funding Programs**

In order to ensure that the right of way phase and activities are set with the appropriate scheduling expectations, the project manager should know about the source of the funds and their timeframes.

Specific timeframes may be outlined by the fund, i.e., the funds may have an expiration date. This is a consideration in developing cost and time estimates. For example, 18 months is permitted to file relocation claims; this may conflict with time constraints of special program funding. The project team must consider this in developing its project.

The projects which are included may be any combination of federal and state funding. The funding source is usually dependent on the type of project.

In addition, state funds are designated for certain projects when there is no federal participation. There may be time limits in place to utilize these funds. However, state funds may be converted to federal funds at any time at the discretion of the Statewide Investment Management Section (SIMS).

### **2.380 Approval of STIP**

Early-stage project and alternative design development is allowed when the four-year STIP is approved, and if applicable, federal PE funding is authorized. Work also continues on those projects previously funded, subject to any changes made during the STIP update period.

### **2.400 Project Design Alternative Selection Phase**

This phase includes preliminary site surveying, mapping, project design alternative analyses and the selection of the preferred alternative. The several footprints of the alternatives showing potential impacts to improvements should be shown on preliminary location maps provided by the region's road designers. The selected alternative is not determined until the FHWA Record of Decision (ROD) is made after the FEIS is approved.

Alternative analyses occur during this phase to generate, evaluate and prioritize the most feasible, reasonable and prudent solution(s) to meet the project's purpose and need. Right of way involvement in this phase entails calculating right of way needs, impacts and costs for each proposed project design alternative.

Potential impacts are identified based on the footprints of the design alternatives. Impacted improvements are identified, such as privately-owned wells, private utilities, septic systems, private fuel tanks, buildings, landscaping, fences, rock walls or other improvements which may be in the existing or proposed right of way. Deadlines to resolve these issues are also required. A right of way report will be requested during this phase. It could be generated in a letter format or a formal report and takes into account all reasonable potential impacts to right of way resulting from the design, construction staging, traffic control, and environmental mitigation requirements.

The right of way report should include: a general statement, a brief synopsis of the basis on which the estimate was developed, a brief description of the alternatives, any limitations to the information considered, the estimated number of parcels affected, the number and types of relocations, the estimated costs of the alternatives and conclusions and recommendations.

A right of way assessment of impacts and costs, as developed during the earlier scoping activities, will be useful at this point. Further refinements of the numbers and additional on-site review may be required to ensure that the information is more accurate and definitive. Each alternative's cost estimate includes acquisition of land and improvements, damages, relocation, demolition, legal and contingencies, incidental and personnel costs.

Generally, cost and time estimates will be based on preliminary right of way maps, tax lot maps and county assessor documents, zoning maps, comprehensive plan maps and real estate sales information. The cost estimates will be more refined than that provided after the original scoping trip.

Relocation data should include numbers of residential displacements, special needs replacement requirements, sufficiency of replacements available in the market, last resort housing, types and numbers of business displacements, outdoor advertising signs and other special concerns. A summary sheet or other format may also be included.

If needed, Environmental Impact Statements (EISs) are prepared and require public comment, especially in the development of environmental documents related to identified project issues.

### **2.410 Contaminated Properties**

The acquisition of contaminated properties continues to be a factor on many ODOT construction projects. During project development, the project team or the right of way project manager will request that the region HazMat specialist conduct an investigation to determine possible ground contamination within the limits of the project. This will be done as early as possible.

The assigned specialist will also investigate all buildings to be demolished. Right of way will obtain needed permits of entry for the hazardous material investigations.

If potential contamination is identified, the project team does a risk assessment to determine the course of action, either avoidance or minimization of acquisition.

## **2.420 Design Alternative Estimate Evaluation**

After the technical reports are submitted, the project team evaluates the data for each alternative. These include construction phasing, design exceptions, detour routing, frontage roads, level of service analysis, value engineering, right of way costs and impacts, landscape concepts, and access management strategies.

Conceptual designs for roadway, bridge, pavement, storm sewer, intersection, and interchange layout, with cost estimates of major items for each alternative are weighed for their costs/benefits.

Stakeholder and public input are also obtained for consideration.

## **2.430 Public Information – Contact Types**

The right of way project manager, as part of the project team, may be called upon to meet or speak with interested parties about a project. Providing information about right of way acquisition and relocation processes along with projected time schedules are essential in keeping the public informed.

Contacts may be made by phone, in person, by attending block, neighborhood, business association or special interest group meetings, participating in open houses or by delivering a right of way presentation at public informational meetings. These contacts may occur during both the program development phase and the project design alternative selection phases.

## **2.431 Public Meetings**

At a public meeting, the right of way representative will be requested to describe the acquisition and relocation assistance programs for the project. Preparation is required so that the information presented is accurate and appropriate.

Two flyers should be introduced and made available at the assembly: “Acquiring Land for Highways & Public Projects” (RITS 2009/2010 Form 734-3773/3773S), a description of the land acquisition program, and “Moving Because of Highway or Public Projects?” (RITS 2205/2206 Form 734-3772/3772S), a description of the relocation assistance program.

## **2.440 Final Environmental Document**

After all public meetings have taken place, environmental services conducts a formal public review of the draft EIS or EA and responds to issues which have been raised. The right of way representative may be requested to reply to queries involving acquisition issues. These comments and responses are included in the final EIS or EA.

After final documents are reviewed and approved, a selected alternative is advanced, and the decision statement is prepared. The process includes updating environmental resource reports, final traffic reports, necessary land use actions, and identification and execution of intergovernmental agreements.

The Final Environmental Impact Statement (FEIS) or Revised Environmental Assessment (REA) is then published.

Right of way will be requested to review any interim or final environmental publication for accuracy and appropriateness of the right of way elements included in the document. Specific mention by name or address of impacted or potentially displaced individuals or businesses should be avoided; plans can change or be modified. Approximations should be utilized when identifying the area to be acquired, acreage and the number and types of displacements.

## **2.500 Project Design Phase**

A detailed design of the selected alternative is generated after the completion of the final environmental document. Subsequent to alignment selection, detailed site surveys, mapping, and base map generation occurs.

Right of way should encourage the best design; reasonable right of way impacts should not compromise the scope of the project.

Coordination and monitoring of survey activities are needed to assist right of way engineering in the development of a base map, a right of way map, and descriptions in a timely manner. All important features such as wells, septic systems, signs, outbuildings, and fences should be tied to both the base map and right of way map during survey work so the designer can locate the features on maps.

Therefore, it may be necessary for a right of way project manager to conduct liaison efforts with property owners prior to authorization stage.

By establishing a final project alignment, the contract plan elements can be detailed and the right of way and permitting activities can proceed with the assurance that these activities will not need to be reworked later at greater cost and delay.

All substantial features of a project and the outer bounds of a project footprint are to be declared at the approved design milestone. This milestone is the date where enough work and decision-making has occurred to acquire right of way, obtain permits and develop contract documents. (The approved design completeness could vary depending on the complexity of the project.) Any significant changes to the selected approved project design must be accomplished through a formal project development change request process requiring a sign off by the area manager and the technical services resource manager (TSRM).

The change request may require a reevaluation of scope, schedule and budget. The cost of any approved changes will normally need to come from the established project funding. If the approved right of way funding for the project is exceeded, the funding allocation within the project budget (construction, PE, CE) will need to be adjusted to cover the additional right of way expenditures. These budget impacts need to be clearly delineated as part of the change request process.

If the increased costs cannot be absorbed within the overall project budget, the region manager can also adjust the funding allocation with the region financial plan to add additional project budget, if necessary, possibly causing another project to be delayed or down scoped in order to utilize those funds.

It is extremely important for the right of way project manager to closely track the right of way expenditures and alert the project team leader if the approved budget will be exceeded.



### **2.505 Determination of Existing Right of Way for Low-Risk Projects**

Low risk, low-cost projects may not require traditional methods of determining existing right of way by field survey. These projects consist only of features such as signs, chevrons and delineators that can be easily moved or removed, or consist of work such as rumble strips or pavement markings installed on the existing pavement. The required due diligence to determine apparent location of existing right of way and to conclude that the work can be constructed within existing right of way consists of typical scoping efforts which includes reviewing ROW maps and may include specific field visits to identify apparent existing right of way by observations of those characteristics usually found at right of way lines such as fence lines, back of ditches or top of cut slopes, utility poles and other physical characteristics typically located at right of way lines.

If field observation using roadside characteristics cannot determine that the project improvements can be installed within the existing right of way, or the features are of the type that cannot be easily moved or removed, field survey will be required to determine existing right of way.

When project teams conclude a project is low risk and no additional right of way is needed, the team shall document in the project charter that the work to be constructed consists of low risk features that either are to be constructed on the existing pavement or are features that can easily and quickly be moved or removed and that they have determined the apparent location of existing right of way and that the low risk features can be constructed within that apparent right of way.

For low risk STIP projects constructed on local agency right of way, both for projects developed and constructed by ODOT and those constructed by the local agency, an authorized representative of the local agency shall provide the project leader of the local agency liaison (LAL) written documentation stating that the work to be constructed consists of low risk features that either are constructed on the existing pavement or are features that can easily and quickly be moved or removed and that the local agency has determined the apparent location of existing right of way and that the low risk features can be constructed within that right of way.

### **2.510 Access Management Sub team**

When ODOT develops a highway project, all approaches within the project limits may be reviewed, mitigated, modified or closed as set out in [OAR 734, Division 51](#), Highway Approaches, Access Control, Spacing Standards and Medians. This is necessary to meet the classification of the highway, the highway segment objectives, mobility standards, spacing standards and safety criteria.

Under Oregon law, access (the right of an adjacent property to enter directly on to the state highway system) is subject to ODOT's regulatory authority.

Closures, restrictions, and relocations of accesses are accomplished under this authority (see [OAR 734, Division 51](#)).

An access management sub team's fundamental purpose is to ensure that project decisions relating to access management are fully considered, carefully monitored, and consistent with the best interests of the overall project, as well as ODOT's broader highway policies, rules and statutes.

The sub team efforts lead to smooth integration of conflicting points of view, emphasizing legal, design, community, or construction factors related to a project's design and construction.

The project leader or his/her designee is responsible for directing the sub team. Members perform (or request) the required access management research and develop the appropriate strategy, communication plan and official project access list called for by the access management policies and PD- 03 (project development access management sub teams).

Before any strategy can be developed, an accurate pre-construction list of approaches must be created and verified by the access management sub team. The initial list identifies approaches that exist within the project boundaries but does not determine right of access or permit status and does not identify the existence or location of a reservation or grant of access.

The final inventory should include the following information:

1. Location of the approach.
2. Width of the approach.
3. Approach construction material (concrete, AC, gravel).
4. Use of approach (single or shared).
5. Property use (residence, restaurant, office, etc.).
6. Safety issues.
7. Substandard spacing between approaches.
8. Approaches not currently in use.
9. Results from research about grants of access or reservations of access and whether the approach exists.

A strategy is then developed for the project by outlining the access management intent. The strategy addresses questions about challenges and opportunities for the project, broad goals, specific goals, deviations required to permit approaches, implications for design, cost and schedule, and community needs or desires to be considered.

The project team reviews the access management strategy, and recommends any changes and/or modifications to ensure the quality of the final product, in accordance with statute, [OAR 734, Division 51](#) and the Oregon Highway Plan.

Research is conducted in preparation of the official project access list. (See PD-03, Doing the Research.)

Sources of information for the access list include physical on-site inspection, deed and tax lot records, district permit records, and right of way research unit.

Right of access research is always completed when a project requires the involvement of an access management sub team. Research is initiated with right of way engineering, a district permit specialist, or the Region Access Management Engineer (RAME) by completing an access control research request form.

When the research is completed, the final project access list is generated. The project team reviews and recommends approval of the plan.

For further information, see PD-03, (Project Development Access Management sub teams) Access Management- Exhibit PD-03, OARs 734-051-3060, Access Management Plans; 734-051-3070, Project Development. 734-051-3080, Closure of Existing Legal Approaches.

## **2.520      Programming Estimate**

Upon completion of the right of way legal description and sketch map by region surveyors, the region description writer is assigned in RITS to upload all legal description information and documents before starting the workflow. At the completion of the legal description workflow, the region project manager assigned to the project is able to create the programming estimate in RITS.

The programming estimate will serve as the basis for funding requests. It must be realistic, defensible and include amounts to cover legal settlements and contingency costs that will be charged as right of way expenditures.

See RITS for the programming estimator which contains the necessary detail to assist in the development of the estimate. It addresses current use, land (total, acquisition, remainder), improvements, damages, appraisal, appraisal review, negotiation costs, personnel costs, relocation activities, demolition costs, PTR costs, and potential legal expenses and contingencies.

The estimate is then submitted to the right of way programming coordinator, who checks it against the budgeted funds for right of way acquisition and sends it to the STIP coordinator. The STIP coordinator then submits the Excel programming estimate to the ROW programming coordinator. Once the ROW programming coordinator has collected all the necessary components for project authorization submittal, the Excel programming estimate is submitted to the SIMS for right of way funding.

## **2.530      Environmental Approval**

Normal authorization of federal funding for real property acquisitions activities requires final project environmental approval. Either:

1. A final EIS has been approved, or
2. A FONSI has been approved, or
3. The action has been classified as a Categorical Exclusion (CE) and a PCE Determination form has been completed.

The required documentation must be completed to demonstrate that significant impact will not occur to properties protected under Section 4(f), as amended and codified in [49 U.S.C. Section 303.](#)

## **2.540      Authorization**

No highway project is eligible for federal participation until the environmental document and the programming estimate have been approved by the FHWA, and authorization to proceed has been obtained. (See [Chapter 3.](#))

Authorization is generally given on a project basis, derived from right of way plans and received through the Electronic Fiscal Management Information System (FMIS) and ATU. Unauthorized charges are considered non-participating and are not eligible for federal reimbursement.

When authorization is requested and received, RITS is updated by the programming coordinator with the appropriate funding amounts and expenditure account (EA) for the region to charge their costs.

Notification is automatically sent to assigned region personnel and they may then proceed with acquisition activities. The timeline to obtain authorization can vary depending on several factors. For local projects, the timeline is also dependent on when the agency makes any deposits required by a previously generated Intergovernmental Agreement (IGA) for Right of Way Services Agreement.

A majority of projects utilize federal dollars in a number of phases in project development and construction including preliminary engineering (PE), right of way (ROW), construction engineering (CE) and construction. Adherence to criteria ensures reimbursement and future federal participation.

Approval for ODOT to appraise or acquire right of way for LPA projects must be obtained from the region right of way manager/program manager before entering into the right of way services agreement.

### **2.545 General Information Notice**

After project authorization, the region right of way staff must send a General Information Notice (GIN) to property owners, contract purchasers, permanent or temporary displacees, or other persons determined to be directly affected by the acquisition.

The GIN is available in RITS (document ID 2005). The project manager updates RITS with the GIN date and other details and uploads the completed form to RITS. In order to avoid duplication of effort, this is generally done by the project manager at the initiation of the appraisal phase. Any GIN sent to a displacee should be sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery.

### **2.550 Funding Exceptions Prior to Environmental Approval**

Preliminary acquisition activities, including title search, preliminary property map and the development of right of way descriptions necessary for the completion of the environmental process can be advanced under a federally funded PE phase. In most cases, project authorization must occur prior to any appraisal work. The deputy state right of way manager must approve any request for authorization of advance appraisal activity before it is submitted to FHWA.

Appraisal activities may be authorized as a federally funded preliminary right of way activity when FHWA concurs with ODOT's determination that advancement of the appraisal work will effectively facilitate the progress of the project and there are no known environmental issues that could:

1. Substantially change the preferred build alternative, or

2. Alter the anticipated date for final environmental approval.

## **2.560 Acquisition Activities**

Appraisal, acquisition, relocation and clearing the right of way must occur prior to certification. These activities may be sequential, concurrent or overlapping due to project complexity, time constraints and multi-project scheduling issues. The appropriate procedures and policies guiding appraisal, acquisition and relocation are described in [Chapters 5, 6 and 8](#), respectively, of this manual.

The acquisition strategy employed will depend on the information obtained during earlier project development phases. If a project includes work on driveway reconnections, and there is the potential that the alternative agreement process is appropriate for acquiring temporary easements associated with that work, the project manager should follow the direction outlined in [Section 6.325](#).

Complex appraisal files, project schedule, staff availability and expertise, numbers of files, and time required for fee appraisals will determine the order in which the appraisals are assigned and completed.

Fixture inventories, the presence of contaminated properties, signs and the need for other specialty reports will influence assignment decisions.

It is strongly recommended that the right of way project manager consider early planning to order and synchronize completion of all specialty reports for the project. This will ensure timeliness for completion of the appraisal process and consistency in treatment of similar items found on the project. A reasonable amount of time for appraisal review needs to be considered.

Acquisition planning should also include the time needed for: document request completion, office Title Reports receipt, special language requirements, identification of tenant-owned improvements and the statutory time notifications and response requirements placed on acquisition activities.

Complicated or extensive relocations, the 90-30 day notice requirements, the number of relocations, special needs requirements, and the availability of replacement locations also need to be considered in the plan layout.

The final report submission may not necessarily conclude the process if there are acquired improvements that require the coordination for sale, disposal or demolition prior to certification.

When the right of way section is responsible for oversight on city, county or other public or quasi-public projects, the region right of way manager/program manager or the assigned right of way project manager will provide assistance and respond to queries submitted by the public agency. They will also monitor these projects for compliance with applicable federal and state laws, regulations and procedures in accordance with [Chapter 10](#).

## **2.570 Acquisition and Demolition of Contaminated Properties**

There will be instances in which the purchase of contaminated properties will be required.

If acquisition or construction needs are minor in nature and the cost of the HazMat investigation is greater than the probable remediation necessitated by the project, the clean-up may be

accomplished as part of the project, and the parcel may be purchased as clean, subject to certain conditions.

If acquisition of the site is determined to be feasible, the right of way project manager or an agent will contact the owners of the contaminated site(s) to determine their willingness and ability to perform or contract for the site clean-up. The course of action partly depends on the owner's response. If the landowner is unwilling, uncertain or unable to perform the site clean-up, a Level 2 investigation is requested. The property will be appraised as contaminated and at the level of remediation typical for highest and best use.

Building demolition by a specialized hazardous materials contractor should be concluded prior to the construction project, but if this is not practical, a specialized contractor should be used rather than the general construction contractor. (See Section 6.330.)

## **2.580      Certification**

Right of way certification is a requirement on all STIP projects (with or without right of way), including local public agency projects, regardless of funding. On both local and consultant projects the region right of way manager/program manager is required to co-sign the certification. This means that right of way staff must provide adequate oversight of the project to enable the manager to co-sign. The only exception to this requirement for co-signing is when the local public agency is handling all phases of a state-funded project, including letting the construction contract without any involvement from ODOT.

The right of way certification identifies the acquisition status of the required right of way for the purpose of advancing a project to construction. It is a prerequisite to advertising the physical construction of a project for contractor bids on a typical design-bid-build project, advertising or releasing the Request for Proposals document on a design-build project or proceeding with force account construction. Right of way certification is a requirement on all highway construction projects within the STIP, including all local public agency projects and regardless of funding source.

The purpose of a right of way certification is:

1. To identify and affirm that no additional right of way and/or relocation assistance is required for construction of the project.
2. To provide ODOT's assurance that the acquisition of additional right of way and relocation assistance for displaced persons and/or businesses has been or will be completed and are in compliance with the federal requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, current federal regulations, and Oregon state law.
3. To ensure that clearance of the acquired right of way is coordinated with the physical construction so no unnecessary delays or costs for physical construction will occur.
4. To identify the existence and status of any hazardous waste issues and/or any encroachments within the right of way.

## **Types of Certifications**

Oregon uses three types of right of way certifications: one standard and two types of conditional certifications. Conditional certifications should be used sparingly, since they bring additional process, risk, and costs to a project. All certifications are documented using ODOT Form 734-7257. The types of certifications are:

### **Standard Certification:**

#### **Cert 1**

This is the standard certification and is the preferred certification for all projects. It states that all necessary right of way, including access control, has been acquired and the agency has full legal and physical possession of the property. Projects not requiring right of way are certified as a Cert 1-No Right of Way required certification.

### **Conditional Certifications:**

#### **Cert 2**

This certification is used when, at PS&E, all necessary rights have not been fully acquired; however, the agency has the right to occupy and use all rights of way or will have the rights prior to the project being bid for construction.

#### **Cert 3**

Certification with holdouts. The majority of files are in possession; however, the acquisition of a few remaining files (holdouts) will not be completed until after the project bid date, but all residential displacees have had replacement housing made available to them. The holdouts must be identified in the project bid letting documents with a date as to when the file will become available to the contractor. The certification must have a Cert 3 Finding signed by the region right of way manager and the project manager.

### **Not Certifying the Right of Way**

The final responsibility and authority in deciding whether or not to certify a right of way project rests with the deputy state right of way manager. If the certification requirements in Section 2.580 – Section 2.581 of this manual are not met the right of way cannot be certified, and the project's PSE date should be revised. Notwithstanding pressures arising from inflexible schedule timelines or other project concerns, misuse or misapplication of the certification process raises the likelihood of serious departmental consequences (including jeopardizing federal funding) which outweigh the pressures to move forward. The rights of property owners and displaced occupants must never be violated. A contract letting date can be changed, despite the importance of adhering to a schedule. In a majority of cases, it is less problematic and costly for a letting date to be delayed than for construction activities to be halted, due to the unavailability of needed right of way.

## **2.581 Certification Process**

All departmental partners in the project development process will work together to complete the right of way certification. The correct certification of a right of way project is an essential step in project delivery and one that can also be a source of controversy and contention. An incorrect certification, whether due to an incomplete understanding of the process and requirements or to project scheduling pressures, can have serious consequences for the project and for the Department. For these reasons, it is important that region right of way staff, project managers, and other project development personnel be knowledgeable of certification requirements and the criteria for correct application of the process.

Conditional right of way certifications (Cert 2 or Cert 3), require a greater amount of coordination to ensure project compliance and success. It is important that the region right of way manager/program manager monitors the right of way project to ensure the listed possession dates are achieved. If it becomes clear that a possession date is not going to be achieved, the right of way manager is required to immediately contact both the ODOT Project Controls Office and the project team leader.

## **2.582 Right of Way Certification Documentation**

Right of way certification consists of several documents attached together to form a statement regarding the status of the right of way at the time of certification. The certification form (ODOT Form 734-7257) is the basis of the certification and is used to document the status of the right of way acquisition and any relocations as of the certification date. Attached to the ODOT form 737-7257, all certifications must have a copy of a project right of way map (such as a construction map, roll map, etc.) that identifies the project limits; the existing features, proposed features, existing right of way lines, proposed right of way lines, and all of the right of way parcels being acquired for the project. A conditional Cert 3 must attach the signed Cert 3 finding, demonstrating it is in the public's interest to proceed with the project despite the holdouts. All conditional certifications (Cert 2 and 3s) are incomplete until the recertification form is completed and filed in RITS.

Documentation requirements vary in complexity depending on the type of certification used. Below is the level of documentation needed for each cert type, documentation requirements for exceptions, and recertification documentation requirements.

### **Cert 1 Documentation**

All necessary right of way, if any, including access control, has been acquired and the agency has full legal and physical possession of the property. Since all property acquisition and relocation activity will be complete as of the date of the certification, there are no holdouts. The certification form (737-7257) and the project right of way map is sufficient documentation.

### **Cert 2 Documentation**

All necessary rights have not been acquired; however, the agency has the right to occupy and use all rights of way or will have the rights prior to the project being bid for construction.

The certification form identifies which property acquisition and relocation activities will not be complete as of the date of the certification. Since the files will be in possession no later than the



bid date there will be no holdouts. However, the files not fully in possession must be listed on the certification form with the expected completion dates. The right of way project manager must ensure that these acquisitions and relocation activities will be complete by the bid letting date. If not, there is a risk the project award may need to be delayed, and the project leader and the deputy state right of way manager must be consulted as soon as possible. Prior to the project award, the project must be recertified to FHWA showing all the files are in possession.

### **Cert 3 Documentation**

The agency does not have all the necessary property rights to construct the project, and the rights will be acquired after the expected bid date.

The certification form identifies which property acquisition and relocation activities will not be complete by the contract bid letting date and anticipated possession dates. A Cert 3 finding must be attached to the Cert 3 form along with the project right of way map. Assurances must be made that the holdout are disclosed in the bid documents, informing the contractor of the date when the holdout will be available for construction. Prior to the NTP being issued, the project must be recertified to FHWA showing all the files are in possession. The recertification must be uploaded to RITS.

When using a conditional Cert 3, ODOT cannot issue a notice to proceed or otherwise allow physical construction to begin until FHWA receives a recertification form identifying the status of the required right of way. If all right of way is not in possession, FHWA must make additional findings demonstrating that exceptional circumstances exist, making it in the public interest to proceed with construction. In making its determination, FHWA will weigh all relevant factors including but not limited to the criteria for holdouts described in this manual, the potential costs of delay, and the public need for expeditious project delivery. FHWA may condition its finding in a manner that protects rights of the landowners and the efficient expenditure of public funds. This finding must be attached to the certification and uploaded into RITS. In addition, FHWA retains its delegated authority to approve contract claim awards and settlements due to delays resulting from the use of a conditional right of way certification. If delay costs are attributed to right of way, FHWA must determine the extent of federal participation in the delay cost. This determination must be attached to the certification and uploaded into RITS.

### **Project Recertification Documentation**

All conditional certifications must be recertified, using a recertification form. This form documents that all the conditional items on the certification have been completed. There are several timeframes that must be maintained which are described above. Recertification involves coordination with right of way, PCO, FHWA and the project management team. Recertifications do not require a right of way map.

### **Documenting Exceptions**

There are some types of properties that FHWA and ODOT agree are an exception to the normal acquisition process. Rights to construct on these properties are acquired through various processes and are described elsewhere in this manual. The regions should consult with the deputy state right of way manager if there are any questions regarding the appropriate process

for acquiring and/or documenting an exception during certification. The following types of acquisitions should be acquired consistent with this manual or other applicable guidance and properly documented on the certification form.

1. Property belonging to state and local agencies (reference to Manual section, requirements, and/or policies).
2. Railroad properties (reference to Manual section, requirements, and/or policies).
3. Tribal lands (reference to Manual section, requirements, and/or policies).
4. Forest Service, BLM lands; or other federal agencies. (reference to Manual section, requirements, and/or policies).
5. Other: (work with FHWA for other circumstances where this may apply).

If possession has not been obtained on these types of properties, the certification should provide information of how and when the property will be available for construction.

### **Recertifying Projects with File Additions**

On occasion, projects may require additional right of way files after the right of way for the project has been certified. This circumstance necessitates recertifying that the additional right of way has been acquired and is cleared and ready for integrating into the construction project.

## **2.583 Right of Way Certification with Holdouts and Cert 3 Finding Criteria**

Certifying a right of way project with holdouts is a major decision that carries the potential for serious consequences to the Department if misused or done incorrectly. These consequences could include:

1. Disruption in the construction schedule with resulting increased costs and/or time delays.
2. Increase bid costs due to uncertainty in the availability of the right of way.
3. Loss of federal participation in one or more phases of a federal-aid project.
4. Violating, denying, or infringing upon an individual constitutional and/or civil rights.
5. Jeopardizing future federalization of a state-funded project.
6. Increased legislative and/or media involvement resulting from complaints by property owners and displaced occupants.

Therefore, the decision to hold out property at certification increases the risk of not having the proper right of way for use by the contractor and should, therefore, be made infrequently and with caution. The need for holdouts should be minimized or eliminated during the establishment of the project development schedule and during project development team discussions. The region right of way manager/region right of way program manager should review the schedule and potential for holdouts at the DAP milestone in project development. In the event that the potential for holdouts is high, the region right of way manager/region right of way program manager should discuss the need for a change in schedule with the project team

leader and the area manager. Any change in the project schedule should be communicated by a Project Development Change Request form.

### **Cert 3 with Holdouts Requirements**

Cert 3 conditional certifications with holdouts should be used sparingly and only with caution to avoid costly delays and compliance issues. The timing and coordination requirements described above help mitigate the risks but increases the effort needed to successfully deliver the project. Below other requirements of using a Cert 3 which when combined with the timing and coordination requirements ensures the proper use and mitigates project risk.

The project team must complete a Cert 3 finding demonstrating it is in the public interest to proceed with advertising before acquisition activities are complete. The Cert 3 finding must be attached to the certification form. To ensure all requirements are met and to simplify the documentation of conditional certifications with holdouts, the Cert 3 finding should address all the requirements below and demonstrate the public interest being served.

The region right of way manager must be able to set a firm target date for possession of a held-out property with a high degree of confidence in meeting that date. If not, the right of way should not be certified.

All impacted property owners and occupants along the project must have received written offers and been given adequate time to consider the offer so that that could have worked productively with the department's right of way agent to address all the pertinent acquisition and relocation questions and issues. The Uniform Act requires that the property owner is given a reasonable amount of time to consider an offer and make counter offers in an attempt to come to a reasonable agreement for purchase of the right of way. The Uniform Act requires ODOT to enter into good faith negotiations. Oregon Statute 35.346(1) sets a minimum time for negotiation at 40 days. Most negotiations can be completed within this timeframe, but some may extend beyond and may require condemnation. The negotiation timeframe must be commensurate with the magnitude of the impact on each individual property.

Residential displacees still occupying the held-out property at the time of certification must have had replacement housing made available to them. FHWA must approve any exceptions to this policy. A comparable replacement dwelling will be considered to have been made available to a person if:

1. The residential displacees, including all tenants, is informed of the location of the replacement housing.
2. The person has sufficient resources and time to negotiate (potentially 30-45 days) and enter into a purchase agreement or lease for the property.
3. Subject to reasonable safeguards, the person is ensured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time (potentially 30-45 days) to complete the purchase or lease of the property.

The Department must make assurances that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. Once the commitment is made to proceed with a Cert 3 pressure on the Department, the property

owners, and displacees will likely be elevated. By regulation, it is the department's responsibility to ensure the landowners and displacees remaining within the right of way are protected against unnecessary inconvenience, disproportionate injury, or subjected to coercion (or the appearance of such) by the Department while completing the acquisition.

The contract bid documents must identify all project holdouts and provide the contractor a date as to when the holdout will be available for construction.

To protect the use of public funds and to increase the certainty of outcomes to the landowner and the Department full and additional consideration should be given to the use of condemnation to gain possession. Condemnation is not required when using a Cert 3, however, it is recommended and at minimum its consideration should be documented in the Cert 3 finding.

Prior to issuing the NTP, the project must be recertified, and the recertification must be supplied to FHWA. If holdouts remain, FHWA must make additional findings.

Since holding out a property invariably increases risk to the affected landowner and the Department, there must be an offsetting public benefit which justifies moving the project forward under a Cert 3. The public benefit is documented in the Cert 3 Finding.

\*The term “Cert 3 finding” was developed to differentiate the public interest finding required for conditional certification under 23 CFR 635.309(c) from the public interest finding required for other construction related actions. A Cert 3 finding is a public interest finding specifically for conditional right of way certifications and is not subject to the PCO LPIF guidance. Information found in this manual should be used to develop the Cert 3 finding.

### **Considerations in Writing a Cert 3 Finding**

When one or more properties will be held out of the right of way certification, a Cert 3 finding must be written, signed by both the area manager and the region right of way manager/program manager, and attached to the certification form. This form should then be submitted to both the FHWA program manager and the deputy state right of way manager.

The Cert 3 finding should address why it is in the public's best interest for the Department to move ahead with letting the construction contract, rather than delaying the letting until all right of way has been acquired. The finding should also explain why the benefits in moving ahead with the contract letting outweigh the inherent risk that goes along with that decision: unanticipated problems occur which prevent the Department from getting legal and physical possession by the target date, thereby interfering with the contractor and possibly forcing a halt in construction. Additionally, the Cert 3 finding must include:

1. Full explanation and reasons for the delay in acquisition.
2. Identification of each holdout file.
3. A date when acquisition will be complete.
4. A statement of substantiation that the date is realistic.
5. A statement and relevant information to the following:

- a. Just compensation established and offers have been made to all landowners impacted by the project;
  - b. All displacees either must have been relocated from within the project limits, or have had replacement housing made available in accordance with 49 CFR 24.20 and have been given a reasonable amount of time to acquire DSS replacement housing\*; and
  - c. The holdouts are appropriately identified in the bid documents with reasonable dates as to when the parcel will be available to the contractor.
  - d. The consideration given to each hold out to file or not to file condemnation.
6. Statement acknowledging the potential fiscal impact to the department from delaying ongoing construction can be far more expensive than delaying the contract letting. Any monetary claim or scheduling claim resulting in additional costs resulting from unavailable parcels are not eligible for federal-aid funds unless approved by FHWA. Potential costs should be submitted to FHWA with adequate justification for review.
  7. A statement acknowledging property owners or persons being displaced by the right of way acquisition will not be significantly inconvenienced or have their rights jeopardized or violated by a decision to move ahead with the letting of the construction contract prior to completion of the right of way acquisition and relocation work.

The Cert 3 finding must have a discussion of why it is in the public interest to move forward with the project. The details may vary significantly depending on the circumstances; however, the finding should consider more than just the project needs. The Cert 3 finding should seek to balance the landowner's property rights, the appropriate use of public funds, and the needs of the project. The following are a few examples of situations where it could be in the public's best interest to proceed with letting the construction contract while holding out properties from the right of way certification:

1. Project mitigates serious safety and traffic issues requiring immediate correction.
2. Limited construction window to achieve the project's purpose.
3. Delays in starting the project threaten efforts to minimize traffic disruption to the community.
4. Project is to be built concurrent with a local project that has a set schedule.
5. Project completion needed prior to a significant community event.
6. Delay in starting the construction will have serious economic impact on the community or state.
7. Favorable contract bidding climate for the department and construction would not be hindered by the holdouts.
8. Quick resolution needed for an emergency situation.

Prior to the certification being signed, the project team completes a Cert 3 finding and attaches it to the certification. The deputy state right of way manager, the project manager and the region right of way manager all sign the Cert 3 Finding.

(For additional policy considerations, refer to Appendix A at the conclusion of this chapter.)

### **Summary of Crucial Cert 3 Actions and Timing**

Certifying a right of way project with holdouts is a major decision that carries the potential for serious consequences to the Department if misused or done incorrectly. Below is a summary of the crucial components including timing, coordination, and requirements needed use a conditional Cert 3 successfully. The list is an overview of the above discussion of Cert 3s. It is meant for the non-right of way professional to quickly understand the scope and importance of completing the Cert 3 process.

1. Discussion: Prior to the initiation of the right of way certification with holdouts, the region right of way manager must contact the deputy state right of way manager to discuss the proposal for the right of way certification with holdouts. If further discussion is necessary, the project manager, right of way agent, and region right of way manager should meet to discuss the use of the Cert 3. FHWA may be consulted with, if desired, and ODOT will make the finding.
2. Timing: The initial discussion regarding the use of a right of way certification with holdouts should be as early as possible, so that there is sufficient time to discuss alternative resolutions. Optimally, these discussions should occur six to ten weeks before PS&E (or as soon as possible.) Early is the key to success, as it controls the timing of the certification in relation to the PS&E date.
3. Prior to the certification being signed, the region must complete a Cert 3 finding (public interest finding) and attach it to the certification. The deputy state right of way manager, the project manager and the region right of way manager sign the Cert 3 finding.
4. The Cert 3 finding, along with the right of way certification with holdouts is entered into RITS, forwarded to FHWA, and incorporated into the PS&E package. The project may go to advertisement and award based on the certification with holdouts.
5. If the property is in possession prior to the Notice to Proceed (NTP)\*, ODOT must recertify immediately and must provide FHWA the re-certification prior to issuing the NTP.
  - a. If all properties are in possession prior to NTP, the property must be recertified and ODOT can then issue the NTP; or
  - b. If all properties are not in possession prior to NTP, the NTP cannot be issued without FHWA approval. FHWA must issue an additional finding demonstrating exceptional circumstances exist that makes it in the public interest to proceed with construction prior to the right of way being in possession.

### **Holdouts Not in Possession by Anticipated NTP Date**

In order to proceed with physical construction, the region must inform FHWA of anticipated NTP date and the anticipated date that physical construction will commence on the project, regardless of if the holdout property is involved in the physical construction or not. The

submittal must allow adequate time for FHWA to make a determination that exceptional circumstances exist making it in the public interest to proceed with physical construction.

1. If the property will not be in possession before the NTP, the region project manager must request approval from FHWA to proceed with physical construction. For this request, the region must submit a recertification form detailing the status of the holdout properties and a justification memo. Detailing what construction will occur in relation to the holdouts, and the exceptional circumstances that exist making it in the public interest to proceed with physical construction.
2. If FHWA determines that the exceptional circumstances warrant construction to proceed, and that all other regulations and policies are being followed, it will issue its finding and the appropriate FHWA engineer will concur with the NTP with any conditions, and the project may move forward with physical construction.
3. Once the property is in possession, the region must immediately recertify the project to FHWA.

## **2.584 Timing of Certification Writing**

To allow proper time to complete the right of way process, the right of way certification date should be determined at or shortly after the design acceptance phase (DAP). Because of the variables, the due date for the right of way certification will vary from project to project. The right of way project manager is responsible for coordinating this date early on in the project with the project manager. Typical target dates for right of way certification is based on the Plans, Specifications & Estimates (PS&E) submittal dates and generally range from one to four weeks prior to PS&E.

The right of way project manager prepares the right of way certification form for inclusion in the final PS&E package that is required by the ODOT Project Controls Office (PCO) prior to the start of project advertisement. Be aware that different types of projects require different lengths of advertising before contract bid opening which could affect the timing of the certification. When holdouts have been listed on the certification (a “Cert 3”), a Cert 3 finding, as outlined below, is required in order to allow the project to be advertised.

It is the region right of way manager/program manager’s responsibility to determine whether the certification requirements and criteria contained in this manual and FHWA policy and guidance have been met. If they have not been met, the right of way cannot be certified. Right of way certification is a federal requirement, therefore, the requirements cannot be replaced with a PD-02 exception letter.

### **Timing of Project Recertification**

All conditional certifications must be recertified, using a recertification form. This form documents that all the conditional items on the certification have been completed. There are several timeframes that must be maintained. Recertification involves coordination with right of way, PCO, FHWA and the project management team.

### **Cert 2 Recertification**

Certification 2's must be recertified to FHWA and entered RITS prior to the award of the contract. If the conditions of the Cert 2 are not met, regions must consult with the deputy state right of way manager. If the deputy state right of way manager determines that the department does not have possession of the files, legal access to the files, or that the property is still occupied, FHWA must be notified immediately. The project must be recertified to FHWA and entered into RITS immediately once all property is in possession.

### **Cert 3 Recertification**

There are several points within the process where a Cert 3 may need to be recertified. The project must be recertified prior to the NTP being issued. Discussions between the project management team, FHWA and ODOT right of way may need to take place to ensure that the Cert 3 process is being followed correctly, since circumstances may vary from project to project.

If all conditions are met prior to issuing NTP, and all property has been acquired, the recertification form must be submitted to the PCO Office and FHWA prior to issuing the NTP.

If the property will not be in possession before the NTP, the region project manager must request approval from FHWA to proceed with physical construction. For this request, the region must submit a recertification form detailing the status of the holdout properties and a justification memo detailing what construction will occur in relation to the holdouts, and the exceptional circumstances that exist making it in the public interest to proceed with physical construction.

## **2.585 Distribution of the Completed Right of Way Certification**

Proper distribution and filing of the right of way certification is required to comply with federal record keeping requirements. All required right of way documents must be maintained in the Department's RITS database. The signed right of way certification must be uploaded to RITS and the original sent to the right of way programming coordinator. The programming coordinator will ensure accuracy of the certification and forward all certifications to FHWA.

The right of way project manager is also responsible for providing the certification to the project team leader, who is responsible for incorporating any conditions of the certification into the PS&E package. The project team leader or senior agent uploads the document to ProjectWise.

## **2.586 Intradepartmental Communication in the Right of Way Certification Process**

All departmental partners in the project development process will work together to complete the right of way certification. Problems with project development timelines on a given project that may result in the need for certification exceptions should be identified and addressed early on. right of way certification exceptions can and should be avoided in most instances by early communication with the project team. FHWA must be notified three weeks in advance, or as soon as possible, if a Cert 3 cannot be avoided. regions should be in contact and work closely with the FHWA right of way representative in this situation.



The region right of way manager/program manager has an ongoing responsibility for communicating any change in the target dates for possession of any properties identified on page 1, item 2, boxes checked as Cert 2 or Cert 3 on the certification. If the target dates will not be met, the right of way manager is required to contact both the ODOT Office of Procurement/Construction Contracting and the project team leader immediately. This is also required if a target date involving hazardous material remediation on page 2, item 4 cannot be met.

### **2.587 Interdepartmental Coordination**

Right of way projects completed under a Cert 1, require minimal coordination ensuring the certification uploaded into RITS and included in the PS&E package. Conditional certification requires additional coordination between right of way, the project team and the Project Controls Office (PCO). Additional information is provided in Section 2.581.1 but briefly outlined here.

A Cert 2 conditional certification allows the project to be advertised without all the files in possession. Its use gives the project flexibility to go to PSE and advertising while the acquisition process is completed on a few files. The right of way project manager must be certain the possession dates listed on the Cert 2 are achievable, so the project can be recertified prior to the project award. Additional coordination between the right of way project team, the project team, and Oregon's PCO is essential for the project's success. If the project cannot be recertified prior to award, additional coordination is required with FHWA who must concur in the project award.

When using a conditional Cert 2, FHWA retains its delegated authority to concur in the project award. Prior to giving its concurrence in the award, FHWA must receive a recertification form identifying the status of the required right of way. If all right of way is not in possession FHWA may concur in the award if it determines all applicable regulations are satisfied to the maximum extent possible. Also, FHWA retains its delegated authority to approve contract claim awards and settlements due to delays resulting from the use of a conditional right of way certification.

A Cert 3 conditional certification with holdouts allows the project to proceed through project award without all the files in possession. The use of Cert 3s should be avoided because it requires the greatest amount of coordination and has a high risk of project delay and cost overruns. Use of a Cert 3 requires coordination with the designers and contracting staff to ensure appropriate notification is provided in the bid documents, identifying the locations of all holdouts and a date that the property will be available for the contractors' use. Once the project is awarded ODOT's PCO must be kept informed of the right of way progress. Prior to issuing a notice to proceed (NTP) with construction to the contractor, the right of way project leader must submit the recertification to FHWA identifying the status of the holdouts. FHWA may need to make additional findings prior to the NTP being issued. FHWA retains its delegated authority to approve contract claim awards and settlements due to delays resulting from the use of a conditional right of way certification.

## **2.600 Other Property Acquisition Alternatives for Federal-Aid Highway Projects**

Prior to any request for authorization for early, protective or hardship acquisition, the region must obtain approval from the deputy state right of way manager.

### **2.605 Advanced Acquisition**

When environmental clearances have not yet been obtained, or when funding for the right of way phase is incomplete but must begin in order to stay on the project schedule, advanced acquisition of right of way with state funds can be utilized. (See [Section 6.364](#).)

### **2.610 Early Acquisition**

ODOT may initiate acquisition of real property without federal funds at any time it has legal authority to do so, based on program or project considerations. Federal aid early acquisitions must include prior consultation with ODOT ROW headquarters.

Requirements for crediting of real property contributions include FHWA's acceptance of ODOT's certification stating compliance with each of the requirements, justification of contribution value, and that credit cannot exceed ODOT's pro-rata share of the project. (See [Section 6.360](#).)

### **2.620 Protective Buying and Hardship Acquisition**

Prior to final project environmental approval, federal funds may be authorized to provide reimbursement for advanced acquisition costs of qualified hardship and protective acquisitions. (See [Section 6.355](#) and [Section 6.364](#).)

### **2.621 Certifying Projects with File Additions**

On occasion, projects will require the addition of new right of way files after the right of way for the project has been certified as outlined in [Section 3.420](#). This circumstance necessitates recertifying that the additional right of way has been acquired and is cleared and ready for integrating into the construction project.

#### **Public Interest Finding Guidelines**

When one or more properties will be held out of an intended right of way certification, a public interest finding must be written, signed by both the area manager and the region right of way manager or region right of way program manager, and attached to the certification form.

The public interest finding should address why it is in the public's best interest for the department to move ahead with letting the construction contract, rather than delaying the letting until all right of way has been acquired. The finding should also explain why the benefits in moving ahead with the contract letting outweigh the inherent risk that goes along with that decision: unanticipated problems occur which prevent the department from getting legal and physical possession by the target date, thereby interfering with the contractor and possibly forcing a halt in construction. The potential fiscal impact to the department from delaying ongoing construction can be far more expensive than delaying the contract letting.

In no instance can property owners or persons being displaced by the right of way acquisition be significantly inconvenienced or have their rights jeopardized or violated by a decision to move ahead with the letting of the construction contract prior to completion of the right of way acquisition and relocation work. The public interest finding should provide that assurance to property owners.

The following are a few examples of situations where it could be in the public's best interest to proceed with letting the construction contract while holding out properties from the right of way certification:

1. Project mitigates serious safety and traffic issues requiring correction ASAP.
2. Limited construction window.
3. Delays in starting the project threaten efforts to minimize traffic disruption to the community.
4. Project is to be built concurrent with a local project that has a set schedule.
5. Project completion needed prior to a significant community event.
6. Delay in starting the construction will have serious economic impact on the community or state.
7. Favorable contract bidding climate for the department and construction would not be hindered by the holdouts, or
8. Quick resolution needed for an emergency situation.

## **APPENDIX A - RIGHT OF WAY CERTIFICATION DESIGN-BID-BUILD PROJECT DEVELOPMENT FORMAT**

### **Introduction**

The intent of Appendix A is to provide policy considerations for certifications on the material provided in [Section 2.580 – 2.587](#) of the right of way manual. The following are the items FHWA are looking to satisfy, and that the regions should be considering. Depending on the situation of the file, these items should be weighed for its application to the landowner. These questions are a minimum that need to be considered; there may be other pertinent questions that should be looked at as well. At some point, individual rights become the matter of the public interest and must be protected.

### **General Considerations**

1. How many files are holdouts in comparison to the total number of files? If there is a disproportionate number of holdouts, it may not qualify as being in the public's best interest to proceed. This should be discussed with the FHWA program manager.
2. What factors led to the ROW file being a holdout? Did the design change? Was it an agreement issue? Was it a project timeline issue? These factors should also be discussed with FHWA to ensure that the factors were reasonable.
3. Will the property be acquired by condemnation in order to gain possession by the NTP?
4. What factors led to the ROW file being a holdout?

### **Considerations Regarding the Landowner**

1. When was the offer made? Has the landowner been given a reasonable amount of time to consider the offer?
2. What measures, if any, are being taken to protect the remaining landowners against unnecessary inconvenience and disproportionate injury or any action coercive in nature?

### **Considerations Regarding the Project**

1. Are holdouts located within the assumed critical path of the project?
2. Is the current bid climate more favorable than normal? Will a delay in the project let result in significant increases in contracting costs?

## Chapter 3 – Project Coordination and Authorization

### 3.100 Introduction

The right of way section, through its project coordination function, manages the programming of all right of way projects which use federal, state, or local transportation funding (or a combination of any and all three) in some portion of a highway project. The majority of projects are assigned a key number and entered into the Statewide Transportation Improvement Program (STIP), which is approved by the OTC on a biennial basis. In the case of Local Public Agency (LPA) funded projects, ODOT is involved in some aspect of the right of way acquisition, ranging from doing only oversight and co-certification to delivering some or all portions of the right of way. Projects can consist of five phases: preliminary engineering (PE), right of way acquisition (ROW), construction (CN), utilities and railroad (UR), and other (OT). The project coordination function is carried out under the operations unit of the right of way section.

The right of way section is responsible for the following four types of projects:

1. **Federal-aid projects.** A project which contains federal funding in any phase of the project is considered a federal aid project. All federal requirements apply to every phase, regardless of the type of funding in it.

Federal-aid projects are either of the following:

- a. State agency projects that are funded with a combination of both state and federal funds, or
  - b. Local Public Agency (LPA) projects that are funded with any combination of state, local and/or federal funds.
2. **State funded projects.** State funded projects are budgeted to expend state funds in all phases of the project.
3. **Local Public Agency projects.** LPA projects may be funded with any combination of federal, state and/or local funds. Through an Intergovernmental Agreement (IGA) for ROW Services Agreement, the local agency may contract with ODOT to deliver all, a portion of, or just oversight and co-certification only of the right of way acquisition process.
4. **LPA Oversight Only Projects.** If there are federal funds in any phase of the project, ODOT staff is required to perform oversight and co-certification to ensure compliance with the Uniform Act. Although it is a local agency project, if federal dollars are being used and/or it is on ODOT's system, ODOT is ultimately responsible for the project.

Each of these four types of projects requires different levels of project coordination activities.

### 3.120 Policies

1. The right of way section shall maintain a current record of all active right of way projects through the RITS system.

2. All projects which are eligible for federal-aid reimbursement shall have all necessary right of way acquisition and costs programmed and certified in accordance with the regulations as set forth in Title 23 of the Code of Federal Regulations (Parts [630](#), [635](#) and [710](#)). With few exceptions, all projects should be viewed to be potentially eligible as federal-aid projects. Regardless of what funding type is originally identified in the STIP, state funds may be entered as advanced construction (AC) funds or state funds may be converted to federal funds at the discretion of the SIMS manager at any time; therefore, all projects should follow rules and guidelines of federal-aid projects.
3. The programming coordinator, in accordance with FHWA directives, will coordinate any requests by the regions to obtain approval from FHWA for protective buying or hardship acquisitions.

### **3.200 Responsibilities**

#### **3.210 Deputy State Right of Way Manager**

For project coordination functions, the deputy state right of way manager is responsible for the following:

All Section policies which impact the project coordination function, including, but not limited to:

1. Compliance with all federal and state laws, regulations and guidelines.
2. Oversight and supervision of all aspects of the project coordination functions.
3. Technical expertise and supervisory support to the programming coordinator.
4. Interaction with FHWA, other ODOT sections, regions, consultants, and outside agencies concerning project coordination policies.

#### **3.220 Programming Coordinator**

The programming coordinator, under the supervision of the deputy state right of way manager, is responsible for the day-to-day project coordination operations of the Section. These include:

1. Compliance with all federal and state laws, regulations, and guidelines.
2. Processing new projects, revisions and cancellations entered into RITS by ODOT regions, surveyors, and consultants, or sent by other agencies.
3. Entering information into RITS for ODOT delivered projects not located on the ODOT system and for all developer donation files.
4. Coordinating all required Map-21 forms, approvals, and reports between regions, FHWA and SIMS, both pre-authorization and post-acquisition.
5. Ensuring all necessary documentation (such as environmental data, agreements, Map-21 forms, end dates, etc.) are in place before submitting items to SIMS for approval.
6. Coordinating with the region Statewide Transportation Improvement Program (STIP) coordinators to gather documentation and submit programming requests to SIMS in order to obtain funding authorization to proceed with right of way acquisition activities.

7. Coordinating certifications (Levels 2 and 3) between regions, deputy state right of way manager and FHWA. process both completed project certifications and recertification documents.
8. Coordinating with ODOT regions, other ODOT sections, FHWA, consultants and other agencies as needed.
9. Entering management home purchase information into RITS, working with the title closing specialist, setting up EA's and closing out EA and file when completed.
10. Closing out project expenditure accounts in RITS at the conclusion of the project.
11. Coordinating with ODOT regions, FHWA, and LPA's to complete the transfer of jurisdictional transfers, relinquishments, state highway designations, and abandonments, both project and non-project related.

### **3.230      Region Right of Way Office**

Each ODOT region has a right of way office and staff under the direction of a region right of way/program manager. These offices work independently of the right of way section. They are responsible for carrying out the right of way phase of transportation projects for the regions while the right of way section maintains responsibility for quality assurance, compliance with federal and state requirements, and other direct project support functions, such as project coordination. The region right of way/program manager, delegated region right of way staff, and region project development leaders maintain responsibility for:

1. Compliance with all federal and state laws, regulations and guidelines.
2. Providing acceptable right of way drawings, legal descriptions and appropriate access language.
3. Ensuring there are adequate budgeted funds in the right of way phase.
4. Initiating and completing Map-21 forms and requests.
5. Completing environmental documents.
6. Executing agreements.
7. Creating and submitting programming cost estimates.
8. Initiating requests for authorization of right of way activities.
9. Providing revisions and/or cancellations.
10. Providing fair market value estimates to FHWA as needed for crediting of real property on federal-aid projects.
11. Recording project data in RITS.
12. Certifying federal-aid projects prior to construction contract letting.

### 3.300 Procedures on Federal Aid Projects

ODOT must comply with the regulations as set forth in Title 23 Code of Federal Regulations (Parts 630, 635 and 710) in order to obtain federal financing for right of way projects. A project which contains federal funding in any phase of the project is considered a federal aid project.

All federal requirements apply to every phase, regardless of the type of funding in it.

Acquisition of any real property on a federal-aid project must follow all applicable state and federal laws, as well as FHWA directives. ODOT works collaboratively with FHWA to obtain federal participation for a project in the areas of programming, authorization, and reimbursement.

### 3.310 Programming of Federal-Aid Projects

A portion of ODOT's highway improvement program is financed with federal funds. Among the prerequisites for the use of federal funds is the requirement that a proposed improvement be included in ODOT's final STIP, which must be approved by FHWA. The programming of federal aid funds in the STIP for highway projects is based on the four common phases of a construction project: design (preliminary engineering), land purchase (right of way), construction, and utilities. In order for a project to qualify for federal aid, all estimated amounts of funds needed for each phase must be included in the STIP, regardless of the type of funding in each phase.

### 3.320 Federal Authorizations

As a condition for receiving federal-aid monies, ODOT must obtain FHWA authorization **prior to** proceeding with right of way work or legally obligating itself to pay for the work. FHWA authorizes a full and complete project; therefore, all files must be submitted, rather than individual files or a portion of the files (piece-mealing). If circumstances dictate the need to submit only a portion of the files at a time, regions may opt to use either the Map-21 or advanced construction process see items D and E in this section.

The initiative to obtain authorization and place a right of way project under agreement (Federal Management Information System (FMIS)) is normally the responsibility of the right of way section, in cooperation with SIMS, through the actions of the programming coordinator. The programming coordinator provides the necessary information to SIMS, which then submits the request to FHWA for approval.

**Note:** State funded projects that qualify may be entered into the federal system as AC projects or converted to utilize federal funding at SIMS's discretion and timing. Therefore, it is imperative that every project follow FHWA guidelines so that they are in compliance if and when funds are converted. If a project has any federal money in any phase of the project, it is considered a federal-aid project.

When requesting authorization to acquire right of way, the programming coordinator will provide legal descriptions, sketch maps, the funding authorization request, and detailed cost estimates for the whole and complete phase of project to FHWA. A change in the scope of project work and/or funding requirements during the course of a project may require an



amendment of the federal-aid authorization/project agreement. The amendment is coordinated by the region STIP coordinator.

Prerequisites for requesting federal authorization of any right of way work (preliminary activities, advanced acquisition, right of way acquisition) include the following:

1. The project and its land purchase phase must be in the STIP.
2. Required environmental actions have been fulfilled for the phase of right of way work to be advanced.

**Note:** If the environment document is not complete, the region right of way office may opt to use the Map-21 process in order to use state funds and seek federal reimbursement at a later date. This requires pre-approval from FHWA (see [Item D](#) in this section).

3. The scope of work is clearly identified (right of way drawings, plans or other acceptable documents).
4. The updated programming estimate of the fully funded right of way phase for the scope of work has been completed.
5. Appropriate justification and documentation for advanced acquisition, protective purchase or hardship acquisition or early acquisition, Map-21 or AC, has been submitted (see items [D](#) and [E](#) in this section).

### **3.321 Preliminary Right of Way Activities**

There are certain preliminary right of way activities that can be completed under the PE phase of the project. These include description writing, title work (such as title searches), preparation of plans, plats and legal descriptions, relocation studies and pre-appraisal work. Work necessary for the completion of the environmental process are typically paid under the PE phase of the project.

#### **A. Federal Authorization for Advanced Acquisition for Protective Purchases or Hardship Acquisitions**

In certain cases, prior to final project environmental approval, FHWA may authorize federal participation in the acquisition of a particular file or a limited number of files to prevent imminent development and increased costs of the preferred location alternative (protective buying), or to alleviate hardship to a property owner or owners located on the preferred location alternative (hardship acquisition), provided the following conditions are met:

1. The project is included in the currently approved STIP.
2. ODOT has complied with applicable public involvement requirements in 23 CFR parts [450](#) and [771](#).
3. A determination of applicability of 4(f) considerations has been completed for any property subject to the provisions of [23 U.S.C. 138](#).
4. Procedures of the Advisory Council on Historic Preservation are completed for properties subject to [16 U.S.C. 470\(f\)](#) (historic properties).

5. FHWA has approved a determination that the advanced acquisition meets the criteria for a categorical exclusion (CE) in accordance with [23 CFR 771.117 \(d\) \(12\)](#).

If it is a federal-aid project (when there are federal funds in any phase of the project), FHWA must approve all protective purchases and hardship purchases. The request to FHWA for approval for protective purchases must be made prior to any negotiation with the property owner and should contain the following information:

1. Format simple memo or letter requesting approval to proceed with acquisitions under [23 CFR 710.503](#).
2. Statement regarding status of NEPA complete. If not, expected date. The NEPA classification: CE, EA, or EIS.
3. Requesting acquisition of one parcel or more, and/or anticipating others?
4. Project in STIP (STIP reference number) expected bid date.
5. The project has completed required public involvement.
6. The subject property is not a property protected by sect 4(f) [23 USC 138], i.e., historic, park, wildlife refuge.
7. Section 106, historic consultations, completed (not on a project scale, but on the parcel level).
8. Information demonstrating the development of property is imminent, not speculative; examples to support include improved development plans, permit applications, and evidence of construction finances.
9. Information demonstrating that if the property is developed it would limit future transportation options, and/or if developed, significant increases in project costs would result.
10. Concurrence from the region right of way manager/program manager.

The request to FHWA for a hardship acquisition must be made prior to any negotiation with the property owner and must include:

1. Date which owner requested hardship consideration in writing. Evidence of the written request must be in the file;
2. Information showing the hardship is based on health, safety or financial reasons that poses undue hardship on the individual when situation is considered in relation to others on the project.
3. Demonstrate inability to sell property on marketplace due to impending project within a time period that is typical for properties not impacted by the impending project. Inability to sell the property could be demonstrated by the number of days on the market compared to average days or the inability of buyers to obtain financing.
4. Date NEPA document completed for the individual parcels.
5. Concurrence from the region right of way manager/program manager.

The programming coordinator works with the regions to submit both protective purchase and hardship acquisition requests to FHWA. More detailed information regarding advanced acquisition for protective purchases and hardship acquisitions can be found in [Section 6.364](#).

## **B. Federal Authorization for Right of Way Acquisition**

Once the appropriate project environmental actions have been completed and the land purchase phase is included in the currently approved STIP, ODOT can request FHWA's authorization for the right of way phase. FHWA approval is subject to the scope of work as identified in the project authorization/ project agreement process. Federal participation in real property cost is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. Federal participation includes the following:

1. **Real property acquisition.** Usual costs and disbursements associated with real property acquisition required under the laws of Oregon, including the following:
  - a. The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.
  - b. The cost of acquisition activities such as, appraisal, appraisal review, cost estimates, relocation planning, right of way plan preparation, title work, and similar necessary right of way related work.
  - c. The cost to acquire real property, including incidental expenses.
  - d. The cost of administrative settlements in accordance with [49 CFR 24.102\(i\)](#), legal settlements, court awards, and costs incidental to the condemnation process.
  - e. The cost of minimum payments and administrative determination of just compensation amounts (see [Section 5.545](#)).
2. **Relocation assistance and payments.** Usual costs and disbursements associated with relocation assistance and payments required under [49 CFR Part 24](#).
3. **Damages.** The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under applicable Oregon law.
4. **Property management.** The net cost of managing real property prior to and during construction to provide for maintenance, protection, demolition of improvements, maintenance of property and the clearance and disposal of improvements until final project acceptance.
5. **Payroll-related expenses and technical guidance.** Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with 2 CFR 200. This includes ODOT costs incurred for managing or providing technical guidance, consultation or oversight on projects in which right of way services are performed by a political subdivision or others.
6. **Property not incorporated into a project funded under Title 23 of the United States Code.** The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

**General.** Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, the acquisition of a buildable residential lot under the provisions of the relocation program or last resort housing.

**Easements not incorporated into the right of way.** The cost of acquiring easements outside the right of way for permanent or temporary use.

7. **Uneconomic remnants.** The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.
8. **Access rights.** Payment for full or partial control of access on an existing highway (i.e., not located on a proposed new alignment), based on elements compensable under applicable state law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.
9. **Utility and Railroad Property.**
  - a. The cost to replace operating real property owned by a displaced utility or railroad and conveyed to ODOT for a highway project, as provided in [23 CFR Part 140](#), subpart I, Reimbursement for Railroad Work, and [23 CFR part 645](#), Subpart A, Utility Relocations, Adjustments and Reimbursement, and [23 CFR part 646, Subpart B](#), Railroad-Highway Projects.
  - b. Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

Costs resulting from the application of access remedies under [OAR 734-051-4010](#) are not eligible for Federal participation.

### **C. Moving Ahead for Progress in the 21<sup>st</sup> Century Act (Map-21)**

Map-21, the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141), was signed into law by President Obama on July 6, 2012. MAP-21 creates a streamlined and performance-based surface transportation program and builds on many of the highway, transit, bike, and pedestrian programs and policies established in 1991.

Map-21 allows for federal-aid reimbursement of all costs incurred by the state for acquiring property, including the fair market value of the property, administrative settlements, personnel costs of assigned staff, etc. The federal reimbursement is in the form of cash versus what ODOT currently receives, which is in the form of a credit.

ODOT and FHWA worked collaboratively to establish guidelines, procedures and requirements in order to utilize Map-21. State funds are used to acquire real property needed for transportation projects in advance of the completion of requirements established by the National Environmental Policy Act (NEPA). Prior to the completion of NEPA. It also establishes guidance in requesting and receiving federal reimbursement for all costs incurred through acquisition prior to the completion of all NEPA requirements.

The criteria for using Map-21 are as follows:

1. The acquisition must be needed for a project that is included in the STIP.
2. The acquisition cannot be for an LPA project.
3. The acquisition must be clearly identified through lines and boundaries established within a right of way layout map providing enough information to define the property.
4. The acquisition cannot be for Section 4(f) or Section 6(f) protected lands if the acquisition requires preparation of an individual Section 4(f) Evaluation, a Nationwide Section 4(f) Programmatic, or results in a Section 6(f) conversion.
5. The acquisition will not influence the environmental assessment of the project, the decision relative to the need to construct the project, the consideration of alternatives, or the selection of the project design or location.
6. The acquisition will not affect the consideration of environmental impacts of the various alternatives under consideration.
7. The acquisition costs must be able to be reasonably estimated and provided within defined expenditure categories.

The area manager will approve a document (request for advanced acquisition) that includes clearance of properties from the region environmental manager and region right of way program manager, or lead, and provides assurance that the criteria for advanced acquisition of property have been met. This document, along with a right of way layout map establishing the line and boundaries for each property and an estimate of the cost for acquiring each property will be submitted to FHWA for authorization to proceed. The right of way layout map and estimates must be reviewed and approved by the region right of way program manager to ensure it provides all information necessary to identify the property that is needed.

**Note:** Once the Map-21 process is approved, funds cannot be converted to federal dollars until all right of way acquisitions have been completed, even if the environmental documents are complete partway through the acquisition process.

**Note 2:** Map-21 cannot be used if the environmental process is complete.

#### **D. Advanced Construction**

Advanced construction (AC) funding is a pre-approval from FHWA in order to convert state dollars to federal funding at a later date with the ability to receive full federal reimbursement for the costs expended. AC projects are entered into the federal system by SIMS for approval. Once FHWA has approved the request, the date of approval is used as the effective reimbursement date.

In order to use the AC process, the following prerequisites must be met:

1. The environmental documents must be complete.
2. The right of way phase must be fully funded for all anticipated file acquisitions.
3. A footprint of the project.
4. A good faith liaison cost estimate provided to FHWA.

FHWA approves the entire amount estimated for all right of way acquisitions.

It can be utilized in the following situations:

1. When the region needs to send in single or a portion of the files for acquisition, the programming coordinator authorizes the estimated amount for them without having to submit multiple programming requests from SIMS but can authorize the files as they are set up.
2. When the SIMS manager wishes to maximize the use of federal dollars, it is at their discretion to enter a state funded project as AC, in order to apply federal funding to it at a later date.

### **E. Federal Withholding Payment**

Non-compliance with federal and state law, regulations, and policies (including this manual) governing ROW acquisitions may result in FHWA requiring corrective actions be taken to bring the project into compliance. Corrective actions may include process and procedure revisions, or if FHWA determines the non-compliance materially affects the rights of an individual additional payments and benefits may be required. In certain cases of non-compliance and issues determined to be waste, fraud, or abuse the FHWA may withhold federal funding or require funds to be re-paid for the ROW file, the ROW phase, or the entire federal aid project.

### **F. Federal Authorization for Right of Way Costs in Design-Build Contracts**

For design-build projects, region should consult with headquarters and FHWA.

### **G. Federal Authorization for Functional Replacement of Real Property in Public Ownership**

When publicly owned real property (including land and/or facilities) is to be acquired for a federal-aid highway project, ODOT may provide compensation by functionally replacing the publicly owned real property with another facility. The replacement facility must provide an equivalent utility and acts in lieu of paying the fair market value for the real property. Region should work with the programming coordinator to submit a request for FHWA's approval prior to negotiation with the property owner.

**Note:** If there is federal funding on any phase of the project, FHWA must approve the request, regardless of what type of funding is in the right of way phase. In order for FHWA to authorize federal participation in the functional replacement costs, ODOT is required to comply with the requirements in [23 CFR 710.509](#).

## **3.322 Projects with Files that Include Cannabis and/or Controlled Substances Operations**

Cannabis operations in Oregon are considered lawful under state and local laws, but not under federal law. Federal funds cannot be used in the acquisition (partial or total take) of any right of way acquired which involves a cannabis operation. This applies whether the activity is owned by either a tenant or the landowner. Cannabis operations include medical facilities.

The non-participation of federal funds extends to any tenant owned improvements, damages, cost-to-cure, or alternative access payments related to a cannabis operation, property or medical facility engaged in such an operation. The project must use non-federal funds to complete these activities and be identified as 'non-participating' project costs. The programming coordinator will set up a separate state funded EA for all files on a project that have any type of cannabis component. In addition, because the costs are non-participating, they cannot be applied to any matching share for the project.

In addition, files that include controlled substances (such as Psilocybin (mushrooms)) are not eligible for federal funding and must be charged to a non-participating state funded EA.

In 2018, the Department of Agriculture removed hemp from the controlled substance list; therefore, files limited to hemp operations are eligible for federal participation.

### **3.330 Project Coordination Steps on Federal-Aid Right of Way Projects**

1. Region staff request a project number assignment from RITS and request that their region surveyors begin preparing the right of way legal descriptions and sketch maps.
2. The project manager:
  - a. Creates a project file.
  - b. Sets up project and property file information in RITS.
3. The programming coordinator:
  - a. Checks to determine that the necessary prerequisites have been accomplished:
    - i) The project is identified and budgeted in the STIP.
    - ii) Required environmental actions have been completed.
4. Region surveyors set up files and enter all information into RITS.
5. The RITS system sends an automatic notification to the project manager that a cost estimate is needed for the files.
6. Upon receipt of the cost estimate, the programming coordinator determines whether sufficient funding has been approved in the STIP budget for the right of way project. If it has not, the programming coordinator works with region to ensure additional funding is secured. If additional funds are needed to cover the whole and complete right of way acquisition phase, a STIP amendment must be completed, approval from the MPO, if applicable (for LPA projects) and approval from the OTC (if applicable) must be completed before the right of way phase can be authorized. These approvals can take several weeks and must be built into the project timeline.
7. Once all necessary funds are in place, the programming coordinator submits the right of way estimate memo to the region STIP coordinator, who sends back the programming request Form, which the programming coordinator then submits to SIMS.

8. At the same time the programming coordinator submits the programming request and completed environmental document to SIMS, the programming coordinator also submits a packet to FHWA, containing the legal descriptions, sketch maps, cost estimate and programming request.
9. SIMS then formally requests funding approval and authorization from FHWA.
10. When funding approval has been received from FHWA and SIMS has obligated the funds and set up the EA, the programming coordinator:
  - a. Coordinates the setup of the right of way expenditure account (EA) in the RITS system.
  - b. Once the authorization information has been entered into RITS (EA and funding amount), it automatically notifies the region to commence right of way activities. The region and/or consultants under contract with the region cannot proceed with any right of way activities until this authorization is given by the programming coordinator.

### **3.340 Revisions and Added Files on Federal-Aid Projects**

During the course of a project, some right of way descriptions may be revised and/or additional files may be added. The region surveyor or consultant enters the Revision Form and any new or revised legal descriptions and maps into RITS. When a revision results in the acquisition of additional property that was not included in the original FHWA project authorization, or when the cost for either new or revised files increases the anticipated expenditures beyond the currently authorized amount, a modification to the original authorization must be obtained from FHWA. Regardless of funding issues, all new and revised legal descriptions, maps and programming estimates (if applicable) are submitted to FHWA through the programming coordinator. The programming coordinator follows the procedures in [Section 3.330](#).

The region may also need to reallocate project dollars to ensure that a revised project has sufficient STIP funding to cover the additional or revised files. If STIP funds are insufficient, a STIP amendment should be completed as soon as possible.

### **3.350 Certification of Federal-Aid Projects**

On all federal-aid projects, the region right of way unit must certify to FHWA that all right of way was obtained in conformance with federal regulations, that the state has legal and physical possession and/or the right to use all necessary right of way, and that all displaced occupants have been relocated to a decent, safe and sanitary replacement dwelling or have had it made available to them.

For conditional certifications (Level 3), the regions are required to work with FHWA to produce a public interest finding.

(See [Section 2.580](#), [Section 2.581](#), and [Appendix A](#) following Chapter 2 for guidelines and information on filling out certifications.)



### 3.360 Credit for Value or Cost of Real Property

ODOT or a local public agency may contribute real property to a federal aid project in the following circumstances:

1. If a non-governmental owner donated the property to the agency for incorporation into the project.
2. For real property owned by either a state or local government, prior to the initiation of the federal- aid project, and is being incorporated into a project, or
3. The project's right of way phase is funded with either state or local funds.

ODOT or a local public agency may receive a credit towards its federal matching requirements from the contribution of real property. The request for a credit must be submitted to FHWA by the region right of way manager/program manager for approval. SIMS cannot apply the credit until they have received FHWA's approval by submitting either Form 1410A or Form 1410B for the right of way being contributed to the project. When requesting a credit, the project agreement needs to document which of the circumstances (listed above) apply to the contribution to the project. ODOT and FHWA have a documented procedure for crediting contributions. This can be obtained from region right of way HQ, along with Forms 1410A and 1410B.

The region right of way/program managers have the following responsibilities and authorities in the crediting process:

1. Establish the value of the real property being contributed to the project.
2. Provide written application from local agencies requesting the ability to contribute real property to the project.
3. Provide the required written certification (via Form 1410A or 1410B) of the value for the proposed property offered by the agency for contribution to the project for FHWA review as detailed below.

FHWA must review the contributions and approve the value to be contributed/credited towards the project matching share. FHWA review will be completed in accordance to 23 CFR 505/507, and its approval given (using Form 1410A and/or 1410B).

#### **A. Credit for Real Property Donated to a Federal-Aid Project by a Non-Governmental Entity**

After being informed of their right to just compensation, a non-governmental entity may donate real property to be incorporated into the federal-aid project. The project sponsor may use the fair market value of the property incorporated into the project as credit to its matching share of project costs.

Region right of way must establish a fair market value for the real property in order to support a credit request for the real property. When an LPA is involved, ODOT must approve the fair market value for the real property. Fair market value may be established using commonly acceptable valuation practices that are less than an appraisal and shall not include any increase or decrease in value caused by the project. The valuation can be based on the following, whichever is earlier:

1. The date on which the donation becomes effective, or
2. The date on which equitable title to the property vests in the state.

Fair market value can sometimes be determined with less than an appraisal (i.e., a recent sale of the property, sales of like properties in the area to establish a SF or parcel value, recent appraisal of a like property in the same market area, admin valuation, etc.) Non-governmental entities must get approval by the region ROW manager/programs manager, who will work with the chief appraiser in these instances. Any questions regarding valuation should be directed to ODOT's chief appraiser.

Before approving the donated property as a contribution to the project, ODOT must certify the following to FHWA and receive its approval before proceeding:

1. Prior to accepting the property, the owner was informed of his/her right to receive just compensation for the property, or of any part thereof.
2. The owner was fully informed in writing of their rights and ODOT's appraisal obligation.
3. That any document executed as part of such donation prior to an environmental document prepared pursuant to the National Environmental Policy Act of 1969 clearly indicated that:
  - a. All alternatives to a proposed alignment would be studied and considered pursuant to such Act.
  - b. Acquisition of property would not influence the environmental assessment of the project including the decision relative to the need to construct the project or the selection of a specific location.
  - c. The property acquired by donation would be re-vested in the grantor or successors in interest if such property was not required for the project after completion of the environmental document.

The written certification is completed by the region right of way office, using Form 1410A, signed by the region right of way/program manager, and submitted to FHWA.

#### **B. Credit for Contribution of Real Property to a Federal-Aid Project by State or Local Governments**

A governmental entity may contribute real property to a project in two circumstances:

- a. Property which was owned prior to the initiation of the federal-aid project, or
- b. Real property acquired with non-federal funds as part of the right of way phase of the federal- aid project.

In order to support the credit for the contribution to a project, region right of way must establish the value for the real property and verify that it was acquired in compliance with the Uniform Act. FHWA must concur with the value before proceeding. When an LPA is involved, ODOT must approve the value provided by the LPA. Establishing value for previously acquired real

property is based on the actual consideration paid for the real property acquisition cost that was supported by a fair market negotiation process.

Before finalizing the contribution can be credited to the project, ODOT must certify the following to FHWA using Form 1410B:

1. The property was lawfully obtained.
2. The property was acquired in accordance with the provisions of 49 CFR part 24.
3. The property was not land described in 23 USC 138 (public park and recreation lands, wildlife and waterfowl refuges, and historic sites).
4. The original project agreement was executed on or after June 9, 1998.
5. The property is not already devoted to transportation/project purpose.
6. The property was not acquired with any form of federal financial assistance.
7. ODOT determined and FHWA concurred that ownership of the real property did not influence the environmental assessment for the project, including:
  - a. The decision to construct.
  - b. The consideration of alternatives.
  - c. The selection of the design or location.

The written certification is completed by the region right of way office, signed by the region right of way manager/programs manager and submitted to FHWA.

### **C. Timing of submitting real property for credit to the matching share**

Real property, either donated by a non-governmental entity or offered as a contribution by a governmental agency, should obtain ODOT's (if an LPA) and FHWA approval after the project receives its NEPA determination and prior to/or concurrently with right of way certification. The federal aid match cannot be credited until FHWA approves Form 1410A or 1410B.

## **3.400 Procedures on State Funded Projects**

Projects are authorized for the expenditure of state dollars within a biennium through the creation and approval of the STIP. Every right of way project in the approved STIP has an identified budget. State funds come from the Oregon highway trust fund, and various other funding sources.

The programming coordinator, in cooperation with SIMS, provides authorization for the regions or consultants to commence work on state funded right of way projects. Although projects may originally be designated to utilize state dollars, the project may be AC'ed or converted to federal funding at the discretion of the SIMS manager at any time he deems it appropriate to do so. Therefore, prerequisites for authorization are similar to those of federal-aid projects (see [Section 3.330](#).)

### **3.410 Project Coordination Steps on a State Funded Right of Way Project**

1. Region staff request a project number assignment from RITS and request that their region surveyors begin preparing the right of way legal descriptions and sketch maps.
2. The project manager:
  - a. Creates a project file.
  - b. Sets up project and property file information in RITS.
  - c. Checks with the STIP coordinator to ensure that the project is identified and budgeted in the STIP.
3. Region surveyors set up files and enter all information into RITS.
4. The RITS system sends an automatic notification to the project manager that a cost estimate is needed for the files.
5. Upon receipt of the cost estimate, the programming coordinator determines whether sufficient funding has been approved in the STIP budget for the right of way project. If it has not, the programming coordinator works with region to ensure additional funding is secured. If additional funds are needed to cover the whole and complete right of way acquisition phase, a STIP amendment must be completed, approval from the MPO, if applicable (for LPA projects) and approval from the OTC (if applicable) must be completed before the right of way phase can be authorized. These approvals can take several weeks and must be built into the project timeline. Once all necessary funds are in place, the programming coordinator:
6. Submits the right of way estimate memo to the region STIP coordinator, who sends back the programming request Form, which the programming coordinator then submits to SIMS.
7. At the same time the programming coordinator submits the programming request to SIMS, the programming coordinator also submits a packet to FHWA, containing the legal descriptions, sketch maps, cost estimate and programming request. All documentation goes to FHWA, regardless of the funding or project type.
8. When the funding has been obligated and the EA set up by SIMS, the programming coordinator:
  - a. Coordinates the setup of the right of way (EA) in the RITS system.
  - b. Once the authorization information has been entered into RITS (EA and funding amount), it automatically notifies the region to commence right of way activities. The region and/or consultants under contract with the region cannot proceed with any right of way activities until this authorization is given by the programming coordinator.

### **3.420 Revisions and Added Files on State Funded Projects**

During the course of a project some right of way descriptions may be revised and/or additional files may be added. The region surveyor or consultant enters the revision form and any new or

revised legal descriptions and maps into RITS. When a revision results in the cost for either new or revised files increasing the anticipated expenditures beyond the currently authorized amount, a funding amendment must be completed, and additional funds obligated for the additional costs. Regardless of funding issues, all new and revised legal descriptions, maps and programming estimates (if applicable) are submitted to FHWA. The programming coordinator follows the procedures in [Section 3.330](#).

The region may also need to reallocate project dollars to ensure that a revised project has sufficient STIP funding to cover the additional or revised files.

### **3.430 Certification of State Projects**

Certification of state-funded right of way projects is a department requirement. Certification ensures that federal requirements have been met, in case a state funded project is federalized. Therefore, it is imperative to follow all federal guidelines to remain in compliance. In addition, it acts as a quality check at the conclusion of the project and provides needed information to the Roadway Office of Pre-Letting during the PS&E phase. The procedure follows [Section 3.350](#).

(See [Section 2.580](#), [Section 2.581](#), and [Appendix A](#) following Chapter 2 for guidelines and information on filling out certifications.)

### **3.500 Procedures on Local Public Agency (LPA) Projects**

For funding and authorization purposes, there are three types of LPA projects:

1. LPA projects programmed in the STIP. These involve state and/or federal dollars in one or more phase(s) of the project, in addition to local agency funds.
2. Non-STIP LPA projects. These are projects that are entirely funded with local dollars. The right of way section and the regions may be involved with these projects through an Intergovernmental Agreement (IGA) for ROW Services, in which the department performs some component of the project work (including oversight and co-certification) for the LPA.
3. State Funded Local Projects (SFLP) - SFLP projects are 100% state funded in all phases of the project, and the local agency will normally deliver these projects without any ODOT involvement. However, if the local agency contracts with ODOT to deliver the right of way work, the standard acquisition process for state funded local projects will be followed.

### **3.510 Local Public Agency STIP Projects**

When an LPA project involves federal dollars and is included in the STIP, all the prerequisites for authorization previously discussed in [Section 3.320](#) apply. FHWA considers these to be ODOT projects for which ODOT gives authority to a local agency. ODOT maintains full responsibility for ensuring that these projects comply with all federal and state requirements, as identified in the Uniform Act and the ODOT right of way manual. Should the LPA wish to perform the right of way work itself, it must be authorized to do so. Project coordination functions differ significantly between LPA projects being administered by ODOT and projects being administered entirely by the local agency.

### **3.520 Project Coordination Steps on an LPA STIP Project – ODOT Performing the Work**

1. Region sets up a project in RITS, including legal descriptions, sketch maps and the executed copy of the IGA for Right of Way Services Agreement. The agreement details the work to be performed on the project by ODOT and the work to be done by the LPA or its consultants.
2. The project manager:
  - a. Creates a project file.
  - b. Sets up project and property file information in RITS.
  - c. Checks to determine that the necessary prerequisites have been accomplished.
  - d. The project is identified and budgeted in the STIP.
  - e. Required environmental actions have been completed.
3. Region surveyors set up files and enter all information into RITS.
4. The RITS system sends an automatic notification to the project manager that a programming estimate is needed for the files.
5. Upon receipt of the programming estimate, the programming coordinator determines whether sufficient funding has been approved in the STIP budget for the right of way project. If it has not, the programming coordinator works with region to ensure additional funding is secured. If additional funds are needed to cover the whole and complete right of way acquisition phase, a STIP amendment must be completed, approval from the MPO, if applicable (for LPA projects) and approval from the OTC (if applicable) must be completed before the right of way phase can be authorized. These approvals, including collection of the local agency's deposit, can take several weeks and must be built into the project timeline.
6. Once all necessary funds are in place, the programming coordinator submits the right of way estimate memo to the region STIP coordinator, who sends back the programming request form, which the programming coordinator then submits to SIMS.
7. At the same time the programming coordinator submits the programming request and completed environmental document to SIMS, the programming coordinator also submits a packet to FHWA, containing the legal descriptions, sketch maps, cost estimate and programming request.
8. SIMS then formally requests funding approval and authorization from FHWA.
9. When funding approval has been received from FHWA and SIMS has obligated the funds and set up the EA, the programming coordinator:
  - a. Coordinates the setup of the right of way expenditure account (EA) in the RITS system.

- b. Once the authorization information has been entered into RITS (EA and funding amount), it automatically notifies the region to commence right of way activities. The region and/or consultants under contract with the region cannot proceed with any right of way activities until this authorization is given by the programming coordinator.

### **3.530 Project Coordination Steps on an LPA STIP Project – LPA Performing the Work**

1. Region sets up a project in RITS. They submit legal descriptions, sketch maps and the executed copy of the IGA for Right of Way Services Agreement to the programming coordinator. The agreement details the work to be performed on the project by ODOT (oversight and co- certification) and the work to be done by the LPA or its consultants.
2. The project manager:
  - a. Creates a project file.
  - b. Fills in project file information in RITS.
  - c. Checks to determine that the necessary prerequisites have been accomplished.
  - d. Notifies the programming coordinator when the programming estimate is uploaded in RITS.
  - e. The project is identified and budgeted in the STIP.
  - f. Required environmental actions have been completed.
3. The programming coordinator:
  - a. Determines whether sufficient funding has been approved in the STIP budget for the right of way project.
  - b. Submits a packet to FHWA, containing the legal descriptions, sketch maps, cost estimate and programming request, and makes a formal request for funding approval to SIMS.
4. SIMS formally requests funding approval and authorization from the FHWA.
5. SIMS requests that the local agency deposit its matching funds with the Department.
6. When funding approval has been received from FHWA and SIMS, the programming coordinator:
  - a. Coordinates the setup of the right of way expenditure account (EA) in the Transportation Environmental Accounting and Management System (TEAMS).
  - b. Once the authorization information has been entered into RITS (EA and funding amount), the region is able to commence right of way activities. For oversight only projects, RITS does not send a notification to the region. The region will need to check RITS or check with the programming coordinator on the authorization of the project. The region and/or consultants under contract with the region cannot proceed with any right of way activities until this authorization is given by the programming coordinator.

**Note:** Even if the LPA uses its own local funds to acquire right of way on its own system, if there is any federal funding on another phase of the project, FHWA requires the LPA to report on the right of way acquisitions in its annual report (49 CFR Part 24 Appendix B - Statistical Report.)

### **3.540 Certification of LPA Projects**

All LPA projects in the STIP must be certified prior to the letting of the construction contract, following the process identified in [Section 3.350](#). LPA certifications are signed by both the LPA and the region right of way/program manager.

(See [Section 2.580](#), [Section 2.581](#), and [Appendix A](#) following Chapter 2 for guidelines and information on filling out certifications.)

### **3.550 Non-STIP LPA Projects**

Right of way LPA projects which are funded entirely by local agency revenue fall outside the jurisdiction of ODOT. ODOT remains responsible in an advisory role regarding state and federal requirements involving eminent domain functions. The Department does not have direct authority over the LPA's activities or its use of local funds. As such, it neither monitors nor audits these projects, and there is no certification requirement.

The LPA may request assistance in carrying out the right of way activities on a given project. The details and extent of this assistance are outlined in the IGA for Right of Way Services Agreement entered into by the LPA, the right of way section, and the appropriate region right of way staff. When ODOT performs any of the right of way functions for an LPA, they must be executed in accordance with all federal and state requirements as identified in the Uniform Act and the ODOT right of way manual.



## Chapter 4 – Title Services Unit

### 4.100 Introduction

The title services unit is a part of the operations unit in right of way headquarters. It provides various support functions to both the regional right of way programs and the headquarters (HQ) right of way section. regional support functions include:

1. Reviewing evidence of title.
2. Determining which interests to clear.
3. Preparing all necessary documents to convey or clear interests.
4. Performing the escrow on right of way acquisitions accurately and expeditiously to promote public confidence in the land acquisition process.
5. Condemnation support services.
6. Working with federal agencies in acquiring rights of way over federal lands.
7. Preparing documents for access management and property management transactions in the access management and property management units.

In addition, the unit is responsible for several program areas within the Section that are not directly related to the regional right of way programs:

1. Processing of jurisdictional transfers.
2. Processing the abandonment of former highway rights of way.
3. Processing the relinquishment of highway and local rights of way acquired for a project.

### 4.110 Definition of Title

In property law, title is a bundle of rights in a parcel of property that a party may own an interest. The rights in the bundle can be held by one party or separated and held by different parties.

Title insurance insures titles to property against all recorded encumbrances which are not shown in the title policy.

### 4.120 Policies

The title services unit staff shall:

1. Support the goals and project schedules of the right of way section.
2. Follow all applicable state and federal laws and regulations in carrying out its functions.
3. Maintain current title information of properties being acquired.
4. Encourage the acquisition of clear title, subject to acceptable encumbrances.
5. Prepare the conveyance and release documents accurately and within acceptable time frame.
6. Require region responsibility for:

- a. ordering preliminary title reports and vesting documents.
  - b. requesting documents.
  - c. obtaining necessary information and signatures for file closing.
7. Assist regions in determining the correct possession date statement for use in documents and offer packets. The correct possession statement is one of the following:
  - a. Possession upon payment to the owner, or
  - b. Possession 90 days after the offer is made, or 30 days after payment, whichever is later.

## **4.200 Responsibilities**

### **4.210 Deputy State Right of Way Manager**

The deputy state right of way manager is delegated the lead role in the acquisition function by the state right of way manager. The responsibilities for this role include:

1. All Section policies which impact the acquisition, title/escrow, relinquishments and jurisdictional transfers.
2. Oversight and supervision of unit staff.
3. Interaction with FHWA, other ODOT sections, regions, consultants, and outside agencies concerning unit policies.

### **4.220 Title Services Coordinator**

Title Work:

1. Recommends when title reports may not be necessary to obtain.
2. Reviews taking title Subject To.
3. Reviews preliminary title reports (PTRs), clarifying areas of concern and presenting them to the appropriate people.
4. Prepares Office Title Report (OTR) based on the information from both the PTR and the owner information sheet on each file.
5. Prepares Condemnation Office Title Report (COTR) that lists defendants for condemnation files.
6. Reviews clearance documents.
7. Answers title questions from title companies, region offices and consultants.
8. Serves as a resource person in the preparation and execution of documents to transfer and clear title.

Closing Work:

1. Reviews entire file.
2. Computes payoff/interest to clear liens.

3. Sends documents for recording.
4. Files documents with the Secretary of State, as needed.
5. Orders title insurance policies as required.
6. Determines real property tax status and prorates taxes.
7. Obtains approval signatures from the deputy state right of way manager as needed.
8. Prepares payment letters to property owners.
9. Sends payment to property owners.

#### **4.230 Title Services Specialist**

In addition to the responsibilities in the condemnation program as detailed in [Chapter 7](#), this position is also responsible for:

1. Coordinating the transfer of property rights for the Department from federal agency land.
2. Providing support and backup as needed to the title services Analyst and title services coordinator.

#### **4.240 Title Services Analyst**

The title services analyst is responsible for the preparation and production of all legal documents necessary to transfer the rights in property being acquired or conveyed by ODOT. These documents include deeds, releases, indentures, grants, contracts, and assignments.

#### **4.250 Jurisdictional Transfers / Abandonments / Relinquishments / Highway Designations**

Both the right of way programming coordinator and the title services coordinator play a role in processing jurisdictional transfers, abandonments, relinquishments and highway designations. The right of way programming coordinator works with the regions, agreement writers, DOJ, OPO and other to process the documentation. The title services coordinator acts as a technical expert and facilitates the coordination of these actions.

#### **4.300 Procedures**

##### **4.310 Document Request**

The title services specialist and title services coordinator receive document requests and the owner information sheet from the region right of way office or consultants, reviews the PTR for title issues and determines if searches should be made for city liens, assessments, and/or Uniform Commercial Code filings in order to ensure the following:

1. That all interests of record are recognized and considered or cleared in the acquisition process.

2. That the state's interest in acquired properties is protected. The title services specialist also relies on input from the region and/or consultants concerning unrecorded interests and may order supplemental title reports. The title services specialist prepares the OTR and generates the acquisition documents out of RITS. Notification that the acquisition documents are complete is automatically sent via RITS.

The title services analyst reviews the OTR and the attached comments to determine:

1. The nature of the documents required to clear title.
2. Parties of interest.
3. Appropriate access control language.

#### **4.320 Final Report/Closing**

The final report notification is received from the region by the appropriate title services specialist or title services coordinator who:

1. Reviews the entire file.
2. Calculates payments to each party of interest as shown on the OTR.
3. Monitors the receipt of necessary release documents for mortgages, trust deeds, releases of leases, tenancies, judgments, and liens.
4. Contacts the appropriate county tax/assessor office for current tax information needed to prorate real property taxes.
5. Determines payments to clear city liens and assessments.
6. Prepares payment letters.
7. Sends legal documents for recording and orders title insurance policy, if necessary.
8. Withholds allowances for fencing or property cleanup obligations by the property owners. These are released when the acquisition agent provides written verification that the obligation has been met.

The title services specialist or title services coordinator obtains approval signature on the final report through a workflow and the acceptance of conveyance documents from the deputy state right of way manager (if necessary), prepares vouchers, and determines the possession date. The voucher is then forwarded for payment processing through ODOT Financial Services. Upon receipt of checks, and the appropriate confirmation of recording by the title company when applicable, checks are mailed with payment/possession letter. Upon receipt of the title insurance policy, the title services analyst reviews it for accuracy and forwards invoices for payment of the title policy. At this time, title services provides copies of the conveyance documents to DSL.

#### **4.330 Processing Payments**

The payment processing procedure is as follows:

1. The title services analyst prepares the voucher.

2. The title services Analyst enters the data into the ODOT TEAMS financial database which allows for preparation of the checks and for the future issuance of 1099 tax forms when required.
3. The title services coordinator or title services specialist codes the cost distribution breakdown for federal participation.

#### **4.400 Acquisition of Federal Land**

The regions have responsibility for acquiring land or interests in land needed by ODOT when the land is owned by the federal government. This includes property rights needed for highway projects, material sources or disposal sites. The title services specialist is the main contact and facilitates processing the documents to complete this process.

#### **4.410 Procedures**

When rights over federal lands are needed, the title services specialist in the right of way operations unit sets up a new right of way file. When the federal lands are under the USDA Forest Service, the title services specialist sends a copy of the plat map (Exhibit A) to the region right of way office so they can obtain region forester approval of the plat map. Bureau of Land Management (BLM) plat maps only require approval by the ODOT technical services manager and the right of way manager. Once the needed approvals are obtained and the plat map is returned, the title services specialist sends a letter of application along with the plat map to the appropriate office of the Federal Highway Administration.

Copies of this letter and the Exhibit A are sent to the right of way manager and the region right of way manager. The application packet to FHWA contains the following information:

1. The purpose for which the lands are to be used.
2. The estate or interest in the land required for the project (highway right of way easement; material source; temporary construction activities, etc.)
3. The Federal-aid project number or other appropriate reference.
4. The name of the federal agency exercising jurisdiction and the name of the national forest or federal district office that is in possession of the land.
5. The plat map which shows the survey of the lands to be acquired and which acts as the legal description of the property. The map or plats are to correspond with what is addressed in the project's final environmental documents.
6. A statement of compliance with the National Environmental Policy Act of 1969 ([42 U.S.C. 4332, et seq.](#)) and any other applicable Federal environmental laws, including the National Historic Preservation Act ([16 U.S.C. 470\(f\)](#), and [23 U.S.C. 138](#)). This is obtained by the regional environmental coordinator and either sent directly to FHWA or to the title services specialist for inclusion in the application package.
7. Copies of the final environmental documents are required. The title services specialist makes sure that the region right of way office provides these to FHWA unless it is determined that FHWA already has extra copies or that the federal agency exercising jurisdiction over the land has already been provided copies.

The FHWA, using materials provided in the letter of application and Exhibit A, contacts the federal agency involved and appropriates the right of way. FHWA then sends back a letter of consent to the title services specialist who forwards it to the region right of way/program manager for ODOT acceptance or rejection of the stipulations included therein.

When the region returns the signed letter of consent, the title services specialist prepares the deed for conveyance of the right of way which includes the approved stipulations. The deed includes a statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C 4332, et seq.).

The title services specialist then forwards the prepared conveyance document for DOJ review and approval for legal sufficiency. After DOJ approves, the conveyance document is sent to FHWA for signature by the division administrator. After FHWA approval, the conveyance document is finally signed by the right of way manager and sent for recording. Once the recorded document is returned, the title services specialist distributes copies to FHWA, the region right of way/program manager, and the federal official who provided the letter of consent.

When the need for the right of way or for the materials acquired no longer exists, the state must provide written notice of this situation to the FHWA and the federal agency from which the land was appropriated, and the lands or materials revert back to the control of that agency or its assigns. In notifying the federal agency, ODOT must work with them to determine what actions, if any, are required prior to the department's relinquishment of the land or materials. The notice in a form suitable for recording shall state that the need for the lands or materials no longer exists for the purposes for which they were acquired.

The following federal agencies have special authority affecting right of way transactions, and the right of way section must file its application directly with that agency:

1. **Bureau of Indian Affairs.** The state should submit its application directly to the Bureau of Indian Affairs for rights of way across tribal lands or individually owned lands held in trust by the United States or encumbered by federal restrictions.
2. **Army Corps of Engineers or Air Force.** The state should submit its application directly to the installation commander and the appropriate district engineer in the Department of the Army's Corps of Engineers.
3. **Navy.** The state should submit its application directly to the District Public Works Officer of the Naval District involved.
4. **Veterans Administration.** The state should submit its application directly to the director, Veterans Administration, and Washington D.C.

#### **4.500 Jurisdictional Transfers**

When a portion of a state highway route is no longer needed for highway purposes but the need for the road remains, ODOT may transfer the segment to a Local Public Agency (LPA). ODOT and the LPA enter into an agreement that outlines the terms and conditions of the transfer, along with an acceptance page, signed by the local agency. A resolution is then submitted to the OTC or its delegee for approval. After receiving approval, a formal conveyance document, which includes a reversionary clause (It is understood that if the above-described property or any

portion thereof is used for purposes other than public purposes, title to the property or portions thereof used for purposes other than public purposes shall automatically revert to and vest in grantor) is prepared by the right of way programming coordinator and recorded in the appropriate county.

When a portion of a local road segment is needed for highway purposes, the LPA may transfer the local road segment to ODOT. ODOT and the LPA enter into an agreement that outlines the terms and conditions of the transfer. A formal conveyance document, which follows the approved agreement and usually includes a reversionary clause (It is understood that if the above-described property or any portion thereof is used for purposes other than public purposes, title to the property or portions thereof used for purposes other than public purposes shall automatically revert to and vest in grantor) is prepared by the LPA. Once a State Highway Designation Resolution is approved by the OTC or its delegatee, the conveyance document can then be recorded in the appropriate county.

The title services specialist and the right of way programming coordinator are responsible for reviewing the jurisdictional transfer agreements for right of way and coordinating the finalization of the accompanying exhibit maps and descriptions through Roadway. The right of way programming coordinator is also responsible for the completion of the documents necessary to complete the transfer once the agreement has been signed and the terms of the agreement have been met. These documents include the Resolution Eliminating a Section of Highway from the State Highway System and Minor Amendment to the Oregon Highway Plan, the jurisdictional transfer document, and, in some instances, the State Highway Designation Resolution.

#### **4.600 Abandonments**

When it is determined that a segment of highway right of way is no longer needed for state highway transportation purposes, the state may eliminate the segment from the state highway system. When the right of way is not to be used as a public roadway in the future, it is considered to be excess property. Excess property that is determined to be resolute right of way (originally provided by county resolution and not owned in fee) can be abandoned to an abutting property owner. If the segment is within city limits, the state must obtain approval from the city before proceeding with the abandonment; if the segment is outside city limits, the state must obtain county approval to proceed with the abandonment.

The region right of way manager is responsible for establishing an internal system in their office to identify properties appropriate for abandonment to an abutting property owner. Once properties have been identified for abandonment, Region personnel will coordinate with the abutting owner, city or county agencies, and district and HQ personnel to complete the process to abandon the property.

#### **4.700 Relinquishments**

The state may enter into an intergovernmental agreement (IGA) with an LPA that includes an obligation for the state to convey to the LPA any new right of way purchased in the state's name on behalf of the LPA upon completion of a project. The relinquishment process applies to new right of way purchased for a project by the state with the express intent to convey the

right of way to the LPA when the project is completed. Likewise, the state may enter into an IGA with an LPA that includes an obligation for the LPA to convey to the state any right of way purchased for a project with the express intent to convey the right of way to the state.

The region right of way manager is responsible for establishing an internal system in their office to identify properties appropriate for relinquishment to an LPA following completion of a project. Once a project is complete that requires relinquishment of properties, region personnel will coordinate with the LPA, and district and HQ personnel to complete the process to relinquish the property.



## Chapter 5 – Appraisal

### 5.100 Introduction

The Fifth Amendment of the Constitution of the United States guarantees that no person shall be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation. Article I of the Oregon Constitution's Bill of Rights gives a similar guarantee.

Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 expands upon the basic rights of property owners, requiring a public agency to appraise real property prior to its acquisition as a basis for determining just compensation.

The Uniform Act, as amended, along with current federal regulations provides a framework under which the appraisal process is to be conducted. It is the objective of the right of way section to comply with all applicable laws and regulations in the appraising of real property for acquisition.

This right of way manual is intended as a general guidance document to assist appraisers and the public through the appraisal process. It is not a statute, administrative rule, or other regulation. Portions of this document summarize requirements established in statute, administrative rule, and by case law for the convenience of the reader. But the state of the law is in constant flux, so the reader should rely on the actual statutes, administrative rules, and case law to determine the state of the law. If the reader has questions, the reader is encouraged to seek technical guidance from the department of transportation.

This document outlines general guidelines for right of way appraisals. But the guiding principle of the appraisal should be to determine the fair market value of the acquisition, and the appraiser may use an appropriate combination of appraisal techniques in valuing a particular property. *City of Bend v. Juniper Utility Company*, 242 Or App 9 (2011).

### 5.120 Policies

### 5.125 Compliance with Federal Regulations

To the greatest extent practicable under state law, appraisal policy and procedures set forth in this chapter are intended to comply with [49 CFR Part 24](#) and [23 CFR Part 710](#).

### 5.126 Compliance with ODOT - Highway Division Appraisal Guide

All appraisals shall meet the criteria and standards as set forth in the [Guide to Appraising Real Property](#). This manual is for use in ODOT projects and for projects sponsored by local public agencies.

### 5.127 Conflict of Interest

An appraiser, review appraiser, or administrative determination of just compensation preparer making an appraisal, appraisal review or administrative determination of just compensation may be authorized by the agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or administrative determination of just compensation only if

the offer to acquire the property is \$15,000 or less. Additional comments regarding conflict of interest may be seen in [Section 1.210 \(Item 5\)](#) and [Section 6.125](#).

### **5.130 Necessity of Appraisal**

Real property shall be appraised before the initiation of negotiations with an owner. Two exceptions are those instances when (a) the appraisal requirement has been waived by the property owner through the donation process, or (b) the agency determines that an appraisal is unnecessary because the appraisal problem is uncomplicated, and the fair market value is estimated to be \$20,000 or less. These exceptions are pursuant to [49 CFR 24.102\(c\)](#) and [23 CFR Part 710](#).

### **5.135 Valuation Basis**

Acquired property rights will be appraised at fair market value. Appraisals shall contain sufficient data and analysis to explain, substantiate, and thereby document the conclusions of the report. Easements and encumbrances affecting the use and development of the property being appraised will be considered. The property will be appraised as though free and clear of all liens, bond assessments and indebtedness. The property will be appraised to its highest and best use.

The appraiser shall disregard any increase or decrease in the fair market value of real property, which is caused by the public improvement for which such property is to be acquired, or by the likelihood that the property would be acquired for such improvement. Value diminution due to physical deterioration within the reasonable control of the owner shall be considered in determining the compensation for the property.

### **5.140 Opportunity to Accompany**

The appraiser shall provide to the owner a written notice of not less than 15 days of a pending inspection of the property for appraisal purposes. The notice will include an invitation for the owner, or the owner's representative, to accompany the appraiser during the inspection. The owner may elect to waive the inspection or the date of the inspection. The appraiser shall document the written notice and the property owner's response. See [ORS 35.346](#).

Documentation of the written notice may be established via one of the following methods:

1. United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery.
2. Email confirmation.
3. Waived inspection confirmed in writing.
4. Written memorandum of verbal conversation.

### **5.145 Just Compensation and Minimum Payment**

The head of the agency shall establish an amount which it believes to be just compensation for the acquisition of real property before the initiation of negotiations with an owner. Just compensation is typically based on the fair market value of the acquisition. Added to the market value is the amount of severance damages, if any, which can be offset by the amount of any special benefits.

The minimum compensation payment is set at \$750. Where the market value of the taking is less than \$750, just compensation will be set at the minimum payment amount by the appraisal reviewer or, in the case of an administrative determination of just compensation, by the region right of way manager/program manager or designee giving approval.

### **5.150 Relocation Compensation**

Appraisers shall not give consideration to, nor include in their appraisals, any allowance for relocation assistance benefits.

### **5.155 Damages and Special Benefits**

When only a part of a property is to be acquired, just compensation will be based on the value of the part to be acquired and consideration of damages and special benefits to the remainder. Because Oregon follows the state rule in acquisitions, special benefits can only offset damages, if any. (See [Section 5.430](#) and [Section 5.465](#).)

### **5.160 Fixtures, Equipment and Signs**

When fixtures, equipment, and signs are situated in the acquisition area or affected by the acquisition, a determination will be made whether the items are personal, realty, or appurtenances. Those items which are realty or appurtenances will be valued in the appraisal report. Separate specialty appraisals will be prepared for fixtures, equipment, and signs, when appropriate (see [Section 5.610](#).) Those items which are determined to be personal property shall be identified and listed in the appraisal report. This listing will be utilized to distinguish which items would be treated as personal property from those that would be considered real property.

### **5.170 Appraiser and Review Appraiser Qualifications**

In order to deliver appraisal reports for right of way acquisition, fee appraisers hired by the Section shall be on the Qualified Appraiser List (QAL) and be a state licensed or certified appraiser in accordance with OAR 161.

In order to deliver appraisal reports for right of way acquisition, staff appraisers shall meet the following criteria:

1. A four-year college degree, or
2. Five years of active experience leading to a basic knowledge of real property valuation, or
3. Any five-year combination of such experience and college study.

Staff appraisers should be given appraisal assignments corresponding to their abilities and experience and be given opportunities for formal as well as on the job training to develop their appraisal skills.

### **5.175 Use of Staff and Fee Appraisers**

Staff appraisers shall be assigned as much of the region appraisal work as practicable. Fee appraisers may be employed as the workload requires or where the appraisal problem is complex or beyond the staff appraiser's ability, experience or training.

## **5.180 Review**

A qualified review appraiser shall review all appraisals to ensure that the appraisals meet applicable standards and to establish just compensation to be offered an owner for the acquisition of real property. (See [Section 5.315](#).)

## **5.185 Confidentiality of Appraisal Reports and Information**

Oregon public records law states that every person has a right to inspect any record of a state agency unless the record is excluded from disclosure by [ORS 192.501 to 192.505](#).

**Note:** Except as provided in [ORS 35.346](#), appraisal reports and related information are subject to litigation and all files on an ROW project are considered confidential until any and all litigation on the project is settled.

## **5.200 Responsibilities**

### **5.210 Deputy State Right of Way Manager and Chief Appraiser**

The deputy state right of way manager manages the chief appraiser and appraisal review unit. The chief appraiser, has responsibility, with oversight of the deputy state right of way manager to:

1. Assist in the administration of any matters relating to appraisals.
2. Prepare and distribute policy and procedural instructions, forms, and other materials necessary to ensure appraisals of professional quality.
3. Coordinate appraisal and appraisal review policy and procedures with applicable state and federal laws to ensure payment of just compensation and maximum federal participation in project costs.
4. Have each appraisal reviewed for accuracy, completeness, and adequacy of documentation and to see that deficiencies are corrected.
5. Establish qualifying criteria for fee appraisers and periodically evaluate each appraiser. See [Section 5.170](#), and update the QAL periodically and make available to department staff. At a minimum the update should include appraisal license status, contact information, COBID eligibility, etc.
6. Recommend in-service training or other courses in appraisal principles and practices for region and Section staff to the deputy state right of way manager. Coordinate, prepare and deliver appraisal training courses for staff, fee appraisers and local public agencies on a statewide basis to increase understanding of appraisal theory and practice.
7. Provide technical appraisal guidance to administration, right of way offices, right of way staff, consultants and review appraisers in order to support project delivery.
8. Assign submitted appraisals to the appraisal review staff and fee appraisal reviewers for the timely completion of reviews.
9. Approve appraisal review certification and set the amount to be offered as just compensation on behalf of the department.

10. Develop and implement policies and procedures for the appraisal program and the appraisal review unit. Provide guidance to section and region staff in the interpretation of these issues.

### **5.220 Review Appraiser**

A review appraiser is a senior right of way agent who works under the lead of the chief appraiser and managed by the deputy state right of way manager to review appraisals for the section. The review appraiser:

1. Assists region right of way personnel and fee appraisers with valuation issues.
2. Shall examine all appraisals, including property management appraisals if requested, to ensure that they meet state appraisal requirements and shall, prior to acceptance, seek correction or revision of those which do not.
3. Inspects the appraised property and the comparable sales used in the analysis. Rarely, a field inspection may be waived. If waived, the review appraiser should document the file explaining why such an inspection is not made. Budget cannot be considered when determining if an inspection may be waived.
4. If unable to accept or recommend acceptance of an appraisal as adequate support for compensation, may develop appraisal documentation in accordance with accepted appraisal standards to support a recommended just compensation if it is determined that it is not practical to obtain additional appraisals.
5. Prepares the review appraiser's certification setting forth the recommended just compensation of the property in a signed written statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Damages or benefits to any remaining property shall also be identified in the statement.
6. Examines all remedies submitted to satisfy the closure of access with an existing permit. This process is based on the provisions of OAR 734-051-6010.
7. Assists regions with appraisal work when available and when needed.

### **5.230 Region Right of Way/Program Manager**

The region right of way/program manager is responsible for the appraisal of properties in their respective regions. This includes planning, staffing, setting priorities and training of staff in order to carry out an effective appraisal program.

### **5.240 Right of Way Project Manager**

The region right of way/program manager may designate a senior right of way agent to serve as project manager to assist with the appraisal function. The right of way project manager:

1. Views the project area with appraisal review to identify valuation problems, the number and type of reports needed, and to estimate costs of any needed fee appraisals.
2. Identifies all on premise signs in acquisition areas and assigns them to an appraiser or sign expert/specialist for valuation.

3. Analyzes each file for prior acquisitions, obligations, or restrictions which should be recognized in the appraisal.
4. Assigns appraisals ([Section 5.560](#)) to region staff whenever possible; but, if necessary, obtains fee appraisals, using proper contracting procedures.
5. Assists staff appraisers and encourages their development through on-the-job and formal training.
6. Coordinates with the review appraiser assigned to the project to complete an inventory and classification determination for fixtures and equipment. Once completed, the specialty report can be prepared based on the findings. (See [Guide to Appraising Real Property](#), Section 6, Fixtures and Equipment Reports).
7. Secures specialty reports when appropriate. Provides the specialty reports to the real property appraiser with instructions for proper consideration of contributory value.
8. Utilizes the appraisal checklist to ascertain that the appraisal follows the acceptable standards. Forwards completed appraisals to the appraisal unit for review. Enters appraisal information into RITS;
9. Reviews appraisals as directed by the region right of way/program manager when authorized to do so by the deputy state right of way manager.
10. Is responsible at the initiation of the appraisal phase for the delivery to property owners and affected tenants of the General Information Notice (see [Section 8.131](#)), acquisition and relocation flyers, and a copy of the right of way map, marked "Preliminary", showing the property to be acquired. Staff appraisers may be instructed to deliver these notices to the owners and/or occupants of properties they appraise. When the owner or occupant is unavailable or a fee appraiser has been contracted to appraise a property, the right of way project manager shall mail the required notice packet. If the occupant will be displaced, the packet shall be mailed by United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery.

The right of way project manager shall be aware of the individual needs of the different groups of people - minority and non-minority - and use methods which will ensure that highway program services, benefits, and opportunities are provided equally to persons affected by the programs.

### **5.250 Appraiser**

The appraiser is responsible for arriving at a documented opinion of fair market value for the property. To do so, the appraiser:

1. Checks assessor's records for property information, including assessed valuation and the previous five-year sales history.
2. Contacts property owners or their designated representative to offer the opportunity to accompany the appraiser on property inspections. Refer to [Section 5.140](#) for procedure. Staff appraisers advise them of the proposed project. The appraiser should contact affected occupants also, if appropriate.
3. Asks owners and tenants to identify tenant or third party-owned improvements.

4. Inspects properties in the field, noting the area, rights, or interests to be acquired and the probable effects on any remainder property.
5. Researches area for market data of comparable properties and verifies the information.
6. Estimates fair market value through appropriate valuation approaches. Reports should be written using the approved ODOT appraisal form, but, at a minimum, shall contain the elements of the ODOT forms and be in the required format. Separate valuation for tenant or third party-owned improvements should be reported.
7. Retains adequate information and material to prepare any required revisions or to assist in pre-trial conferences or for court testimony.
8. Completes all appraisals in accordance with instructions in the [Guide to Appraising Real Property.](#)
9. Shall submit appraisal reports that meet the requirements outlined in the statement of work or scope of work, if provided.

The appraisal responsibilities and procedures as detailed in this chapter extend to ODOT staff appraisers as well as to fee appraisers doing work for under contract for federal or state funded projects.

## **5.300 Procedures**

### **5.305 Appraisal Background**

The appraisal of real property to be acquired for public projects presents unique appraisal problems not found in standard real property appraisal situations. This can be attributed to a variety of appraisal concepts, which are largely determined by law. The Section's appraisals shall meet stringent standards of thoroughness, accuracy, credibility, and appropriate widely accepted methodology in order to withstand the rigors of potential condemnation proceedings and to ensure the rights of the property owner and agency are upheld.

### **5.310 Just Compensation**

Since just compensation shall be paid for private property taken for a public purpose, the state obtains one or more appraisals of the property being acquired. The reviewed and recommended appraisal will be used to establish an offer of just compensation.

When an entire property is being acquired, the estimate of just compensation is the same as the approved estimate of fair market value developed in the appraisal process. When only a portion of a larger parcel is being acquired, the estimate of just compensation is the market value of the land and improvements acquired plus damages offset by special benefits to the portion of the larger parcel remaining from the acquisition of the right of way.

### **5.315 Fair Market Value**

All appraisals shall be made on the basis of fair market value. For the purpose of real property acquisition by the state, fair market value is defined as: "The amount of money, in cash, that property would bring if offered for sale by one who desired but was not obliged to sell and was



bought by one willing but not obliged to buy. It is the actual value of the property on the date of the taking, with all its adaptations to general and special uses, that is to be considered.”

However, nothing shall be allowed for prospective value, speculative value or possible value based upon future expenditures and improvements. Refer, also, to *Highway Comm. v. Superbilt Mfg. Co.* (1955) 204 OR 393, 412, 281 P2d 707.

It is important to maintain a clear distinction between fair market value and just compensation. The appraisal or administrative determination of just compensation always estimates fair market value. Just compensation is established for the agency by the state right of way manager or their designee on all appraisals and by the region right of way/program manager (or other authorized right of way staff) on administrative determination of just compensation. In some instances, fair market value and just compensation may not be the same. (See [Section 5.145](#)).

### **5.320 Larger Parcel**

Essential to the field of eminent domain appraising is the concept of the larger parcel. The larger parcel impacted by a right of way acquisition may be the entire property under appraisal, may only be a portion of the property, or may be several related parcels. Determination and reporting of the larger parcel is required in every appraisal assignment or administrative determination of just compensation assignment.

The larger parcel is that property under appraisal containing the following elements:

1. **Unity of title.** In order for one or more tracts of land to be considered to be part of the same larger parcel they shall enjoy the same quality of ownership. The fact that owners have an interest in the parcel, a part of which is not taken, is not sufficient unity of ownership to support a claim for damages to that parcel. This is an issue which may require a legal determination.
2. **Contiguity.** For a remainder area to be considered part of the larger parcel it generally shall be physically contiguous with the acquisition area. However, exceptions may be made, depending upon the nature of the operation being performed on the non-contiguous sites.
3. **Unity of use.** For a remainder area to be considered part of the larger parcel it shall be in the same use or an integrated use with the acquisition area. This is an appraisal question and requires a determination by the appraiser.

### **5.321 Highest and Best Use Considerations**

An appraiser shall appraise property to its highest and best use. Highest and best use is that reasonable and probable use of the property as of the date of valuation, which is most likely to produce the greatest net return to the land and improvements. Elements to be considered in determining the highest and best use include, among others: comprehensive plan, zoning and building restrictions, size of the land and its suitability for development, supply and demand, and neighborhood trends. The appraiser’s highest and best use shall be an economic use.

For partial acquisitions, the appraiser needs to consider highest and best use twice, once as the property exists before the acquisition and once as the property would exist after the acquisition. Consideration of highest and best use under both scenarios shall be performed for all report



types. However, it may not be reported in every report. Consideration of highest and best use in both scenarios should be maintained in the appraiser's work file if it is not reported in the appraisal report. A change in the highest and best use of the remainder area due to the acquisition might result in a finding of damages or benefits to the remainder area, or a material change in the intensity of use within a highest and best use could also be the basis for finding damages or benefits, such as the remainder area changing from a balanced economic farm unit to an unbalanced unit.

It is important in the highest and best use consideration not to value the land for one use and the improvements for another use and combine the two elements into a value for the entire property. This violates the consistent use theory. Improvements are to be valued to the extent they contribute to the highest and best use of the property or for their value for removal, whichever is greater.

### **5.322 Consistent Use**

An appraiser shall follow consistent use theory in the highest and best use analysis and subsequent property valuation. Consistent use theory states that land cannot be valued on one highest and best use while the improvements are valued based on another highest and best use. As an example, if a residence is located in a commercial area, the property cannot be appraised based on a residential use for the improvements plus commercial use for the underlying land. The value shall be based upon its highest and best use – either as a residence with commercial potential based on sales of similar properties with similar potential, or as a commercial site giving little to no contributory value to the improvements.

Improvements are to be valued to the extent they contribute to the highest and best use of the property or for their value for removal, whichever is greater. There may in fact be a deduction in value because of the required demolition costs of the house which might have to be removed in order to develop the commercial site.

### **5.323 Interim Use**

A building or other improvement may have an interim, or temporary, use when the property's transition to its highest and best use is deferred. Using the example from [Section 5.326](#), the present market may not be suitable for immediate development of the property to its commercial highest and best use. The appraiser may find that the residence is suitable for deriving a short-term rental income that can act to offset taxes and other holding costs that may occur while the optimal time for commercial re-development approaches. Interim uses are by their nature short term. A long-term interim use exceeding five years raises a serious question as to whether the appraiser's highest and best use conclusion is remote and speculative.

The best method for determining whether the interim residence actually contributes to the value of the property as a whole is to analyze comparable sales of properties in the same economic position. If adequate comparable sales are not available, the appraiser may utilize an appropriate method to find a present value for a temporary income stream from the residential use. This income stream shall be market based. The resulting present value can be added to the commercial land value only if the land value recognizes the delay in development to a commercial site. It would be a violation of consistent use theory to simply add the present value

of the temporary residential use to a commercial land value reflective of immediate development to its highest and best commercial use.

### **5.330 Entire Acquisitions**

Entire acquisitions involve a straightforward appraisal approach utilizing sales comparison, cost, and income approaches, as appropriate for the type of property being considered.

Whenever a parcel of real property is being acquired in its entirety, the appraisal shall provide separate market value opinions of the underlying land and the improvements in addition to the market value of the whole property. The sum of the land and improvement values shall equal the market value of the whole property.

### **5.335 Partial Acquisitions**

Because partial acquisitions involve the acquisition of only a portion of a larger tract, leaving a remainder, the estimate of market value is generally a more complex assignment than is valuing an entire acquisition. The standard procedure for partial acquisitions is to appraise either on a before and after, or on a taking and damages basis.

In a before and after appraisal, after the land and improvements within the acquisition area have been valued, the appraiser shall determine the value of the remainder after the acquisition. To determine the value of the remainder, the appraiser shall:

1. Assume the project has been completed according to plan.
2. Analyze and describe the highest and best use for the remaining property.
3. Show by sales data or other applicable techniques, the market value of the remaining property based upon its highest and best use.

To assist the appraiser in valuing the remainder land the right of way project manager should maintain a current listing of sales involving properties from which a right of way acquisition has been made in order to measure, by market data, the value of remainder properties.

### **5.340 Before and After Appraisals**

A partial acquisition which is complex or involves a substantial portion of the larger parcel requires the appraiser to first value the entire larger parcel as it exists prior to the acquisition. Then, the value of the part to be acquired, as a part of the larger parcel, is calculated. The next step is to appraise the remainder property as it will be after the project is completed. Any difference between the value of the entire property, less the value of the acquisition, and the value of the remainder after the taking, indicates the project has caused damages or benefits to the remainder. The appraiser shall determine whether or not the damages are compensable or non-compensable and allocate the total damages as compensable or non-compensable in the appraisal report. The value of the part acquired, as a part of the larger parcel, plus compensable damages offset by special benefits, if any, would be the appraiser's estimate of market value.

The following is a link to .zip file containing a worksheet template outlining the steps in the before and after appraisal:

[https://www.oregon.gov/ODOT/ROW/Documents/Appraisal\\_Guide-Forms.zip](https://www.oregon.gov/ODOT/ROW/Documents/Appraisal_Guide-Forms.zip).

The appraisal report shall include a summary that contains the elements shown in the worksheet. Refer to the Guide to Appraising Real Property published by the right of way section for detailed information on the individual components of the before and after appraisal form.

This form can be found at the bottom of the page for the above link under Forms-Appraisal & Others. Generally, high value and access acquisitions require a before and after report.

### **5.345 Taking and Damages Appraisals**

When damages are minimal and can be accurately measured in and of themselves (and there are no special benefits) certain right of way acquisitions do not merit the before and after approach. Instances when a taking and damages format is appropriate include:

1. When the effect of an acquisition is minimal in comparison with the larger parcel.
2. The highest and best use of the property will not change.
3. A before and after appraisal will not add significant additional clarity to the report.

### **5.350 Prior Sales of the Subject Property**

Just compensation is measured in terms of market value. A recent market sale of the subject itself may provide good evidence of market value. The appraiser is to research the sales history of the subject for the previous five years, analyze any sale to determine whether it is relevant to a current indication of value, and report the conclusion of the analysis in the appraisal.

### **5.355 Approaches to Value**

Standard real estate appraisal practice employs three basic methods of estimating value: the sales comparison, cost, and income approaches. In eminent domain appraising all three approaches are used in estimating market value. When adequate market sales data are available to reliably support the market value for the appraisal problem, the sales comparison approach is the only approach that is required. If more than one approach to value is used, the appraiser shall analyze and reconcile the approaches sufficiently to support the opinion of value.

### **5.360 Sales Comparison Approach**

Comparisons of bona fide comparable sales transactions to the subject property comprise the basis of the sales comparison approach. As the appraiser analyzes sales, each sale needs to be adjusted to the subject, as appropriate, and an indicated value of the subject is developed for each sale. The individual value indications of each sale then shall be reconciled to arrive at an estimate of market value for the subject property. Elements of comparison to be considered are:

1. Highest and best use. The appraiser should use comparable sales that have the same or most similar highest & best use as the subject property. An analysis of the comparable sales should reflect the current and potential uses of those properties.
2. Property rights conveyed. The appraiser should determine if a sale is of the fee or less than Fee interest and make an appropriate comparison of the rights sold to the property rights being appraised.

3. Conditions of sale. Extenuating circumstances of the sale need to be considered. Such things as length of time on the market, special financing and buyer's and seller's motives are examples of conditions to address in the analysis.
4. Time interval between sale date and date of valuation. This comparison can show a decrease in value as well as an increase or no change at all.
5. Expenditures made immediately after the purchase should be analyzed and the sale price adjusted appropriately to reflect the impact on the selling price from those expenditures.
6. Location. This is one of the most important factors and shall be judged carefully. The appraiser will want to examine the sales while observing such things as differences in the neighborhoods, price range of properties near the sale property, proximity of services, etc.
7. Physical characteristics. The physical differences between the subject and comparable sales shall be recognized and adjustments made to reflect those differences. Physical differences may include size, soils, access, topography, quality of construction, age, condition, functional utility, amenities and other considerations as demonstrated by the market.
8. Fixtures and non-realty. As identified and discussed in [Section 5.395](#), items identified as fixtures are considered part of the real property and are to be included in the valuation of the real property based upon their contributory value. Comparable sales shall either contain equivalent fixtures that offer the same contributory value or adjustments shall be made to reflect the differences with the subject regarding the presence or absence of fixtures. In appraisals of improved commercial and industrial property, and residential property when indicated, fixtures are to be identified for the subject property and, on the sales sheets, for each comparable sale. (See [Section 5.160](#) and [Section 5.610](#).) Non-realty components of the sale, such as chattel, business concerns and other items that do not constitute real property but are included in the sale price shall be identified and analyzed separately from the real property.
9. Economic similarities and dissimilarities.

The appraiser shall verify sale prices, the terms and conditions of the sale, and determine whether it is representative of the market. Verification of sales data shall be done with the buyer, seller or the real estate broker actually involved in the transaction and in that order of preference. In selecting comparable sales to be used in valuing the subject, greatest emphasis should be given to those sales which are similar in as many features as possible. The basis for and magnitude of the adjustment for each element of comparison shall be stated separately and supported, when necessary, rather than reciting all the elements of comparison and stating a cumulative adjustment. The sales shall be sufficiently described to allow the person reading the report to understand the conclusions drawn by the appraiser. Distress sales, sales to a condemning agency, forced sales, sales including property exchanges, sheriff sales, foreclosure sales, sales between family members, offers to buy or sell, and sales involving unreasonable financing terms are often unreliable indicators of market value and should generally not be used for comparative purposes. However, these transactions may be used as secondary support for the bona fide market indicators.

### 5.365 Cost Approach

The cost approach may have limited applicability in appraising properties for eminent domain purposes. It could be used in cases where market data is not available or for special use properties. In this approach, the fair market value of the land is added to the depreciated replacement or reproduction cost of the improvements to arrive at a value for the entire property. It is mandatory to account for all forms of depreciation - physical deterioration, economic obsolescence and functional obsolescence.

The use of cost services shall be done with care. The appraiser should show each step taken in using the service. The section, page, date of the page and calculations should be included in the report. The appraiser may also use information in the cost service books to estimate accrued depreciation; however, the appraiser shall pay attention to the possibility of abnormal functional obsolescence or some degree of economic obsolescence because the tables in the cost service books reflect only normal physical deterioration and functional obsolescence. Thus, it is best to estimate depreciation from available market evidence.

### 5.370 Income Approach

The income approach should be used to value properties which exchange in the real estate market for investment purposes. The basis for the analysis is the potential gross income and the subsequent net operating income (NOI) the real property may produce, not the income produced by the business.

There are basic elements, which shall be considered to perform the income approach analysis. They include:

1. **Potential Gross Income Estimate.** Potential gross income to the property should be estimated from comparable gross rental data found in the market for comparable income-producing properties (market rent).
2. **Vacancy and Collection Losses.** This should be based on verified data of comparable rental properties. The subject's actual vacancy and collection losses should also be analyzed.
3. **Fixed and Operating Expenses.** Actual expenses should be verified with the property owner and may be relied upon if supported by comparable expense data from similar income properties. The appraiser shall include documentation for the amounts for fixed and operating expenses, reserve for replacements, management costs and other appropriate deductions to be applied.
4. **Net Operating Income.** Concluded vacancy and collection losses should be deducted from the potential gross income to obtain the net operating income.
5. **Capitalization Rate.** The capitalization rate shall be clearly supported by an analysis of similar sales to determine the rate demanded in the open market. The characteristics of the subject should also be analyzed and discussed in concluding a capitalization rate.

### **5.380 Land Valuation**

In eminent domain appraising the land value of the larger parcel is valued to its highest and best use as if vacant and ready for development. The appraiser shall determine the appropriate unit of comparison and apply the market data approach to obtain the land value.

### **5.381 Easement Valuations**

Easements provide a right to use a described property for a particular project-related purpose that may be for a specified length of time. The easement period could be in days, months, years or in perpetuity. An easement is distinguished from rental of the property in that it is for a specific purpose. The property owner can continue to use the property for all other purposes not specifically excluded by the terms of the easement or in conflict with its specified use. The appraiser shall utilize the scope of work provided by the right of way project manager for project details needed to complete the appraisal assignment.

#### **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.

#### **Valuation Policy**

In general, all easements should be valued based on their effect on the property. The easement value should be based on the plans and specifications of the project and their effect on the property as it relates to the probable future use of the easement. The appraiser should value the easement based on the probable future use and not speculate as to the worst case scenario. When valuing the easements, any pre-existing easements on the property should be considered as well as damages and special benefits. Easements should be valued based on a 'before and after' concept. Whenever possible, the easement value should be supported by market-based data. Improvements will be valued when they are affected by the easement.

1. Permanent easements. Permanent easements give rights as specified in the language of the easement, including but not limited to, construction, reconstruction, and maintenance. After the initial construction, the state has the right to continue to maintain the slopes and other project improvements or facilities, but not to engage in new construction which would significantly alter the grade or condition of the easement area. Any significant alteration to what was previously constructed in an easement area may require a new easement and appraisal.

Property management appraisals will address the impact of the permanent easement to the state's property, including any damages to the remainder. The scope of work will determine whether enhancement value will be considered when appropriate ([Section 5.565](#)).

2. Temporary easements. Temporary easements give rights as specified in the language of the easement for a specified period of time. The value of the temporary easement should reflect the period of actual use plus any other impact on the market value or loss of utility attributed to the temporary easement.

Other guidance for the valuation of easements may be found in the [Guide to Appraising Real Property](#) and Technical Bulletin RW15-01(B) which may be found at: <https://www.oregon.gov/ODOT/Engineering/Pages/Technical-Guidance.aspx>

### **5.385      Irrigated Lands**

The right of way project manager or the appraiser shall investigate to determine whether a private water right is involved, and if so, documentation of the water right needs to be obtained, or, if an irrigation district is involved, the bonded indebtedness per acre of the district needs to be obtained. The appraiser shall consider these findings in the selection and analysis of sales to be considered in the sales comparison approach.

When irrigated land is being appraised, the right of way project manager should determine whether the property owner has other lands to which the irrigation rights can be transferred. If there are no other lands available, the right of way project manager should direct the appraiser to consider whether or not there are damages as a result of the inability to transfer those water rights.

In the case where the property owner has remaining lands to which the irrigation rights may be transferred, the right of way project manager shall instruct the appraiser to value the land to be acquired as both irrigated and non-irrigated. The appraiser shall address, also, the costs to transfer the rights to other lands and any costs involved to physically divert or provide the water to those lands. The costs to transfer the water rights and divert the water shall be less than the value of the water rights plus any damages to the remainder property. The actual compensation will depend on whether the water rights will be transferred, or the state will acquire the rights.

### **5.390      Improvement Valuation**

When acquiring any interest in real property, the state shall appraise buildings, structures, or other improvements located upon the real property to be acquired. The value of any improvements should be based on their contributory value to the real property being appraised. In the case of a partial acquisition, any impact on the market value of the improvements located on the remainder shall also be considered. This shall include any improvement of a tenant owner.

Just compensation for a tenant owned improvement is the amount to which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater.

Salvage value is defined as the probable sale price of an item that will be sold and removed from subject property at the buyer's expense. This includes allowing reasonable time to find a buyer knowledgeable of the uses of the item, uses of the serviceable components and any scrap value.

### 5.395      **Fixtures**

Fixtures are personal property which has been attached to the land or structure thereon in such a manner that they may be considered realty. The application of the following three tests determines whether an item is a fixture:

1. **Intention.** This test considers evidence of a party's intention in bringing an item onto real property. If the intention at that time was to make the item a permanent part of the realty and this is supported by evidence of some degree of adaptation or annexation, then the item is considered a fixture. The intent which is considered by this test is that which is readily perceived or inferred, not any uncommunicated or hidden intention.
2. **Adaptation.** The test for adaptation focuses on whether an item is adapted to and necessary for the primary use of the realty. The elements generally considered in evaluating the adaptation of an item to the use of the realty consist of the following:
  - a. Consequential loss of value of an item if removed.
  - b. Need for the item in order to accomplish the purpose to which the realty is devoted.
  - c. Permanency of dedication of the item to the use of the real property.
3. **Annexation.** This test is concerned with the permanency and firmness of an item's physical attachment to the real property. In order to be considered a fixture due to annexation alone, the item shall be so firmly annexed that it could not be removed without substantial injury to itself or the realty. However, a lesser degree of attachment, or a complete lack of attachment does not necessarily preclude an item from being considered a fixture. In those cases, the tests of adaptation and intention shall be applied to determine whether an item is a fixture.

Tenant owned improvements concluded to be fixtures are treated as realty and shall be appraised for purchase, even though the landlord tenant agreement may require their removal at its expiration.

Personal property not concluded to be a fixture remains personally and is not to be considered in the appraisal.

### 5.400      **Fencing**

Like any other improvement, fencing (except for fencing containing livestock (as addressed in Section 5.401) situated within the acquisition area is to be valued on the basis of its contributory value to the highest and best use of the land, recognizing functional utility, depreciation, and possible interim value. Generally, the contributory value of the fence being acquired plus any damages attributable to the loss of the fence should not exceed the cost to replace the fence within the acquisition area.

### 5.401      **Fencing Allowances**

On property containing livestock, it is important that the remainder area have the fencing restored to prevent the animals from entering the operating right of way. To do this, the appraiser needs to determine a reasonable amount of money to provide to the owner so that the



owner or a fencing contractor can install the new fencing prior to the removal of the fencing affected by the project, provided the project or property owner are not installing temporary fencing in the interim.

In deriving a fencing allowance, the appraiser needs to discuss fencing needs with the property owner and prepare a fencing specification sheet detailing the type, amount and quality of fencing required to enclose the remainder, and a time frame for completion of the work. The specifications should include the type and gauge of the wire, the type and spacing of posts to be used and the type and number of gates to be included. The appraiser needs to then secure one or more bids from qualified fencing contractors based on the fencing specification sheet and incorporate the bid into the appraisal as the allowance for fencing.

It is important to note that the fencing allowance is only applicable for property containing livestock and is not intended to allow for enclosure of domesticated animals. Additionally, the fencing allowance is intended to allow for the same style of fence so that it is secure enough to contain livestock and prevent livestock from entering the highway system.

The fencing allowance is not part of the just compensation and should be reported separately.

### **5.405 Signs**

This section does not apply to outdoor advertising signs. Signs situated on property to be acquired, including any signs which will overhang or encroach upon the state highway right of way, need to be appraised either by the real estate appraiser or by a specialty appraiser, depending on the complexity of the assignment. For a discussion of the sign appraisal format (see [Section 5.615](#)).

The value of a sign is to be incorporated by the real estate appraiser into the real estate appraisal to the extent of its contributory value to the real estate. The appraisal should treat signs similarly as any other improvements located in the acquisition area. Based on the manner in which the sign, or part of the sign, is attached to the real estate, the appraiser may determine that the sign, or part of the sign, is personal property, i.e., the sign face, sandwich board sign, A-frame signs, flags, etc. An opinion of the contributory value in place of the sign, if determined to be real estate, should be included as part of the take and consideration of damages and special benefits be made. A cost-to-cure should be considered in lieu of damages. A cost-to-cure may include re-establishment of the existing sign out of the acquisition area, if applicable. Re-establishment may include additional costs including permitting, electrical (if necessary), engineering, etc. If the sign cannot be re-established, damages should be considered if it was determined that the sign contributes value to the underlying land. Generally, the concluded contributory value of the sign plus any damages to the remainder or costs to cure should not exceed the replacement cost new of the existing sign.

### **5.406 RESERVED**

### **5.410 Trees and Crops**

Trees growing within the acquisition area are part of the realty and need to be appraised for their contributory value to the land and should not be considered separately from the land itself. Trees

growing within the existing right of way adjacent to the proposed right of way cannot be considered in determining compensation.

An appraisal involving growing crops shall be performed on the basis of the land value including the crops. If the acquisition occurs after harvesting, the appraisal shall be adjusted to the current value of the land, excluding any crop value previously assigned.

Timberlands being appraised generally require a specialty report. (See [Section 5.620.](#))

#### **5.415 Domestic Water Supplies**

When a domestic water supply is situated within an acquisition area, or might be jeopardized by construction of the project, the region right of way/program manager shall request the project leader to have water quantity and quality tests performed. The test results provide a benchmark in determining the extent of the state's liability if claims for water supply damage due to the project are filed against the state.

If a domestic water source is to be entirely or partially acquired, the right of way project manager or designated agent should secure an estimate of the cost to provide a new comparable replacement well from a well drilling contractor. The real property appraiser shall consider this cost estimate in light of depreciation or other relevant factors to arrive at an estimate of the contributory value of the water source being acquired. The appraiser shall determine whether the loss of the water source causes any damages to the remainder, and if so, whether a cost to cure can be applied to mitigate damages. Examples of a cost to cure include drilling a new well if legally permissible or connecting the remainder to an existing public water system. Generally, the contributory value of the water system being acquired plus damages to the remainder attributable to the loss of the water system should not exceed the cost to replace the water system.

#### **5.420 Septic Systems**

When all or part of a septic system is situated within an acquisition area, an analysis similar to that for a domestic water supply may be done. The contributory value of the septic system should be estimated. This will require a contractor's estimate. Damages to the remainder property due to the loss of the system need to be analyzed, and a cost to cure applied if appropriate and permissible. Determining the feasibility of replacing the system requires coordination with the local public agency sanitarian. Generally, the contributory value of the septic system being acquired plus damages to the remainder attributable to the loss of the septic system should not exceed the cost to replace the septic system.

#### **5.425 Utilities**

As a part of the appraisal process the right of way project manager is to examine the provisions made in the construction plans for utility relocation. Because public utilities are generally relocated as a part of a project, the right of way project manager may direct the appraiser to assume that existing utilities will be available after the project is completed, and therefore they are not appropriate items for the appraiser to value.

However, in an entire acquisition containing a utility owned by the grantors (such as a well or a wind powered generator, etc.), the appraiser shall consider this facility as an improvement to be appraised for its contributory value to the land.

### **5.426 Mobile Homes**

Mobile homes, with the exception of travel trailers, are generally considered real property by ODOT. However, when the land beneath the mobile home is not owned by the mobile homeowner, such as in a mobile home park, and the mobile homeowner pays a licensing fee and personal property taxes, the mobile home may be treated as personal property. (See [Section 8.632](#).)

### **5.430 Damages**

Although just compensation includes compensating a property owner for damages to the remainder resulting from the acquisition, there are many situations which adversely impact the remainder property for which no compensation can be allowed.

One example is a loss of value to the remainder when the loss is attributable to the exercise of police powers. Police powers involve the government's right to promote order, safety, health, and the general welfare of society within constitutional limits. This can directly affect property valuation by regulating or prohibiting certain uses of the property. The loss of value under eminent domain is due to a transfer of ownership to the public, while the loss of value under police powers is due to regulation. Since no acquisition of property is involved under police powers, no compensation can be paid to owners for a loss of value. The exercise of police and eminent domain powers can occur concurrently, and care shall be taken to distinguish the effects of each. (See [Section 5.450](#).)

Damages to the remainder are divided into two classifications: compensable and non-compensable.

### **5.440 Compensable Damages**

A loss in value of the remainder property is compensable if it is caused by or related to the taking of property or property rights, or the manner in which the public improvement is constructed, if it includes:

1. Dividing a property into two or more parts. This includes dividing buildings or other improvements on the property.
2. Reducing the remainder area into small parcels no longer having economic utility (see [Section 5.470](#)).
3. Creating oddly shaped remainder areas having diminished value.
4. Creating a landlocked remainder.
5. The loss of reasonable access to the highway system (see [Section 5.480](#)).
6. Proximity of the highway to buildings in the after situation.
7. Change of grade or loss of view if the loss results in a decrease in market value.

8. The loss of off-street parking.
9. A loss in value because of a change in highest and best use.

If there is no loss in value, then no damage has occurred. Any loss in value shall be supported and documented by market evidence in the appraisal.

### **5.445 Costs to Cure**

A partial acquisition can leave a remainder property unusable or substantially impaired. However, often the adverse effects can be reasonably diminished or completely mitigated by specific modifications to the remainder property. A cost-to-cure is an estimate of those costs an owner would incur if all the necessary modifications were made. This often requires that a specialty report, contractor estimate, or bid be prepared for consideration by the real property appraiser in the measurement of damages. (See Section 5.625.)

The decision to utilize a cost-to-cure to estimate damages to a remainder should be based on the reasonableness of performing the cost-to-cure. Damages shall be estimated prior to determining the cost-to-cure. If the cost-to-cure estimate is greater than the amount of damages created by the project, it is inappropriate for the cost-to-cure to be applied. A cost-to-cure may be used only to offset greater damages. It shall be reported in the appraisal that the cost-to-cure is less than the estimated damages, if a cost-to-cure is being utilized.

In some situations, a cost-to-cure will include replacement value for item(s) also valued in the part to be acquired, thus caution shall be exercised to avoid double compensation. Also, the cost-to-cure shall be limited so as not to provide betterment to the remainder (unless the enhancement would be due to zoning or building codes, etc.).

The cost-to-cure estimate is applicable only for measuring the extent of damages to the remainder. It is not to be applied if the cure is dependent upon actions taking place outside the control of the property owner. As an example, it is not appropriate to cure damages resulting from a deficiency in the size of a remainder by assuming the owner could acquire adjacent land.

Examples of situations in which costs-to-cure might be employed include:

1. Fencing is severed, jeopardizing its security function. Security can mean to protect inventory or avoid liability. This is not the same as a fencing allowance (see [Section 5.400](#)).
2. A building is severed.
3. Access to property or buildings is eliminated but can be restored by relocating the access (See [Section 5.480](#) and [Section 5.481](#)).
4. An improvement can be moved to mitigate damages to the remainder. It is not proper to consider relocation of structures to decrease proximity to the project.
5. A water supply or sewage system is acquired and can be replaced in some fashion.
6. A drain line can be installed to prevent flooding on the remainder.

### **5.450 Non-Compensable Damages**

A loss in value of the remainder property is non-compensable if it is caused by or related to:

1. Remote and speculative damages:
  - a. Any aesthetic or sentimental losses perceived by the owner.
  - b. Any damages caused by the acquisition and construction on the lands of others. The damages shall be a result of an acquisition from the damaged property.
  - c. Annoyances or inconveniences suffered by the public generally, such as an increase in noise, dust and fumes, or circuitry of travel.
2. Damages to business. The following factors generally cause increased cost to businesses but cannot be compensated for in the appraisal process:
  - a. Business losses during construction.
  - b. Loss of good will.
  - c. Expenses incurred in moving personal property to a replacement site.
  - d. Loss of trade, business, or future profits.
  - e. Increased costs in operating the business, except as it affects the market value of the real property.
  - f. Costs of plans and specifications for proposed improvements now obsolete due to the acquisition; also, loss of prospective use of the property based upon those plans.
  - g. Damages arising out of an owner's inability to relocate into an acceptable substitute location.
  - h. Loss of profit from the sale of vacant land if it were subdivided. The appraiser cannot find higher damages by asserting the vacant land would be more valuable if subdivided, since it is speculative as to when and for how much the lots would be sold. The highest and best use of the larger parcel would consider the aggregate of the lots and not at the value of the sum of the components.
  - i. Inconvenience and expenses incident to the surrender of possession.
3. Police powers. A loss in value to the subject property is non-compensable if, by the proper exercise of police powers, it is caused by:
  - a. Zoning regulations.
  - b. Changes in traffic patterns, such as the creation of one-way streets; installing median barriers; establishing traffic lanes and restricting on street parking; increasing or decreasing traffic volumes and regulating speeds; limiting left turns, U-turns and crossovers; temporary and permanent diversions and rerouting of traffic, including the inconveniences resulting from circuitry of travel.
4. Access restrictions (see Section 5.480). A loss in value due to restriction of access is non-compensable if it is caused by or relates to:
  - a. Disallowing access directly to a newly located limited access highway.
  - b. Not having access to a widened highway if there was no prior access.

- c. Access restrictions if access to the highway system is reasonable, including if access is provided by means of a frontage road.
- d. A loss of access if access is not allowed at each and every point along the highway, so long as reasonable access is provided.

### **5.455 Benefits**

If the owner's remainder property increases in value as a result of the project, the owner has been benefited and compensation may be modified by offsetting the benefits against any damages previously determined by the appraiser. Not all benefits can be used to offset damages. Benefits are divided into two categories, general and special. Only special benefits can be applied against damages.

### **5.460 General Benefits**

An increase in value of the remainder property as a result of the project is a general benefit if the benefit accrues to the neighborhood or community at large, including those who do not abut on the new improvement. If a benefit is determined to be general, it cannot be used to offset damages to the remainder.

### **5.465 Special Benefits**

An increase in value to the remainder property as a result of the project is a special benefit if it results from the remainders special relationship to the project and is not realized by the community as a whole.

The benefit may be a direct result of the acquisition, such as by the creation of additional frontage or changing a creek channel creating more usable land. The project could create special ingress and egress or establish access where none existed before. A change of grade could be a special benefit to the remainder if it increased the market value of the land.

If the remainder is provided with a higher and better use as a result of the project, this would most likely be viewed as a special benefit. The appraiser shall determine that the higher and better use is special to the property and is not equally enjoyed by properties that do not abut or proximate to the project. If a property receives both general and special benefits, only the special benefits may be used to offset damages.

A special benefit to one tract of land abutting the project does not become general merely because a like benefit is enjoyed by many tracts that are contiguous or in near proximity to the project. The benefit may be special to all of the abutting or proximate remainder parcels.

In situations where the distinction between general and special benefits is difficult, the appraiser should seek the advice of the right of way project manager and the deputy state right of way manager for further direction.

### **5.470 Uneconomic Remnants**

An uneconomic remnant is the remaining part of the subject property in which the owner is left with an interest that the state determines has little or no utility or value to the owner. If the acquisition of only a portion of property would leave the owner with an uneconomic remnant,

the state shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. The determination of whether or not a remainder is considered an uneconomic remnant is made by the review appraiser. The state will not condemn for an uneconomic remnant.

## **5.480 Access Considerations**

Under Oregon law, access to the state highway system is subject to ODOT's regulatory authority. Closures, restrictions, and relocations of accesses are done under this authority. Access rights may also be acquired under ODOT's eminent domain powers, but the rights acquired are still subject to ODOT's overriding authority to regulate access. Oregon courts have generally held that access control does not constitute a compensable taking under the Oregon Constitution, because of this regulatory authority.

### **Exceptions**

Loss of access is compensable only when an existing reservation or grant of access is closed, or when a property is left with no reasonable access. Reasonable access for appraisal purposes is any access that allows some remaining economic use of the property, not necessarily the existing use or the existing highest and best use.

### **Project related access control**

The right of way project manager instructs both staff and fee appraisers regarding the nature and degree of access control on a project. Appraisal instructions shall include locations before and after the project of access reservations, permitted approaches, grandfathered approaches, and illegal approaches.

### **Non-project access control**

A district office may initiate access closures unrelated to a right of way project. Upon receipt of a notice of closure, the region right of way/program manager will determine whether there will be a taking of a compensable access right or the closure of an access for which a permit has been issued. A taking requires an appraisal. Closure of a permitted access requires an [OAR 734 Division 51](#) remedy analysis.

### **Appraising access rights for compensable access closures**

The closure of an existing reservation or grant of access, or the loss of reasonable access to a property normally requires a Before and After appraisal to analyze the impacts of the loss of access on the property. A thorough analysis of the before and after situations is required. The access characteristics both on the property and off the property shall be considered in the before and after situations; this includes a review of the internal circulation and external accessibility.

Damages due to the access closure are compensable in these situations and shall be documented and/or explained. Special benefits shall be measured.

A taking and damage appraisal may be appropriate in some situations, but concurrence of the deputy state right of way manager will be needed before this format may be used. The taking and damage appraisal shall employ the same thought processes as in a before and after appraisal.

Value finding appraisals and administrative determinations of just compensation may be applicable in certain circumstances where it is obvious that no damages result from the loss of access. The deputy state right of way manager shall approve the use of a value finding or administrative determination of just compensation on a file with compensable access control.

### **Appraisals with non-compensable access closures**

An appraisal of property that does not involve closure of a reservation or grant of access or loss of reasonable access shall recognize that damages due to access changes are not compensable. The appraiser will distinguish between compensable damages due to the taking and non-compensable damages resulting from the loss or control of access.

The appraiser shall mentally separate the taking from the changes in access by determining what the effects of the changes would be if ODOT's regulatory authority were used prior to, and totally separate from, the project. Those effects are non-compensable. The appraiser would assume that the access changes have already been made, and the appraisal would measure the effect of the taking alone in valuing the property.

Factors other than access may require a before and after appraisal. Since the before and after format automatically measures damages due to access control along with all other damages, the appraiser shall identify damages due to loss or change of access as non-compensable.

Taking and damage appraisals, value finding appraisals, and administrative determination of just compensation should neither address nor measure non-compensable damages.

### **Access control only files**

Loss or change of access is non-compensable. No value can be attributed to access restrictions or changes in access in an appraisal, unless there is a closure of a reservation or grant of access or loss of reasonable access. Appraisers may not report a nominal value, or any other value for loss of access. This includes files that are access control only.

If an access reservation is being closed, a before and after appraisal should be completed to document any changes in value to the property. If the appraisal shows no loss in value, the appraiser should state the value of the access closure as \$0. For statewide consistency, appraisal review will establish just compensation in these situations.

Closures of accesses are compensable only when an existing reservation or grant of access is closed, when a property is left with no reasonable access, or when a property is landlocked. Reasonable access for appraisal purposes is any access that allows some remaining economic use of the property, not necessarily the existing use or the existing highest and best use.

## **5.481 Access Remedies Under OAR 734-051-6010 (SB 86)**

Under [OAR 734-051-6010](#), closure of an access having an existing permit may result in the offer of an administrative remedy. If the right of way section determines that such a remedy would address issues created by such closure which relate to real property value, utility and use, then a remedy may be considered. Regulatory closure of an access for which a permit has not been issued is not eligible for a remedy under this provision. Offers of remedies are totally discretionary on the part of the Department and are not subject to a contested case appeal.



The process of determining a remedy is separate from the appraisal process for an acquisition. The remedy may be determined by the appraiser at the time the property appraisal is being completed, but neither the remedy, nor discussion of the remedy, will be part of the appraisal. The remedy is not part of the just compensation to be offered to the grantor.

Remedies are intended to mitigate out of pocket costs an owner may incur in reestablishing alternate access due to the loss of a legally permitted access. Remedies are intended to restore functional access to the property. They are not intended to compensate for damages to the remainder property, or to make the property whole.

Remedies may be monetary and/or non-monetary and are benefits to a property that which would address issues related to real property value, utility or uses.

They include the equivalent value of:

1. Actual physical reconnection of an approach to the highway or some other public facility.
2. Construction of public roads or other public facilities, including frontage or utility roads, city streets, alleys or county roads.
3. Improvements or modifications to the real property served or intended to be served by the approach, including paving of parking, re-striping of lanes or parking, relocation of other traffic barriers and other items that directly address the impact to the property of the closure or denial.
4. Improvements or modifications to highways or other public facilities, including medians or other traffic channelization, signing or signal installation.
5. Remedies include any benefits derived by the property by virtue of highway improvements and highway modifications, whether or not related to the specific closure.
6. Remedies will be limited to those necessary needed to serve existing uses or other uses reasonably allowed uses given the existing zoning of the property and other factors, including physical or geographical constraints.

Remedies do not include:

1. Reimbursement for attorney fees.
2. Relocation expenses.
3. Lost profits.
4. Lost opportunities, or
5. Costs not specifically related to value, utility or use of the property itself.

Remedies will be based on cost estimates from private contractors (preferred method) or prepared by agents knowledgeable about typical costs.

Documentation of remedies is not required to be as extensive as for an appraisal but shall be sufficient to provide a reasonable basis for determining the remedy amount. A narrative explanation of the situation and the remedy will be sent to the appraisal unit for review.

Remedies should not be reported on appraisal forms.

**Note:** Costs related to administrative access remedies under [OAR 734-051-6010](#) are not eligible for federal reimbursement.

## **5.500 Appraisal Reports**

ODOT has standardized appraisal forms. Appraisers may use their own appraisal format; however, the report shall contain the same components of the ODOT standardized forms, at a minimum. The forms may be found in the [Guide to Appraising Real Property](#).

### **5.505 Definition of an Appraisal**

The Uniform Act defines an appraisal as: "... a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information."

Appraisal reports should contain, at a minimum, the following elements:

1. The purpose of the appraisal including a statement of value opinion to be provided and the rights or interests being appraised.
2. An adequate scope of work that defines the appraisal assignment.
3. Identification of the property and its ownership, including at least a 5-year delineation of title.
4. A statement of appropriate assumptions and limiting conditions, if any. Extraordinary assumptions or hypothetical conditions should not be included without prior approval from the client (ODOT or its assignees).
5. An adequate description of the neighborhood, the property, the portion of the property or interest therein being acquired, and the remainder(s) if any.
6. Discuss the comprehensive plan and zoning requirements of the subject property.
7. Photographs of the subject property including all principal above ground improvements or unusual features affecting the value of the property to be acquired or damaged.
8. An identification or listing of the buildings, structures, and other improvements on the land as well as the fixtures which are determined to be a part of the real property to be acquired.
9. An identification or listing of personal property, if the personal property is within the acquisition area.
10. An estimate of market value for or resulting from the acquisition. In the case of a partial acquisition, where appropriate, a reasonable allocation of the estimate of market value for the real property to be acquired and for damages and/or special benefits to remaining real property.
11. The data and analyses or reference thereto to explain, substantiate, and thereby document the estimate of market value.
12. The effective date of the appraisal, including the date of value (usually the date of the last inspection) and the date the report is written (completed).

13. The certification, signature, and date of signature of the appraiser.
14. Other descriptive material (maps, charts, plans, photographs).
15. Sketch map(s) and description of the acquisition.
16. The Federal-aid project number and parcel identification (if available).
17. Statement of inspection, including; date(s) of inspection, who was present, etc.
18. A statement of known and/or observed encumbrances, if any.

Additional requirements and guidelines for appraisals on federally funded projects are contained in applicable portions of the Code of Federal Regulations.

### **5.510 Property Inspection**

Staff or fee appraisers shall provide the owner or a designated representative an opportunity to accompany the appraiser during the inspection of the property being appraised. The appraiser's (both staff and fee) contact with the owner or representative shall be documented in accordance with [ORS 35.346](#) and the [Guide to Appraising Real Property](#). (See [Section 5.140](#).)

### **5.515 Accurate Information**

An appraiser shall attempt to obtain current and accurate data regarding the property to be appraised, including title, site, improvement, and highest and best use information:

1. Staking: Where staking of the proposed right of way is necessary for a proper evaluation of an acquisition, the appraiser should ask the right of way project manager to request it.
2. Changes in Ownership: An appraiser may discover that ownerships shown on the right of way map are incorrect. It is the appraiser's responsibility to notify the right of way project manager in such cases so that new descriptions and/or title information may be obtained. Requests for new descriptions are sent in writing to the appropriate region description writers. The new title information should be sent to the title and closing specialist in the right of way operations unit and should be accompanied by copies of documents showing the change in ownership.
3. Grantee or subgrantee shall provide accurate descriptive material of property interest being appraised. Appraiser should not guess or speculate as to the nature of any substantial project impacts. It is the responsibility of the agency (grantee or subgrantee) to provide the appraiser with an accurate legal description of the subject property prior to initiating the assignment.

### **5.520 Acceptable Formats**

All appraisal reports shall be written in compliance with the procedures found in the right of way section's [Guide to Appraising Real Property](#). The level of documentation required and the format of acceptable appraisals vary by the complexity and scale of the appraisal problem. The right of way project manager shall approve the choice of format from the following:

### **5.530 Value Finding Appraisal**

The Value Finding Appraisal Report Form #15 may be used for the valuation of uncomplicated acquisitions.

Uncomplicated acquisitions are those with no major improvements either within or materially affected by the acquisition. Damages, if any, shall be curable by nominal cost to cure measures.

Comparable sales data, improvement data, and cost to cure support shall be attached to the appraisal. However, when land unit values have been established for a project by a reviewed project data book or sales study and/or reviewed appraisals of comparable properties, these may be referred to instead of attached.

### **5.540 Appraisal Forms - Taking and Damages or Before and After**

Refer to the Guide to Appraising Real Property for selection of the appropriate forms for the appraisal assignment. See Section 5.340 and Section 5.345.

### **5.545 Administrative Determination of Just Compensation (formerly Waiver Valuation)**

This section is currently under revision. For questions, please contact the deputy state right of way manager.

As an alternative to securing an appraisal or direct donation (described in [Section 6.320](#)), the state may administratively establish just compensation to acquire right of way, via an administrative determination of just compensation. This process is allowed under [49 CFR 24.102\(c\)\(2\)](#) and under [ORS 35.346\(2\)](#). It can only be completed by and approved by department staff that are knowledgeable in the real property valuation process and shall comply with the following:

#### **Standards**

The administrative determination of just compensation process is to be used only for uncomplicated takings and cannot involve complex appraisal problems such as potential damages that require complex analysis or unique improvements in the taking area requiring special analysis. Use of administrative determinations of just compensation for specialty commercial real estate properties (i.e., gas stations, dry cleaners, auto service stations, special use properties, etc.) should be avoided, no matter the size or complexity of the acquisition.

Decisions on complexity of appraisal issues and whether or not to use the administrative determination of just compensation process are made by the region right of way manager/program manager, or their designee. The person making this decision shall be qualified and competent in judging the project's impacts on real property and for making market value estimates of the real property to be acquired.

The process can be used by ODOT up to \$20,000. Use of this process shall follow the conditions set forth in these standards. administrative determinations of just compensation above \$15,000 shall be developed in compliance with regulation, [49 CFR 24.102\(c\)\(2\)](#), whereby the administrative determination of just compensation process may be used so long as the agency has the property owner's approval. The valuation report shall include a signed

statement indicating approval from the property owner that an administrative determination of just compensation can be prepared by the Agency to establish just compensation. The signed statement shall be attached to the administrative determination of just compensation or shall be made available upon request of right of way headquarters or FHWA.

All administrative determinations of just compensation may be prepared by a senior right of way agent or delegated to a right of way agent who is experienced in appraisal processes. The right of way agent who prepares the administrative determination of just compensation shall be experienced in appraisal of real estate prior to preparation of an administrative determination of just compensation. Experience with value finding report formats is highly recommended prior to the preparation of an administrative determination of just compensation. Approval of the estimate of market value and determination of just compensation will be by the region right of way manager/program manager, or designee. The administrative determination of just compensation preparer cannot be the same person who reviews the administrative determination of just compensation or sets just compensation based on the administrative determination of just compensation.

The administrative determination of just compensation concludes with an estimate of market value for the acquisition. As a part of the approval, the region ROW manager or designee makes the final determination of just compensation for the agency. If the administrative determination of just compensation concludes with a market value less than the minimum payment level identified in [Section 5.145](#), the just compensation will be established at the minimum payment level.

**15-Day Notice** – Prior to inspecting the property, the agent should provide no less than a 15-Day Notice to the owner of the planned property inspection. The owner and/or designated representatives should be given the opportunity to accompany the agent on the inspection of the property. While this notice and inspection offer is not a legal requirement for completion of an administrative determination of just compensation, the practice helps ensure a thorough inspection of the acquisition area and facilitates the negotiations with the owner. In circumstances where time is of the essence, the region right of way/program manager may decide to waive the 15-Day Notice requirement. If not waived, a copy of the 15-Day Notice should be maintained in the file.

1. **Physical Inspection** – Any agent assigned to do an administrative determination of just compensation is required to view the subject property and comparable sales used in the analysis prior to completion of the report. If the region right of way manager, or designee, determines a physical inspection of the subject or comparable sales is not necessary for the assignment, written justification should be maintained in the file.
2. **Administrative determination of just compensation report** – At a minimum, the report should include the following:
  - a. Clear, concise language, understandable to the owner.
  - b. Inspection date, if applicable, and a statement as to whether or not the owner was present for the inspection.
  - c. Copies of the applicable section of the ROW map and the Exhibit A.
  - d. Photos of the acquisition area and of any improvements acquired or affected.

- e. Market information should be referenced for all opinions of value. Market information includes, but is not limited to, sales data, established values (see levels of documentation section), cost factor book data, informed opinions, listings, and verified sales.
  - f. Access information, both before and after the project. Changes in access due to the project should be clearly identified.
  - g. Comparable data sheets are not required to be included in the report; however, they should be made available to the property owner at the onset of negotiations.
  - h. Signature of the agent completing the compensation determination and of the region right of way/program manager or designated agent approving the report.
3. A copy of the administrative determination of just compensation will accompany the acquisition offer. Review by the region right of way manager/program manager, as required in these Standards, shall be completed prior to forwarding to the owner.
  4. In addition to using the administrative determination of just compensation up to \$20,000, certain allowances may be made for land improvement features impacted by the project that of necessity shall be replaced. These allowances would be for items typically identified in the project design as requiring re-establishment, either as part of project construction or the right of way agreement with the property owner. The allowances should be based on bids provided by qualified contractors and approved by the region right of way manager/program manager. Some examples of allowances of this type are for re-establishment of fencing to contain livestock or re- establishment of drainage or irrigation facilities. Parts of these types of allowances may not be included in the \$20,000 limit, i.e., fencing allowance.
  5. If damages are reported in an administrative determination of just compensation and a cost-to- cure can be utilized to mitigate those damages, a specialty report may be required. The specialty report may need to be reviewed by the appraisal review Unit prior to its inclusion in the administrative determination of just compensation. Damages and/or cost-to-cure estimates should be very minor if reported in an administrative determination of just compensation. If a cost-to-cure is being utilized to mitigate damages, the administrative determination of just compensation preparer shall estimate damages and make a statement that the cost-to-cure is less than the damages, following a similar process of an appraisal report.
  6. No one making or approving an administrative determination of just compensation shall have any interest, direct or indirect, in the real property being valued for the Agency that would in any way conflict with the preparation or review of the valuation.

### **Levels of Documentation**

All pertinent documentation should be retained in the file or be referenced when contained in other ODOT records. The level of documentation should be consistent with the valuation problem. It is important not to over work a valuation problem and lose the cost savings and efficiency benefits of using the form, but it is equally important that we do not establish an

arbitrary estimate of value. If the administrative determination of just compensation is part of a larger project, consistency with the valuations of other properties on the project shall be maintained.

Accuracy and consistency need to be maintained on all administrative determinations of just compensation. They can only be done once values for the project are known, or once property values of similar properties in the area in question have been established. This can be done using a reviewed and recommended project sales book or a reviewed and recommended appraisal report that contains data applicable to the subject property. Approval to use a recommended project sales book or a reviewed and recommended appraisal report shall be obtained by the deputy state right of way manager. Written approval should be submitted to the chief appraiser and the deputy state right of way manager and should be obtained prior to the start of administrative determination of just compensation work. A copy of the approval should be maintained in the file. The administrative determination of just compensation should reference the project sales book or the recommended appraisal (by file number) on which the concluded value opinion is based. The project sales book, or recommended data used to support the administrative determination of just compensation should be made available to the property owner upon the start of negotiations.

Commitment to maintaining a high work quality standard and assuring fair and equitable treatment of all property owners and displacees in conformance with the Uniform Act is a requirement of each administrative determination of just compensation.

### **Approval/Review**

1. Any review or approval of the administrative determination of just compensation will include a check for consistency and uniformity; any discrepancies are to be brought to the region right of way manager/program manager's attention and resolved.
2. Prior to signing, the region right of way manager/program manager or designated agent will check the math in the report, and review the information used to support the conclusions of value. Any need to re-inspect the subject or verify supporting data is left to the discretion of the reviewer.
3. Only administrative determinations of just compensation which are to be the basis of value for a condemnation filing require a review by the appraisal review unit.

### **Use in Condemnation**

The region right of way/program manager may request a review of the administrative determination of just compensation any time prior to the condemnation filing. If a review is deemed necessary, administrative determinations of just compensation submitted for condemnation will be forwarded through appraisal review to check for compliance with the waiver valuation standards. The administrative determination of just compensation and the documentation used in its preparation will be reviewed for consistency, compliance with these standards, and to assess the appropriateness of the just compensation value that was determined. Additional market information may be requested by the reviewer to support the opinion of value by the administrative determination of just compensation preparer.

Regions should be prepared to provide appraisals or award appraisal contracts once condemnations have been filed. Appraisals will normally be required for trial preparation.

### **Annual Process Review**

At the end of each calendar year, the deputy state right of way manager will complete a review of the administrative determination of just compensation process for the year. This will include a review of the files where condemnation filings were made on administrative determinations of just compensation. This report will be made at a management team meeting with recommendations for improvements.

### **5.547 Administrative Determination of Just Compensation - Use of Consultants**

Consultants hired by the state or by LPAs cannot utilize the administrative determination of just compensation process. Current state appraisal licensing law contains provisions that effectively preclude anyone other than agency staff from doing an administrative determination of just compensation.

### **5.550 Administrative Determination of Just Compensation Process for LPAs**

LPAs that have staff experienced in eminent domain appraisal may be authorized to use the administrative determination of just compensation up to \$5,000. Should the administrative determination of just compensation preparer's final conclusion of value exceed the \$5,000 limitation, a standard form appraisal shall be prepared by an experienced eminent domain appraiser and submitted for review.

Use of this process shall follow the conditions set forth in the standards outlined in the right of way manual, specifically [Section 5.545](#).

Any request by an LPA for use of the administrative determination of just compensation shall be made in writing to the deputy state right of way manager. The request should be submitted to the region, who will then pass the request to the chief appraiser and/or deputy state right of way manager. A resume that outlines the experience level of the staff that will be performing the work should be presented with the request. The experience level of the staff should meet the minimum requirements of ODOT staff that perform valuation work (see [Section 5.170](#)).

### **5.555 Number of Appraisals Required**

1. **Real Property Appraisals.** At least one appraisal report or administrative determination of just compensation for each property to be acquired shall be secured before negotiations are begun. On files with high market value or involving complex or controversial issues, two appraisals may be secured.
2. **Specialty Reports.** When a separate valuation of fixtures, equipment or other specialty items is necessary, at least one specialty report is required. More than one specialty appraisal may be secured on files with high market value or involving complex or controversial issues.



3. **Additional Appraisals and Specialty Reports.** The need for additional appraisals subsequent to the initial appraisal review shall be discussed between the right of way project manager and the appraisal reviewer. If an additional appraisal is necessary, a written request stating the reasoning shall be submitted to the region right of way/program manager for approval.
4. **Obtaining a New Appraisal.** If an appraisal assignment changes or an appraisal report requires significant revisions and could not be corrected in review, the right of way project manager should obtain the region right of way/program manager's approval to solicit proposals for a new appraisal. If the original appraisal could not be corrected, that appraiser should be excluded from writing a new appraisal.

### 5.560 Appraisal Assignments and Specifications

The right of way project manager is to complete an appraisal specification (statement of work) for staff and fee appraisers for each appraisal assignment so that they will be aware of the appraisal requirements. The statement of work should also include a completion date for the appraisal report. The right of way project manager shall also enter the appraisal assignment in RITS.

### 5.565 Property Management Appraisals

All appraisals of ODOT property declared surplus to ODOT's needs shall follow normal appraisal techniques and meet the standards prescribed in Chapter 4 of this manual. Surplus property may be appraised for three different valuations. These valuations are the market value, the assemblage value and the enhancement value. Surplus property will be appraised for two values, the market value and the assemblage value. Not all property management appraisals will contain both values. If the appraiser determines that the market value and the assemblage value are synonymous, that shall be stated and explained in the report. The Enhancement Value will be appraised when appropriate.

1. **Market Value.** This reflects a value for the surplus property as if it stood alone in the marketplace often by using comparable sales.
2. **Assemblage Value.** Often, surplus parcels can only achieve their highest and best use when they are assembled to an abutting parcel. In these instances, market value of a property as an assemblage is determined by analyzing the market value of the most likely parent parcel with and without the benefit of the assemblage with the surplus parcel. If there is more than one abutting parcel, the appraiser shall determine the most likely parent parcel. The most likely parent parcel is the abutting property that provided the highest and best use of the surplus property. The appraiser shall analyze the difference in market value with and without the assemblage and allocate the market value difference between the parent parcel and the surplus property.
3. **Enhancement Value.** Enhancement value is the additional property value a state-owned property would provide to an adjacent property if both properties were assembled. This increase in value of the adjacent property is the enhancement value for the state-owned property. This value is determined through the use of the before and after appraisal approach, assuming both properties have been assembled.

## **5.600 Specialty Reports**

After a region receives authorization from the right of way section programming coordinator to appraise property that is needed for a project, the right of way project manager, along with a review appraiser, should view the properties needed to determine what types of specialty reports will be required. These may include fixtures and equipment, sign, timber, cost to cure reports, or hazardous waste reports.

Whenever possible, specialty reports should be reviewed and accepted by the appraisal review unit prior to incorporation into the real property appraisal. If the specialty report could not be reviewed prior to inclusion in the real property report, it should be reviewed concurrently with the real property appraisal report.

If any appraisal relies in any way on a written report, opinion or estimate of any other person(s), a copy of the written report, opinion or estimate shall be provided with the appraisal report.

Whenever possible, the specialty appraisal report should be appropriately incorporated into the real appraisal report. If any appraisal provided relies in any way on an unwritten report, opinion or estimate of any other person(s), the party providing the appraisal shall also provide the name and address of the person(s) who provided the unwritten report, opinion or estimate with the appraisal. (ORS 35.346 as amended).

## **5.610 Fixture and Equipment Reports**

When the right of way project manager determines a fixture and equipment report is needed, the right of way project manager or an assigned agent, contacts and meets with the property owner(s) to determine the type of operation, its products and services. The agent inquires whether the business will relocate after the acquisition and obtains copies of leases or rental agreements. The right of way project manager then assigns an agent or contracts with a qualified specialist to prepare a fixture and equipment report. The report shall include an inventory list, photo record and determination as to the classification of all items inventoried, i.e., realty, fixture or personal property.

Once the report is prepared, the right of way project manager shall forward it to the appraisal reviewer. After the region has received acceptance of the fixture and equipment report from the appraisal reviewer, the report will be provided to the real property appraiser for consideration. Refer to the [Guide to Appraising Real Property, Section 6](#), for specific procedures and reference to the inventory report. Refer to [Section 5.160](#) and [Section 5.395](#) and to the [Guide to Appraising Real Property, Section 6](#), for additional information. Refer to [Section 9](#) for an example of the fixture and equipment report.

## **5.615 Sign Reports**

The right of way project manager assigns an agent or contracts with a private sign expert to prepare sign appraisal reports when they are needed.

The value of a sign located within the acquisition area should be based on its contributory value. The real property appraiser is responsible for developing the contributory value of the sign. This may or may not be based upon some or all of the components reported in the sign report.

The real property appraiser should carefully analyze the contributory value of a sign when it is no longer relevant to the highest and best use of the real property being appraised. This can be based on the sign report or can be determined independent of the sign report.

The sign report that is prepared by a sign expert or agent is prepared on the Sign Appraisal Report Form #18 and shall contain sufficient photos to document the type and condition of the sign(s). After approval by appraisal review, the sign report will be given to the real property appraiser for analysis of contributory value and inclusion into the real property appraisal. See the [Guide to Appraising Real Property](#) for additional information.

After considering the contributory value of the sign, the real property appraiser must determine if the remainder is damaged due to the loss of the sign; if damaged, the appraiser should consider a cost-to-cure. A cost-to-cure may include re-establishment of the existing sign out of the acquisition area, if applicable. A determination of costs associated with re-establishment of the sign shall be determined by the real property appraiser (with the help of an expert if necessary) and included in the appraisal report. Generally, the concluded contributory value of the sign plus any damages to the remainder or cost-to-cure should not exceed the replacement cost new of the existing sign.

## **5.620 Timber Reports**

When a property is improved with a timber stand, the right of way project manager shall determine the need for and obtain a specialty report from an agent or a private contractor to estimate the value of the timber. The real property appraiser then estimates the contribution of the timber value to the entire property. This may be the market value of the timber, depending upon the highest and best use of the entire property. The concluded value shall consider all costs involved in order to determine a net value. The need for the report is determined by the highest and best use of the property. Contributory value of trees on properties with a highest and best use other than timber land will be determined by market data.

Also, the right of way project manager might obtain a timber appraisal when the acquisition creates landlocked parcels of reforestation land. The real property appraiser can use the timber appraisal in considering damages to the landlocked remainder and whether to apply a cost to cure of building an access road into landlocked parcels to mitigate damages.

A timber appraisal also might be used to estimate an amount to be realized from the sale of timber which could be used to offset costs of clearing the right of way.

A timber appraisal shall contain the following information as a minimum:

1. Site Location; Map-Lot identification; ownership, etc.
2. The merchantable timber categorized into types of trees with a brief description of the condition of the timber, the quantities in thousands of merchantable board feet of the various types of trees, a value per unit, a subtotal value of each type of tree, and a total value of the timber stand. Logging costs are to be deducted to arrive at the net value of the timber.
3. A description of the understory and reproduction found on the property, with its value.

4. A description of the land, including the larger parcel, with comments concerning its productivity for forest products.

### **5.625 Cost-to-Cure Reports**

The right of way project manager may need to obtain a variety of reports estimating the cost to affect cures to damages which would be caused by the acquisition of land and/or improvements or by the proposed construction. These reports may be assigned to qualified agents or contracted with specialists, such as architects, building contractors, landscapers or landscape architects, appraisers, engineers, sanitarians, refrigeration contractors, etc. These estimates shall be in sufficient detail to enable the appraiser and reviewer to make meaningful comparisons among the reports. Sometimes it may be necessary to have plans or sketches and specifications prepared so that the cost-to-cure reports are made on the same basis. Whenever possible, costs-to-cure reports should be reviewed and accepted by the appraisal review Unit prior to incorporation into the real property appraisal.

### **5.626 Hazardous Waste**

Please refer to ODOT Policy ENV 16-01 and Procedure ENV 16-02.

The evidence of contaminants or hazardous waste on properties to be acquired will require testing and an attempt to avoid the contaminated property. If the property cannot be avoided, the right of way project manager, with the review appraiser, will determine one of the following courses of action:

1. If the owner is willing and able to perform, or contract, the site cleanup in a timely manner and other issues will not lead to condemnation, the right of way project manager will obtain a hazardous materials agreement signed by the owner and the parcel will be appraised as a clean site.
2. If the owner is uncertain or noncommittal about cleaning the site, or the project timeline is too short to accommodate a cleanup, a Level 2 investigation shall be performed. The property will be appraised as both clean and contaminated. The offer will be for the value as contaminated. Also, the offer “as clean”, along with the associated responsibilities, will be presented.
3. If the owner is unable or unwilling to perform the cleanup and/or there are other issues which will lead the acquisition to condemnation, the right of way project manager will obtain a Level 2 investigation and the property will be appraised only “as contaminated”.

If the appraisal assignment includes providing a market value opinion “as contaminated”, the Level 2 investigation shall be completed on the entire site, not only in the portion of the site being acquired. Refer to [Guide to Appraising Real Property, Section 2](#), Subsection 65.

### **5.700 Appraisal Review**

Applicable laws, regulations and Section policy require that all appraisals and specialty reports be reviewed prior to the initiation of negotiations. The right of way operations unit maintains a qualified staff of review appraisers who do most of these reviews. The state right of way

manager or deputy state right of way manager may give the region right of way/program manager/right of way project manager the authority to review specific appraisals in the field if workload or manpower limitations preclude review by appraisal review staff.

### **5.710 Review Objectives**

The review appraiser considers all factors pertinent to estimating just compensation for a property. The reviewer examines an appraisal to ensure that it:

1. Is clearly reasoned, analyzed, completely documented, mathematically correct and accurate, free from errors or omissions, and in accordance with the Section's appraisal requirements.
2. Follows acceptable appraisal techniques/methodologies and is based on correct assumptions as to facts, law and the nature of the proposed construction.
3. Contains or refers to information which explains and substantiates the estimate of market value, and where appropriate, a separate allocation for damages to remaining property.
4. Identifies or lists buildings, structures, improvements and the fixtures which were considered part of the real property.
5. Identifies or lists personal property.
6. Is consistent with the range of values reviewed for other properties in the area to ensure uniform and equitable treatment.
7. Meets standards outlined in this chapter.

### **5.720 Review Procedures**

Review procedures are briefly outlined in [Section 5.220](#) regarding the review appraiser's responsibilities.

The appraisal reviewer shall document, by memos to the file or in the appraisal review, all efforts made to have appraiser's correct deficiencies in their reports. The reviewer shall make a reasonable effort to reconcile substantial differences of value opinion when considering two or more appraisals of a property. If neither appraisal is acceptable, or if it is not possible to reconcile divergent views, the reviewer may make an independent finding of value, but shall support it with documented evidence. If this is not feasible, the reviewer should request authority from the deputy state right of way manager for the right of way project manager to secure another appraisal.

Any new or revised appraisal, including one provided by a property owner, shall also be reviewed. In addition, a new review may be made if the appraisal reviewer believes there was an error in judgment or analysis in a previous review, or if new information becomes available. To the greatest extent possible, the reviewer is expected to remain open-minded and objective in estimating just compensation.

### **5.730      Review of Specialty Appraisals**

Specialty appraisals, such as those valuing fixtures or costs to cure should be reviewed by the review appraiser before the right of way project manager submits them to the appraiser for incorporation into the real property appraisal. Reviewing specialty reports is similar to reviewing the real property appraisals. The reviewer examines the report to determine whether it complies with federal and state appraisal guidelines; follows accepted principles and techniques for valuing the subject of the report. explains and documents fully the conclusions of the specialist. In the cases where the specialty report is not reviewed by the review appraiser, the right of way project manager will provide the specialty report to the real property appraiser to be included in the real property appraisal. The specialty report will then be reviewed in conjunction with real property appraisal.

It is the responsibility of the right of way project manager to forward a copy of the inventory list and determination of classification of inventory for fixture and equipment appraisals to the operations unit for review of the categories before providing the report to the real property appraiser. Once the categories are reviewed, the entire specialty report can be provided to the real property appraiser.

### **5.740      Appraisal Review Reporting**

The appraisal reviewer records the review findings and recommendation of just compensation on the appraisal review panel in RITS. If substantial differences exist between appraisals of a property, the reviewer shall state how they were reconciled, the reasons for accepting one opinion over another and should document the decision with any pertinent data.

If the appraisal reviewer makes an independent finding of value, different from any appraisal, this estimate of just compensation shall also be allocated as required on the review form. The reviewer shall also cite information, which supports this independent finding.

### **5.750      Condemnation Appraisal Review Process**

Before the final offer letter is delivered to the property owner on a file recommended for condemnation, the chief appraiser shall re-examine the file for completeness and accuracy. This includes identifying whether any appraisal issues developed, or market conditions changed during the negotiation period. The chief appraiser notifies the deputy state right of way manager and region right of way manager/program manager when the review is complete.

## Chapter 6 – Acquisition

### 6.100 Introduction

Rights of way and other real properties are obtained by the right of way section under the provisions of Public Law 91-646, the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” and related amendments. ORS [Chapter 35](#) directs ODOT to comply with the Uniform Act in its acquisition program.

Title III of the Uniform Act and implementing regulations ensure that owners of real property to be acquired for federal and federally assisted projects are treated fairly and consistently. The laws and regulations were written to encourage and expedite acquisition by agreements with owners, to minimize litigation, relieve congestion in the courts, and to promote public confidence in the land acquisition program. It is the objective of the right of way section and the region right of way offices to comply with the provisions of these laws and regulations.

### 6.120 Policies

#### 6.121 Just Compensation Current Summary Statement

Prior to initiation of negotiation, the right of way section shall determine just compensation based on an appraisal or administrative determination of value to all owners of real property to be acquired. The amount shall not be less than the approved appraisal of fair market value. The offer shall be in writing, include a statement of the basis for the offer, and shall be updated as necessary to reflect current information. (Refer to [Section 6.460](#) for more information regarding who must receive offers of just compensation.) Exceptions would include those properties of which the owners have released the state from its obligation to appraise, such as for donations.

#### 6.122 Expeditious Acquisition and Notice to Owner

Every effort will be made to acquire real property expeditiously through negotiation with property owners. The property owner shall be notified in writing of the agency’s interest in acquiring real property and the basic protections provided to the owner by law as soon as feasible.

#### 6.123 Personal Contacts

Although contacting each property owner in person to initiate negotiations to acquire right of way is preferred, there are times when ODOT can elect to initiate negotiations by United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. (See [Section 6.460](#) for a discussion on initiation of negotiations by mail or delivery service.)

Right of way agents shall make all reasonable efforts to contact the property owner or their representative and discuss the offer to purchase the property. Discussions shall include the basis for the offer of just compensation, ODOT’s acquisition policies and procedures, and payment of incidental expenses. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property

and to suggest modification in the proposed terms and conditions of the purchase. ODOT shall consider the property owner's presentation.

### **6.124 Coercion**

Right of way agents, or other agency representatives, must attempt to represent the interest of both the acquiring agency and the property owners. A file shall be reassigned if a personality conflict makes it impossible for an agent to negotiate with an owner. No attempt will be made to compel an agreement during liaison activities, by deferring negotiations, advancing or deferring condemnation or by any other coercive action.

### **6.125 Conflicts of Interest**

For parcels valued over \$15,000, the appraiser or agent preparing an administrative determination of value cannot be assigned to acquire that property. For parcels valued at \$15,000 or less, the appraiser may negotiate the purchase after the just compensation has been approved, with the approval of the region right of way manager/program manager. Right of way agents cannot deliver payments on files which they negotiated. (See also [Section 1.210](#), Item 5).

In addition, the appraiser, review appraiser or person performing the administrative determination of just compensation shall not have any interest, direct or indirect, in the real property being valued by the agency.

### **6.126 Disclosure of Appraisals or Administrative Determination of Value**

[ORS 35.346](#) requires that all property owners be provided with a copy of the written appraisal relied upon in establishing the amount of compensation offered. When just compensation is based upon an administrative determination of value, a copy will be provided.

### **6.127 Acquisition of Improvements and Fixtures**

When acquiring any interest in real property, ODOT will acquire at least an equal interest in all buildings, structures or other improvements, including fixtures, when appropriate, which are located upon the parcels being acquired, and which are required to be removed, or, in the judgment of ODOT, are adversely affected by the acquisition. All buildings, structures, or other improvements normally considered to be real property will also be considered real property if that property is owned by either a landowner or by a tenant and an offer to purchase them will be made.

### **6.128 Owner Retention of Improvements**

Property owners shall be permitted the right to repurchase improvements at salvage value (see [Section 6.560](#)), unless the region right of way manager/program manager determines it is not in the public interest to do so.

### **6.129 Uneconomic Remnants**

An offer will be made to purchase the remainder from any proposed acquisition if it is determined that the remainder would be uneconomic to the owner. Uneconomic remnants can



only be acquired with the consent of the landowner and not by condemnation. (See [Section 6.410.](#))

### **6.130 Economic Remnants**

The region right of way manager/program manager may recommend the purchase of other excess property remainders to the state right of way manager if it appears to be in the best interests of ODOT. Economic remnants can only be acquired with the consent of the landowner and not by condemnation. Acquisitions of economic remnants by settlement will not include federal funding participation.

### **6.131 Payment before Possession**

No owner shall be required to surrender possession of real property before the agreed purchase price has been paid or has been deposited in court. For the use of the owner, an amount not less than the approved estimate of just compensation will be paid, as stated in the final offer letter. See [Chapter 8](#) regarding notices.

### **6.175 Donations**

ODOT may accept donations of needed real property, provided that prior to acceptance, owners are informed in writing of their right to receive just compensation. (See [Section 6.320.](#))

### **6.180 Acquisitions in Advance of Project Authorization**

Acquisitions of real property prior to the final environmental approval of projects may be made for reasons of hardship or protective buying (See [Section 6.360.](#)).

### **6.200 Responsibilities**

#### **6.201 State Right of Way Manager**

The state right of way manager has authority from the OTC to take all actions necessary to acquire real property that has been authorized by resolution and to establish the procedures necessary to complete the transactions including condemnation. The procedures approved by the state right of way manager, and included in this manual, establish the authority to accept agreements and other documents relating to property the OTC has authority to acquire. These procedures establish authority in a variety of instances with the deputy state right of way manager, the management and policy advisors, and the region right of way managers and program managers (see [Section 6.591](#)). Acceptance of these documents creates a binding agreement between the grantor and the department.

#### **6.202 Deputy State Right of Way Manager**

The deputy state right of way manager has the lead role in setting acquisition policy and overseeing the acquisition process for the right of way section. This position works with the region right of way offices, DOJ and FHWA to coordinate right of way acquisition efforts and to ensure conformance with all legal requirements, as well as quality and consistency in acquisition activities.

The deputy state right of way manager has authority to approve all settlements and agreements with property owners and accept all documents for the purchase of rights of way. Typically, the deputy state right of way manager approves settlements and accepts documents in the following circumstances:

1. Settlements greater than \$100,000 and more than 20% over the just compensation amount, or
2. Settlements which are the result of the Section's Alternate Dispute Resolution (ADR) process, or
3. Settlements arrived at through the condemnation processes.

### **6.203      Region Right of Way Managers**

1. The region right of way manager is responsible for overseeing the acquisition process in the region in conformance with state and federal laws and the right of way section's policies and procedures. The region right of way manager may designate a right of way project manager to assist in directing the work of right of way agents in the field.
2. The state right of way manager must approve the qualifications of the region right of way manager in order to exercise the authority granted in this manual. The state right of way manager may further limit and condition these authorities until he/she determines the region right of way manager is fully qualified to exercise the authority granted herein.
3. Upon approval by the state right of way manager, the region right of way manager has the authority to:
  - a. Make formal offers to acquire real property in preparation for condemnation based upon the value established by the appraisal process, and as permitted by their delegated authority.
  - b. Approve and execute fee appraisal and value-related contracts for property acquisition/relocation, demolition contracts, and repair and maintenance agreements as permitted by their delegated authority.
  - c. Approve and execute agreements with other governmental jurisdictions.
  - d. Approve final reports and accept agreements, conveyance documents and all other documents for settlements within the following limits and parameters:
    - i) Any monetary settlement for the reviewed or approved amount.
    - ii) Any monetary settlement under \$100,000 total price, regardless of the percentage increase.
    - iii) Any monetary settlement within 20% of the reviewed or approved amount.

- iv) Any major negotiated construction obligations and other state obligations approved by region that comprise a portion of the settlement over the reviewed amount shall be appropriately valued, included in the final settlement total as part of the letter of justification, and are subject to the above limits. Construction obligations may not offset damages or result in double compensation for items acquired which were included in the appraisal review.

#### **6.204 Region Right of Way Program Managers**

1. The region right of way program manager is appointed by the region right of way manager and is responsible for administering and overseeing the functions of the region right of way office.
2. The region right of way manager must approve the qualifications of the region right of way program manager in order to exercise the authority granted in this manual. The state right of way manager may further limit and condition these authorities until he/she determines the region right of way program manager is fully qualified to exercise the authority granted herein.
3. Upon approval and the necessary delegation authority by the state right of way manager, the region right of way program manager has the authority to approve final reports and accept agreements, conveyance documents and all other documents relating to acquisition of property the OTC or its delegee has authorized by resolution within the following limits and parameters:
  - a. Any monetary settlement for the reviewed or approved amount.
  - b. Any monetary settlement under \$100,000 total price, regardless of the percentage increase.
  - c. Any monetary settlement within 20% of the reviewed or approved amount.
  - d. Any major negotiated construction obligations and other state obligations approved by region that comprise a portion of the settlement over the reviewed amount shall be appropriately valued, included in the final settlement total as part of the letter of justification, and are subject to the above limits. Construction obligations may not offset damages or result in double compensation for items acquired which were included in the appraisal review.

#### **6.205 Right of Way Project Manager**

The right of way project manager is a senior agent in a region right of way office who assigns files to right of way agents, monitors the progress of each assignment and provides guidance to the agents in acquisition, relocation and appraisal matters. The right of way project manager may also assign to him/herself the acquisition, relocation, and appraisal work as necessary.

#### **6.206 Right of Way Agent**

The right of way agent is the region staff position within the right of way agent series assigned to acquire real property or other property rights for a project. It is the responsibility of the right

of way agent to conduct property acquisition functions in compliance with the right of way manual and in a manner which increases public confidence in and respect for ODOT.

## **6.207 Right of Way Consultants**

On a given project, right of way consultants may be used to perform some or all of the acquisition, relocation, appraisal and utility relocation functions performed by right of way agents and/or right of way project managers as discussed in this chapter. The extent of consultant use, and level of responsibility will be detailed in the consultant contract. When used, consultants 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.

## **6.300 Procedures**

### **6.305 Temporary Easements**

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

If the easement is going to expire before the project is completed, it is possible to extend it as long as the file is still in the possession of ODOT (as long as the easement has not already expired) and if the file is a temporary easement only but is attached to a different acquisition type.

If the file is still in the possession of ODOT, negotiations with the property owners may be conducted to extend a temporary easement. The negotiations may be accomplished via letter or phone call, or by meeting in person. The negotiation would be based on the original appraisal report. New reports or updated values are not needed. However, if negotiations with property owners are not successful, an updated appraisal report or a new report may be needed. Once negotiations have been agreed upon, ODOT will produce a new conveyance document for the extension of the easement which will need to be signed by the property owner. FHWA will not participate in the additional costs of either extending an existing temporary easement or creating a new file due to a temporary easement that has expired.

### **6.310 Methods of Acquiring Rights of Way**

### **6.315 Rights of Entry**

#### **Temporary Right of Entry**

A temporary right of entry is obtained by ODOT staff to gain entry to private property for a purpose specified within the document. This document is usually obtained in the early stages of a project to allow the state to perform geological testing, archeological studies, environmental testing, or other similar purposes. The procedures for such entry follow [ORS 35.220](#).

### **Permit of Entry for Construction**

Under exceptional circumstances, the region right of way manager/program manager may authorize the right of way agent to offer the owner the option of a permit of entry. The owners must be fully informed of their rights and the state's obligation to:

1. Make payment available before requiring the owner to surrender possession of the real property.
2. Provide the tentative plan for completing the acquisition process.
3. Provide the approximate date the state desires possession.

### **Permits of entry cannot be used to circumvent normal negotiation processes or solely to meet a predetermined construction schedule.**

The following may be considered exceptional circumstances:

1. The property owner is a governmental agency partnering in the project, and the necessary permit is sought through an intergovernmental agreement or cooperative improvement agreement, or
2. An event of an emergency nature where it is necessary to enter onto private property to protect the highway facility or the private property, or
3. To avoid the need to resort to condemnation where complex title problems require an abnormal time to clear and/or other special circumstances where it is in the owner's interest to surrender possession of the property before payment is made available, or
4. The property to be acquired is the result of a design change instituted after physical construction of the project is underway and the time required to complete acquisition of the property would unduly impede overall completion of the construction work.

Normally, property which can be valued by the administrative determination of just compensation process should not require use of a permit of entry.

The right of way agent should modify the Permit of Entry (RITS 1010 Form 734-3840) as appropriate to meet the terms and conditions required by the specific need for the permit. The agent contacts the property owner, communicates the need for the permit, and attempts to secure the owners' signature. The agent distributes copies of a signed permit to the person requesting it, the property owner, and the region file, and uploads the signed document into RITS along with clear documentation why a permit of entry is being used for construction. The region shall provide advance notice to FHWA about the use of a permit of entry for construction.

In the event a property owner refuses to agree with a permit of entry, the state is precluded from entering onto the property, except in emergency situations.

### **Permits of Entry – Right of Way Authorization**

For files where a permit of entry will be used on a project, it will be necessary to go in on an emergency basis to take care of the immediate issue, then go back at a later time to perform the acquisition process.

The ROW agent will set up the project in RITS and create a liaison file. Using the right of entry tab, they enter their information and perform the early emergency work. When they are ready to

proceed with right of way acquisition (description and estimate), they will set up a right of way file under the project and associate it with the liaison file so the two are linked.

If there is no key number associated with the file that is utilizing the permit of entry, the region performs the emergency work charging to the PE EA, and then prepares the description and estimate. When they submit these items, the programming coordinator also obtains a RW EA from the region for the right of way charges (typically from maintenance or district.)

If the file falls under a project that has a key number, the region charges their emergency work to the PE EA until they prepare a description and estimate, and the programming coordinator then authorizes the right of way using the approved process. See Chapter 3.

### **6.320 Donations**

Property owners are entitled to just compensation for property to be acquired, and to payment prior to delivering possession to the state; however, donations of property rights on projects are permitted by ODOT and FHWA regulations. The law provides that owners may donate the necessary property rights as long as they have been fully informed in writing of their right to receive just compensation for the property, the right to an appraisal or administrative determination of just compensation of the real property, and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable state law.

Any documents executed for donations of property received prior to the approval of the NEPA document for the project shall clearly indicate that:

1. All alternatives to a proposed alignment will be studied and considered.
2. Acquisition of property under this section shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location.
3. Any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

If property owners wish to make a donation, an acquisition agent must have the owners sign a donation agreement, stating they have been informed of their right to just compensation. ODOT is responsible for valuing the area to be donated unless the property owner chooses to waive their rights to the valuation and releases the state from its appraisal obligation. If owners choose to donate but desire an appraisal, the state shall provide one. For donations valued more than \$20,000, the state must use a qualified fee appraiser whose business is not solely generated by the Division. For donations valued less than \$20,000, the state may use any qualified staff or fee appraiser.

At the time the donation agreement is signed by the property owner, the agent should also have the proper conveyance document executed.

In order to minimize misunderstandings surrounding an acquisition by donation, the agent prepares a term of state's offer summarizing the terms and conditions under which the donation has been made, including any obligations the state is required to perform. The agent sends the terms of state's offer form and the donation agreement to the property owner and copies to the region and HQ's files.

After the property owner has received the terms of state's offer and has signed and returned both the donation agreement and executed conveyance document to ODOT, the agent is to complete a final report on real property negotiations. (See [Section 6.590.](#))

On federal-aid projects, ODOT may claim credit toward its share of the project costs for the fair market value of donated real property. The region is responsible for incorporating the fair market value of donated property into the final or amended federal-aid project agreement and for specific certifications required by FHWA. (See [Section 3.360.](#))

### **6.322 Developer Mitigation Donations**

Property development projects are often required to donate land to ODOT for highway mitigation purposes as part of a permit application. Request for the mitigation donation is typically originated by the local public agency but can also originate from ODOT. The request must specify the degree of title that is to be given to ODOT (fee or permanent easement). Most developer mitigation donations require a fee simple interest. District should consult with region right of way if there are questions regarding this issue.

The procedures for developer mitigation donations are as follows:

1. The developer must provide a preliminary title report to the region right of way agent assigned to the project, who then works with the programming coordinator to create a project and file in RITS. The programming coordinator enters an expenditure account (EA) into RITS, which automatically sends a notification that the file has been authorized.
2. The developer will submit to the right of way agent a completed Level 1 HazMat Investigation Report if one exists. If no report is available, the right of way agent will contact the appropriate district or region representative to determine if a level 1 report is necessary for evaluation. If necessary, ODOT will obtain a simple level 1 report for review by the appropriate district or region representative. If more than a simple level 1 report is required, the developer must pay the necessary costs to obtain the report. If HazMat is considered to be an issue on the property to be donated, language must be added to the donation deed or easement document to ensure that ODOT does not accept the liability for any Hazmat related costs.
3. The developer prepares the draft legal description (Exhibit A) and drawing (Exhibit B) such that the described area can be "made certain", and then the developer provides the draft exhibits and the necessary supporting documentation to the region right of way agent who submits the documentation for sufficiency review by ODOT's geometronics unit. The region right of way agent will contact the developer for any corrections that are required in the description or drawing.
4. Approved Exhibits A and B are signed, stamped, and forwarded to the region right of way agent when completed by the developer, and the programming coordinator uploads the exhibits into RITS.

5. The right of way agent requests conveyance documents in RITS, at which point the title services unit creates an office title report and the requested documents with Hazmat language if necessary. Documents are sent by the right of way agent to the developer for execution.
6. Following acceptance of a fully executed developer mitigation donation document, the right of way agent prepares a final report and begins the RITS workflow. The final report must contain language to the effect that “District Maintenance concurs with the decision to accept the Donation.” All appropriate exhibit documents must be signed and accompany the paperwork so that the title services Unit can process the file, record the documents and send the acceptance letter.

### **6.323 Developer Donations vs. Acquisitions**

Section 6.322 (above) describes the developer donation process for private development projects along a state highway and specifies the requirements for those types of developer mitigation donations. However, if a donation coincides with a project that is in the current STIP or has already been through the project kickoff process, the developer cannot be required to donate the frontage by either ODOT or a local agency. Instead, the developer/property owner will be owed just compensation because the project is considered vested. The standard acquisition process should be followed once the STIP project is authorized, even if the developer is already in the land use process.

### **6.325 Alternative Temporary Easement Deeds for Projects with Driveway Reconnections/Road Approaches**

For uncomplicated projects with a high probability of staying on schedule, if the only project impact to a property is to reconnect a driveway or road approach to the profile of the post-construction highway, it may be appropriate to utilize the alternative temporary easement deed. This alternative deed allows ODOT de minimis temporary use of the property. Provided the temporary easement to reconnect the driveway or approach has minimal impact to the property the property owner can be offered the minimum payment of \$750 through the alternative deed pursuant to [Section 5.145](#) of this manual.

When the alternative deed is being considered for potential use, the project team should be made aware that the alternative deed is an optional action offered to the property owner. Rejection of the alternative deed will require a valuation, review and offer of just compensation being made under the threat of eminent domain to the property owner for the necessary property rights as set forth in chapters 5 through 8 of the right of way manual, and that ODOT or the LPA will utilize condemnation if a reasonable settlement is not possible. Rejection of the alternative deed shall not result in the cancellation of the file. An adjustment of the project schedule and budget may be necessary to accommodate a rejection of the alternative deed.

A right of way file can qualify for the alternative deed if the region right of way manager/program manager concludes that:

1. It is a driveway or road approach reconnection file where construction is limited to minimal impacts in the form of paving within the temporary easement.
2. Occupancy of the temporary easement will be no more than 30 days.



3. Each right of way file using this process comprises no more than one temporary easement for the driveway or approach reconnection (i.e., no other easements or fee parcels will be acquired on the file).
4. Work within the temporary easement does not result in any damages or costs to cure to the remaining property.
5. There is no relocation involved within the temporary easement or the owner's remaining property.

LPAs may also use the alternative deed with the prior written approval of the region right of way manager/program manager if the above criteria are met.

The implementation of the alternative deed does not relieve ODOT, its representatives, or the LPA from following the requirements for acquiring property according to federal and state laws, regulations and statutes, including the Uniform Act. Furthermore, authorization must be obtained before any offer under this alternative deed is made to a property owner for the temporary easement. The \$750 offer can be either hand delivered or mailed. The cover letter that accompanies the offer should explain the process and clearly state that this alternative deed process is optional, and if rejected, an acquisition under the exercise of eminent domain will be initiated.

### **6.330 Hazardous Materials (HAZMAT)**

The following procedures will be followed for the acquisition of contaminated properties:

1. At the inception of the project, guided by ODOT Hazardous Materials Procedure ENV 16-02, the project team or the right of way project manager will request the region Hazmat specialist do a Level 1 investigation (also known as an ASTM Phase 1, an AASHTO Initial Site Assessment (ISA) or an Environmental Due Diligence Assessment 1 (EDDA 1)) to determine possible ground contamination within the limits of the project.
2. If potential contamination is identified, the project team does a risk assessment to determine the course of action (may require Level 2 investigation (ASTM Phase 2, AASHTO Preliminary Site Investigation (PSI) or EDDA 2):
  - a. Avoidance.
  - b. Acquisition – care should be used in minimizing the size of the parcel to be acquired. Use the process set forth below.
    - i) If the acquisition or the construction needs are minor in nature and the cost of investigation to determine the presence or level of contamination may be greater than the probable remediation necessitated by the project, consider doing it as part of the project and purchasing the parcel as clean. Remediation may include placing contaminated materials on the remainder property.

- ii) If acquisition of the site is determined to be feasible, the right of way project manager or a right of way agent contacts the owner of the contaminated site to determine their willingness and ability to perform or contract the site cleanup. The right of way representative will also attempt to identify any non- contamination issues that might lead directly to condemnation.
- iii) The right of way project manager with the appraisal reviewer will agree on one of the following courses of action:
  - (a) If the owner is willing and able to either perform cleanup or contract the site remediation in a timely manner and other issues will not lead to condemnation, then obtain a hazardous materials agreement signed by the owner and proceed to appraise the parcel at the level of remediation agreed upon.
  - (b) If the owner is uncertain about cleaning the site and/or the project timeline is short, then request a Level 2 investigation and appraise the property both as contaminated and at the level of remediation typical for highest and best use. Offer the owner the contaminated amount and present the option of the as-remediated amount with its associated responsibilities.
  - (c) If the owner is unwilling or unable to perform cleanup and/or there are other issues that would lead directly to condemnation, then request a Level 2 Investigation and appraise the property in its current condition only.

**Note:** The company performing the level 2 investigation should be directed to identify the typical remediation that would be required to satisfy current DEQ requirements, based on the highest and best use of the property.

Cost/benefit analysis should be done prior to obtaining two appraisals to ensure wise expenditure of funds.

### **6.335 Cannabis/Controlled Substance Operations**

Files in Federal-aid projects which include cannabis/controlled substance operations must be separated out and charged to a state funded EA. For more information, see Section 3.322.

### **6.345 Condemnation**

The property owner must be given reasonable opportunity to consider the offer and present their own documentation on the value of the acquisition property. When right of way cannot be purchased from a property owner by mutual agreement regarding the terms and conditions of a purchase, the state has authority to acquire the right of way in a judicial proceeding, called a condemnation action, which determines just compensation and passes title to the state. This exercise of the power of eminent domain is initiated when a right of way agent submits a recommendation for condemnation (RC) to the region right of way manager/program manager.

See [Section 6.660](#) and [Section 6.665](#) for instructions on submitting an RC. For information relating to the condemnation process, see [Chapter 7](#).

If condemnation is initiated based upon an administrative determination of just compensation rather than an appraisal, additional appraisal review actions are required prior to or at the time of the RC submission to HQ. (See [Section 5.545](#); and [Section 6.665](#).)

## **6.350 Right of Way Acquisition Timelines**

### **6.355 Authorization**

The acquisition of a right of way file cannot begin until approval to do so is received from the right of way section programming coordinator. For information related to authorization, see [Chapter 3](#).

### **6.360 Early Acquisition (MAP-21)**

In some situations, state funds may be used to acquire real property needed for transportation projects in advance of the completion of NEPA requirements. Federal-aid reimbursement of all costs incurred by the state for acquiring property is allowed, and is in the form of cash; however, reimbursement will not occur until all of the necessary right of way has been acquired. The Uniform Act applies to all early acquisitions.

Certain criteria must be met to utilize the early acquisition process:

1. The acquisition must be needed for a project that is included in the STIP.
2. The acquisition cannot be for an LPA project.
3. The acquisition must be clearly identified through lines and boundaries established within a right of way layout map providing enough information to define the property.
4. The acquisition cannot be for section 4(f) or section 6(f) protected lands if the acquisition requires preparation of an individual section 4(f) evaluation, a nationwide section 4(f) programmatic, or results in a section 6(f) conversion.
5. The acquisition will not influence the environmental assessment of the project, the decision relative to the need to construct the project, the consideration of alternatives, or the selection of the project design or location.
6. The acquisition will not affect the consideration of environmental impacts of the various alternatives under consideration.
7. The acquisition costs must be able to be reasonably estimated and provided within defined expenditure categories.

To utilize early acquisition using state funds, a request for early acquisition document must be submitted to FHWA for authorization to proceed. Preparation and approval of the request for early acquisition document requires coordination between region, area, and HQ personnel.

### 6.364 Advanced Acquisition

There are two types of advanced acquisitions: hardship acquisitions and protective buying. Real property acquisition required for a planned public project or program may be authorized when it can be demonstrated that the impending project or program creates a particular hardship for a property owner or when ODOT determines that an advanced acquisition protects the public interest as determined by the OTC or its delegee, department director and/or state right of way manager.<sup>1</sup> FHWA approval is also required when utilizing advanced acquisition on a federal aid or state funded project. Advanced acquisition of real property and/or access rights may be considered for corridor preservation, access management or other purposes.

The following factors must be considered before approving advanced acquisitions:

1. ODOT's sufficiency of information, or a high degree of certainty that the acquisition will protect the corridor or be needed for a highway project or program.
2. The acquisition is consistent with any environmental work or decisions to date (e.g., a location EIS) and will not influence the environmental review of a project, including the decision relative to the need to construct the project or the selection of a specific location or alignment.
3. The acquisition is within ODOT's legal expenditure authority (for transportation related uses).
4. ODOT's current or future use of federal funds can be protected if FHWA participation is requested and compliance is consistent with [23 CFR 710.501-503](#).

<sup>1</sup>The director would submit a request to the OTC for approval of an advanced acquisition for a project or program not covered in the current STIP. FHWA approval is also required when utilizing advanced acquisition on a federal aid or state funded project. (See advanced acquisition process requirements in Chapter 6, [Appendix A](#), and details regarding the authorization process for advanced acquisition in [Section 3.320](#)).

#### Hardship Acquisitions

ODOT may consider a request for a hardship acquisition based on a property owner's written submission which:

1. Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining on the property poses an undue hardship when compared to others.
2. Documents an inability to sell the property because of the impending project at fair market value within a time period that is typical for properties not impacted by the impending projects.

An affected property owner must submit a written hardship acquisition request to the region right of way manager/program manager who forwards the request to the state right of way manager for consideration, which will result in a well-documented written approval or denial. FHWA approval is also required when seeking a hardship acquisition on a federal aid or state funded project.

FHWA does not require advanced condemnation in the event a hardship acquisition negotiation cannot reach a settlement. ODOT will only approve a written hardship acquisition request on the condition that ODOT will defer acquisition of the property to the time it would occur in the normal project schedule if a settlement cannot be reached. region right of way will advise the property owner of this condition in writing at the time the hardship request application is received. The state right of way manager shall provide a letter to the owner containing the following, or equivalent, language:

“ODOT will review your request for an advanced hardship acquisition and advise you in writing whether or not the request is approved. If approved, ODOT will make its offer of just compensation based upon a fully reviewed appraisal and will work with you in good faith to reach agreement and a satisfactory conclusion to the acquisition. In the event that voluntary agreement cannot be reached, the acquisition will be deferred to the time it would occur in the normal project schedule. ODOT will not initiate an early condemnation process to conclude the hardship acquisition.”

Hardship acquisitions are to follow the regular valuation, negotiation and relocation processes identified in [Chapters 5, 6 and 8](#); however, condemnation is not permitted for a hardship acquisition.

### **Protective Buying**

ODOT may approve a protective purchase if it can be demonstrated that the development of a property is imminent and such development would limit future transportation choices, thus justifying a protective purchase. A significant increase in cost may be considered as an element justifying a protective purchase. The following criteria should be considered in decisions about protective buying:

1. Unimproved properties should be acquired as protective buying parcels in those cases where documentation is presented, showing that the owner has imminent plans to develop the property within certain time frames or that the property will be available for sale.
2. Protective buying is not generally applicable to property already improved to its highest and best use, because the only additional money ODOT would pay in the future is inflation value.
3. Improved properties should be acquired as protective buying parcels in those cases where documentation can be shown that:
  - a. The property owner has plans to remove the existing building improvements and replace them with new building improvements of significantly higher value, or
  - b. The property owner plans enlargements or renovations that will represent a large increase in the ultimate highway right of way acquisition costs, or
  - c. The enlargement or renovations may require additional land that ODOT will need for transportation improvement projects within approximately 6 years, or
  - d. The property is strategically located along the I-5/205/405 corridors and is for sale on the open market.

A cost/benefit analysis may be performed to ensure prudent expenditure of funds. Consideration should be given to avoid the potential of:

1. Increased real property values.
2. Large damage claims.
3. Extraordinary relocation expenses.
4. Extraordinary property management expenses.

Protective buying should be an opportunity for ODOT to realize a significant financial advantage based on the above criteria. If such a situation develops, the region right of way manager/program manager should contact the state right of way manager to determine if protective buying should be undertaken.

FHWA approval is also required when seeking a protective acquisition on a federal aid or state funded project.

Protective buying is to follow the regular valuation, negotiation, relocation and condemnation processes identified in [Chapter 5 through 8](#), and should include consideration of the alternate dispute resolution process, if feasible.

### **6.375 Acquisition Schedules**

To avoid delays in letting a construction contract, the acquisition program on the project must be coordinated with the contract schedule. On every project, negotiation priority shall be given to properties on which improvements or other facilities lie within the area to be acquired. Improved properties generally are negotiated in order of diminishing value and complexity. As soon as feasible, each right of way agent shall notify the property owner in writing of the state's interest in acquiring property, and the protections provided to the property owner by law. Before the initiation of negotiation, the real property to be acquired shall be appraised, except as provided in [Section 6.325](#), and the property owner shall be given the opportunity to accompany the appraisal inspection. Each right of way agent must discuss the time requirements for obtaining possession of the right of way with the property owner. All negotiations must be done both expeditiously and in good faith but allowing a reasonable amount of time for the property owner to consider the offer. If negotiations become stalled, or it is apparent that negotiations will not be successful, the agent must submit an RC, and immediately communicate with the region right of way manager/program manager to inform them of potential delays in delivering possession of the necessary right of way.

### **6.380 Preparation for Negotiations**

#### **6.385 Background Familiarity**

As soon as just compensation has been established for a property by the appraisal review, the right of way agent should initiate negotiations with the property owner. In preparing for the initiation of negotiation, the agent should become familiar with:

1. The project (through the general information notice) and how it will affect the subject property, including access control, grade, proximity, road approach changes, and drainage provisions.
2. Any damages to remaining property as identified in the appraisal, if the appraisal review recognizes any uneconomic remnants for which a purchase offer must be made, or any other issues that may exist as identified in the appraisal.
3. Any tenant-owned improvements identified in the appraisal or through liaison work that will require a single offer be made, with a copy sent to both the property owner and the tenant owner as outlined in [Section 6.408](#) and [Section 6.480](#).
4. The title report with the focus on clearing exceptions to title that impact the highway acquisition area. If the property has sold on contract, the agent should include the contract purchasers in the negotiations.
5. The Owner Information Sheet (RITS 2030 Form 734-2999).
6. Any information about the property owners from any previous contacts. Several special situations should be handled as described in [Section 6.390](#) and [Section 6.395](#).
7. The property and its immediate surroundings by making a personal inspection prior to the initiation of negotiations.

### **6.390      Owner Missing**

If the agent cannot locate an owner, the file must be recommended for condemnation. The agent must submit a report of efforts made to locate the owner. At a minimum, these efforts should include a check of the assessment rolls, post office, sheriff's office, public utilities, individuals in the community (obtaining their names and length of residency) and any other sources that may provide information regarding the owner's current location. These measures are essential to the legal requirement to conduct a diligent search.

### **6.395      Owner Represented By a Third Party**

When the agent is informed that an owner will be represented by an attorney or other third party, the file must be documented and negotiations continued with that appointed party. If the owner is represented by a third party, a written statement from the owner must be obtained designating that person as representative.

### **6.400      Ordering Documents**

The agent is responsible for requesting the documents needed for each file. Requests are to be made in RITS and can include a rush request if necessary. The agent should upload the owner information sheet into RITS, if available, before the document request is made so that document preparation is more efficient and complete.

The agent should request new documents whenever a revision to a file results in a changed legal description or change in ownership.

### 6.405 Acquisition Packet

The agent should prepare an acquisition packet for the owners of real property, consisting of:

1. The State's Offer, which includes the following:
  - a. Owner Offer Letter – RITS 2020 Form 734-1712.
  - b. Acquisition Summary Statement – RITS 2015 Form 734-1714. The summary statement should state the basis of the offer of just compensation by clearly and separately identifying the compensation for the real property, damages, and improvements, and by identifying the location of the real property, the interest(s) being acquired, and the separately held ownerships of the property to be acquired.
  - c. Relocation Benefit Summary Statement – (RITS 2210, Form 734-1715, for Residential, RITS 2211, Form 734-1717 for Non-residential, or RITS 2211, Form 734-2963 for Personal Property). (See [Chapter 8](#).)
  - d. Terms of State's Offer and Signature Page – RITS 2018D & 2019D. The state includes the terms of state's offer form in the acquisition packet pursuant to legal advice from the Oregon Attorney General's office.
  - e. Acquisition/conveyance document. If it is not included in the acquisition packet, it should be noted it will be provided under separate cover.
2. A copy of the reviewed appraisal or the administrative determination of just compensation ([ORS 35.346](#)).
3. State's Obligation(s) Agreement (RITS 2046 Form 734-3931) when appropriate.
4. Grantor's Obligation(s) Agreement (RITS 2045 Form 734-3930) when appropriate.
5. A copy of the right of way map or drawing showing the property and the areas being acquired by the state.
6. Copies of the flyers "Moving Because of Highway or Public Projects?" (RITS 2205/2206 Form 734-3772/3772S) and "Acquiring Land for Highways & Public Projects" (RITS 2009/2010 Form 734-3773/3773S). The agent should be familiar with the flyers and able to answer questions regarding their content.
7. All necessary tax forms, primarily a W-9.
8. A copy of the current Title Report.

Other documents or forms may be applicable and could supplement the acquisition packet on a file-by- file basis. The right of way agent should have the right of way project manager and/or the region right of way manager/program manager approve any non-standard attachments to the acquisition packet prior to it being given to the property owner(s).

### 6.408 Tenant-Owned Improvements

If there are tenant-owned improvements, a single offer will be made, with a copy sent to both the property owner and the tenant owner identifying the value placed on each party's separately held interest.



Compensation for fixtures should be listed under the “other” category on the acquisition summary statement.

The value of tenant-owned improvements or fixtures is determined by their contributory value to the entirety or by their salvage value, whichever is greater. These values are provided in the breakout of the appraisal and the appraisal review.

#### **6.410 Uneconomic Remnants**

If a partial acquisition of private property leaves the owner with an uneconomic remnant, the state shall offer to acquire the uneconomic remnant along with the portion needed for the project. The owner may elect to sell or to retain the remnant.

The chief appraiser identifies whether a parcel is an uneconomic remnant and determines the value to be offered for the uneconomic remnant. Acquisition of uneconomic remnants must follow the policies identified in [Section 6.129](#), [Section 6.525](#), and [Section 6.680](#).

#### **6.415 Exhibit A Legal Description**

The Legal Description is prepared by the region right of way engineering staff for STIP or maintenance projects. It is referred to as Exhibit A in the conveyance document. It contains a description of the parcel(s) to be acquired and states the degree of access control. This exhibit satisfies the requirement to describe the property being acquired.

#### **6.420 Access Control**

The project development team will determine if any access control for a project is necessary (see [Section 2.510](#)). Access between a highway and an owner’s property may be restricted or controlled to a specific location. If any access rights are to be acquired, the region right of way engineering staff will identify the type of rights being acquired for each parcel in the file addendum language included with the Exhibit A: legal description. It is the right of way agent’s responsibility to confirm that the addendum language properly identifies the rights being acquired.

Examples of the types of access rights to be acquired include:

1. **None.** No access control language will be included for the parcel.
2. **Access Controlled to Highway.** Access will be controlled from all of the grantor's remaining property to the highway. Even if the parcel being acquired does not extend along the entire frontage of the grantor's property, the new document will affect the entire frontage. One or more access reservations will be identified (stations and widths) in the conveyance document to provide access from the grantor's remaining property to the highway.
3. **Access Controlled to Parcel.** Access will be controlled from all of the grantor's remaining property to the parcel that is being acquired. If the parcel being acquired does not extend along the entire frontage, the new document will not affect the remaining frontage. One or more access reservations will be identified (stations and widths) in the conveyance document to provide access from the grantor's remaining property to the parcel that is being acquired.

4. **Access Restricted to Highway.** Access will be prohibited from all of the grantor's remaining property to the highway. Even if the parcel being acquired does not extend along the entire frontage, the new document will affect the entire frontage. No access reservations will be identified in the conveyance document.
5. **Access Restricted to Parcel.** Access will be prohibited from all of the grantor's remaining property to the parcel that is being acquired. If the parcel being acquired does not extend along the entire frontage, the new document will not affect the remaining frontage. No access reservations will be identified in the conveyance document.
6. **Controlled to Frontage Road.** If the project plans include the creation of a new frontage road, access will be controlled from all the grantor's remaining property to the frontage road. One or more access reservations will be identified (stations and widths) in the conveyance document to provide access from the grantor's remaining property to the frontage road.
7. **Future Frontage Road.** The grantee (state) has a right to construct a future access road, at which time all reservations shall extinguish.
8. **Joint Access.** Notes that an access point is to be shared by adjoining owners.
9. **Farm Access.** Notes a reservation is for farm use only.
10. **Farm Crossing.** Reserves a crossing location on each side of the highway at the same station for farm use only, so long as the properties on both sides of the highway remain under one owner.
11. **Rights to Cross beneath a Highway Structure.** In some situations, it is mutually advantageous to the state and the property owner to permit rights to cross beneath a highway structure to a severed remainder. Such an arrangement should be included by the use of the following clauses in the conveyance document:
  - a. Grantor reserves the right to cross beneath the highway structure, at approximate station \_\_\_\_\_ over the parcel herein conveyed, to serve remaining property on the \_\_\_\_\_ side of the highway so long as the remaining lands on both sides of the highway remain under one owner. Grantor shall be liable for any damage to the highway structure incurred as a result of the exercise of this crossing right.
  - b. The rights to cross shall be limited to transit use and specifically prohibit parking, storage, or any other use of the property by the grantor. (Optional) Except that parking of vehicles during a period of loading or unloading shall be permitted, provided that vehicles are manned at all times. provided further that no cargo of explosives, inflammables, or products giving off noxious fumes, odors, or vapors shall be permitted on, under, or across the highway right of way.
  - c. The right herein reserved shall in no way interfere with the paramount use of the land for highway purposes and, in the event of conflict, shall terminate upon notification and compensation to the grantor by the Oregon Transportation Commission.

Clauses a, b, and c must be used in any extension of the right to cross beneath a structure. Clause b option shall be used when applicable. The right herein discussed shall not be extended beneath or through a structure designed solely for drainage without specific authority from the state right of way manager. Nor shall the right be extended in a situation where no advantage will accrue to the state. This right may have value and must be compensated for in the event of a future termination under provisions of clause c above.

12. **ORS 374.405 – No Abutter’s Rights of Access.** Generally, [ORS 374.405](#) specifies that no rights of access shall accrue to any real property abutting upon any portion of a state highway that was constructed or reconstructed after May 12, 1951, or any real property abutting any right of way for state highway purposes that was purchased prior to May 12, 1951. If this access situation applies, no access rights will be purchased. The parcel access language in the addendum will read “ORS 374.405 – No Abutter’s Right of Access” and there will be no right of access to or from the remainder of the grantor’s parcel and any highway subject to the conveyance.

When ordering documents, the language in the addendum to Exhibit A informs the document specialist what access control language should be written into the conveyance document. Additional guidance regarding access language may be found in the right of way engineering policies and procedures manual.

## **6.425 State's Obligations**

The State’s Obligation attachment is used to list obligations, which the state will perform as part of the agreement. The agent should hold the contractual obligations of the state to a minimum. These must be in writing so there is no doubt as to the understanding between the contracting parties. All statements should be clear and concise. Where access is not controlled, access to private property should be maintained for the duration of the project in most situations. State’s obligations must be agreed upon in writing in the exhibit. Construction obligations not shown on the plans, or access arrangements other than those previously authorized must be approved by the region manager or designee. A statement of the obligation to the state shall appear on the final report.

Obligating the state to pay damages based on future contingencies does not satisfy the state's obligation to offer just compensation. FHWA requires that every agreement be complete and final in its terms.

Some examples of standard obligation language follow:

### **Exchange of Land**

“As an essential part of this transaction, the state agrees to convey to the grantors by bargain and sale deed that parcel of land described in the attached description, which land shall be subject to (include clause as required).” (See [Section 6.535.](#))

### **Right of Entry to Remove Structures**

“The state, its employees and contractors or assigns, shall have the right to enter the abutting property for the performance of the state's obligations and to move said structures from the remaining property in the most feasible manner.”

**Existing Tide Boxes and Gates**

“State shall protect or reestablish beneath the highway all existing tide boxes and tide gates. grantor shall thereafter maintain and keep them free of debris.”

**Replacement of Water Supply**

“State agrees to drill on the owner's remaining land a well which will yield water at the rate of

\_\_\_\_\_gallons per hour. Completion of a well of the specified capacity shall constitute a full and complete satisfaction of the state's obligation.”

Additional language may be necessary if the state is required to replace an entire water system in kind. The agent must discuss a water supply replacement obligation with the region right of way manager/program manager, who obtains approval from the deputy state right of way manager prior to completing an agreement.

**Cattle Guards**

“State agrees to install a standard (metal or concrete) cattle guard at the right of way line opposite station,\_\_\_\_\_side”.

**Note:** The exact location of a cattle guard may require reference to a location on a county road, frontage road, access road, etc.

**Stock Pass**

“The state shall provide and install a stock pass at approximate Station\_\_\_\_, for use by the grantors or their assigns, so long as the remaining lands on both sides of the highway remain under one owner.”

**Highway Abandonment**

“State agrees to abandon the present right of way between (station) and (station) after the new highway is completed and opened to traffic.” Use of this clause must have prior approval of the deputy state right of way manager.

**Relocation of Ditches**

“State agrees to relocate outside of the new right of way, the irrigation ditches presently located on the property described herein.”

Whenever possible, however, the owner should be paid an allowance to reestablish irrigation ditches, based on competitive bids.

**Conduit**

“State agrees to provide and install beneath the highway at approximate Station \_\_\_\_\_a conduit having a minimum diameter of\_\_\_\_\_for the grantor's use in installing a (water) (irrigation) line. The installation of a (water) (irrigation) line through the conduit shall be done by the grantor under the terms of a standard pipeline permit.”

**Water Line**

“State agrees to reestablish grantor's (water) (irrigation) line which crosses the highway at approximate Station\_\_\_\_\_, if disturbed by construction. Grantor will maintain the line.”

**Service Road for Private Use**

“State agrees to construct on the grantor's remaining property, adjacent to and immediately outside of the\_\_\_\_\_right of way line, a graveled service road for private use, with a top surface width of feet, between Stations\_and\_\_\_\_. Said service road shall be maintained by the grantor.”

**6.426 Other Clauses**

The following are additional clauses which can be added to an agreement to address some standard situations. An agent who believes other special language is required should seek the advice of the right of way project manager and/or the region right of way manager/program manager.

**Exploratory Clause**

“This agreement is entered into for the purpose of investigating for road building materials upon the property described on Exhibit A, and for the subsequent purchase of said property in the event the state chooses to do so. It is understood that any pits or excavations made upon the property will be refilled and the property otherwise restored to its present condition. In the event the state chooses not to exercise the rights to purchase granted hereunder, no claim for damage shall be made against the state by reason thereof.”

**Assignment of Consideration**

The following language regarding an assignment of consideration may be used within an agreement or can be included in a separate follow up agreement, so long as the separate statement is also signed by all of the grantors.

“Of the consideration to be paid by state, the undersigned hereby assigns and transfers to \_\_\_\_\_the sum of\_\_\_\_\_(\$\_\_\_\_\_) Dollars\*, provided however, that this assignment shall be subject to claims which the state may have in the proceeds, or to any prior assignments. If for any reason the sale to the state cannot be closed, then this assignment shall be null and void.

\*plus, interest to date of payment.”

The agent should delete the note regarding interest in cases where it is inapplicable and must be certain the grantors sign the agreement below this clause.

**Hold Harmless Clause**

When an owner insists on including a hold harmless clause in an agreement, the following language has been approved for ODOT and should only be used with prior approval of the region right of way manager:

“Subject to the limitations of Article XI, §7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Grantee shall indemnify and hold harmless, within the limits of and subject to the restrictions of the Tort Claims Act, Grantor against any liability for personal injury or damage to life or property arising from Grantee’s negligent activity under this easement provided, however, Grantee shall not be required to indemnify Grantor or hold Grantor harmless for any liability arising out of the wrongful acts of Grantor, its officers, employees or agents.”

### **Payment for Water Supply Damage**

“It is mutually agreed that the consideration includes compensation for any and all damages to the grantor's water supply.”

### **Water Rights**

When the grantor retains water rights, the following clause is to be used:

“Grantor shall be permitted to reserve irrigation water rights appurtenant to the lands herein conveyed, with the right to transfer the said rights to other lands that may be now or hereafter owned. Grantor shall be responsible for all charges, liens and assessments that may accrue by virtue of such water rights.”

When the state purchases water rights, each agreement on irrigated land shall contain the following:

“We, the undersigned owners, understand that \_\_\_\_\_ acres of the above-described parcels are irrigated. These rights are from: (Enter the name of the irrigation district or the state Water Rights Division Permit No.) These lands were last irrigated from this source on \_\_\_\_\_. We will not object to the sale of these rights by the state or a change in the point of diversion.

Approximately \$ \_\_\_\_\_ per acre, bonded indebtedness is to be assumed by state.” (See [Section 6.645.](#))

## **6.430 Fencing**

On interstate highways or on highways normally built with complete access control, the state will normally install and maintain fencing along the new right of way line as part of the project.

For other highway projects, the state will not install fencing along the right of way line; therefore, any fencing located within the parcel(s) to be acquired will not be replaced and must be acquired on the basis of its contributory value to the land.

If the subject property has livestock which the owner intends on keeping and which could endanger the highway and its users if a portion of the fencing were removed, then the state needs to require through a fencing agreement and a potential fencing allowance that the owners or their contractor will restore the fencing along the proposed right of way line prior to removal of the existing portion of the fencing.

The right of way agent is to provide the owners with an allowance for fencing determined in the appraisal process (see [Section 5.401](#)). If the appraisal does not include a fencing allowance to protect the highway from livestock on the subject property, the agent must determine what an appropriate fencing allowance would be after consulting with fencing experts. The agent needs

to include a grantor's obligation agreement which will cover the terms of the agreement, including the minimum specifications for the fencing, a due date for the owner to complete the work, and language obligating the owner to maintain the fencing upon completion of its installation. The owner must be informed that the fencing allowance amount specified in the agreement for fencing will not be released until the fence is constructed to the required standards within the designated time. The agent should be sure to clarify how payment is to be made and whether more than one party is involved.

The amount to be paid to the owners as a fencing allowance should not be included in the consideration shown on the deed.

If the replacement of fencing using the fencing allowance format places a hardship on the property owners, the agent should assist them in making necessary arrangements with a fencing contractor.

On condemnation files where livestock is involved, the agent should still attempt to reach an agreement on fencing issues. If this is not possible, the state will prepare its complaint to provide for the right to enter onto the grantor's property and construct the fence on the right of way line with future maintenance being the obligation of the property owner.

### **6.435 Grantor's Obligation(s) Agreement**

This attachment should be used to clearly and concisely list items which the grantors agree to do as part of the right of way transaction. Cost to cures such as fencing and irrigation capping that impact the construction work must include a completion date for the work. In addition, a statement should be included that conveys the following: "Damages to the remainder, by failure of grantor to complete the cost to cure by the required date, are not the responsibility of the state." Completion dates must be included for obligations which involve clearing the right of way. For example, if the agreement permits the owners to retain timber, the following paragraph may be used:

"The grantor may remove the timber located on the property described herein provided removal is completed by , 20 . In the event the timber has not been removed by the agreed upon date, it shall become the property of the state."

### **6.445 Repurchase of Improvements by Owner**

Whenever buildings or improvements are repurchased by property owners as part of a transaction, a Repurchase of Improvements form should be used. (See [Section 6.560](#).)

Owners who repurchase their dwelling may be eligible for a replacement housing payment. (See [Chapter 8](#).)

### **6.460 Initiation of Negotiations**

The initiation of negotiations to acquire right of way is the date the right of way agent presents the written offer to the property owner or a designated representative. The agent must not initiate negotiations with a property owner until a resolution of necessity has been obtained from the OTC or its delegee (see [Section 7.310](#)). The agent generally will initiate negotiations in person unless circumstances exist which warrant presenting the offer by United States Postal Service certified mail with return receipt or other delivery service that provides a receipt

for proof of delivery. Circumstances in which the offer can be presented by certified mail or delivery service include files with out of state owners, owners who refuse to meet with an acquisition agent, minor acquisitions involving no relocation, or where the distance to be traveled is unreasonable in relation to the acquisition.

Once negotiations have commenced, the agent should pursue acquisition as promptly as possible. The offer must be made to:

1. All legal and equitable owners of the real property:
  - a. To the legal owner(s) who is the person(s) or entity who appears as the owner of the real property even though the property may have been sold on contract or by some other sale mechanism.
  - b. To the equitable owner(s) who is the person(s) or entity who has a present title in land that will result in legal ownership upon the performance of certain conditions (e.g., contract purchaser).
  - c. To owner(s) of tenant-owned improvements or fixtures in accordance with [Section 6.408](#). Tenant-owned improvements and fixtures are considered part of the real property, and the legal and equitable owners of such improvements and/or fixtures should be presented with a copy of the offer.
2. Any entity that has a financial lien (encumbrance) on a property that is in default at the time of the offer to the property owners and that could result in forfeiture of their ownership interest. (Examples: mortgage foreclosure, contract default, bankruptcy, etc. where actual or constructive notice to the public has been given.)

The state's offer to the legal and equitable owners states the requirement of the property owners to provide title to the state clear of any encumbrances or interests.

**Note:** In rare cases, the state may only be acquiring a sub-interest in property. In this event, the offer is made to only the owner(s) of that interest.

Negotiations should be conducted with the owner who has possession rights and control of the property. When negotiating with a contract purchaser, the agent must provide the offer and appraisal to the fee owner and any intermediate contract purchasers either in person or by United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. Each owner has a minimum of 40 days from receipt of the offer to accept or reject it.

The initial contact by the right of way agent provides an opportunity for the agent to present information to the property owner, and to obtain information necessary to complete an acquisition. The information presented to the property owner is the same regardless of whether presented in person or through certified mail or delivery service. Information to be exchanged and discussed includes:

1. **The Owner Information Sheet (RITS 2030 Form 734-2999).** This document is sent with the general information notice to the owner and may already be in the file. If the property owner did not return the form, the agent should complete it no later than at the initiation of negotiations.



2. **The Preliminary Title Report.** This report should be reviewed with the owners to determine current encumbrances and parties of interest on the property and complete or revise the form as necessary. The information obtained is also a resource for completing the relocation eligibility listing required under relocation procedures.
3. **Information flyers.** The agent delivers a copy of the printed flyers “Acquiring Land for Highways & Public Projects” (RITS 2009/2010 Form 734-3773/3773S) and “Moving Because of Highway or Public Projects?” (RITS 2205/2206 Form 734-3772/3772s) to the grantor.
4. **The right of way map and construction information.** The agent should explain the project and the need for the property using maps, construction plans, and other relevant material to aid in the explanation, and should clearly describe the property being acquired.
5. **The State’s Offer.** The agent must be prepared to discuss a variety of issues when presenting the offer letter and terms of state’s offer. Since this is the time when a monetary offer for the purchase of the right of way is made, the agent needs to explain the valuation process to the grantor, as well as details of the impacts to the property. In the event of displacement, the offer provides notification to vacate the acquisition area. The agent should explain that the grantor has the right to occupy the premises for at least 90 days from the date written notice to vacate is given. The grantor is entitled to receive full payment prior to vacating the property whether the payment is made out of a negotiated agreement or through the deposit of money into court pursuant to condemnation proceedings.
6. **Relocation Benefit Summary.** The agent should discuss the relocation benefits listed on the relocation benefit summary and answer the concerns and questions of the grantors. See [Chapter 8](#) for relocation responsibilities at the initiation of negotiations.
7. **Appraisal or Administrative Determination of Value (ORS 35.346).** Besides using the initial contact to outline the grantor's rights under the Uniform Act, the agent should attempt to determine the grantor's position regarding the proposed offer. The agent should also explain the courses of action available to the property owner if the offer is unacceptable. The owner can present material relevant to the value of the property which may have not been previously available for consideration or obtain an appraisal (at the owner’s expense) to submit to the review process. (See [Section 5.515](#).)

## **6.475 Follow-Up to Initiation of Negotiations**

Subsequent to the initiation of negotiations with the property owner, the right of way agent must contact other parties of interest, as well as perform record keeping functions, including updating the report of personal interview in RITS.

## **6.480 Acquisition of Tenant-Owned Improvements**

The right of way agent must contact the tenant owner of any improvements or fixtures to present the appropriate state’s offer.

With the landowner and the tenant-owner both receiving a copy of the offer, the agent should try to reach a comprehensive agreement during negotiations. The agreement must include

provisions to release the interests each owner has in the other's property, as well as direction on how the proceeds are to be paid. If the owners do not want to combine their concerns into one agreement, or if it is not feasible to combine the agreements into one, the agent may obtain one agreement incorporating the landowner's acquisition and another incorporating the tenant-owner's acquisition and submit each separately for acceptance.

Each agreement must contain a provision for each party to release its right, title, and interest in the land and improvements to the state.

### **6.490 Relocation Contacts**

The agent is to meet with affected tenants of the property being acquired to deliver the state's offer and relocation benefits summary as soon as feasible after the initiation of negotiations. (See [Chapter 8](#).)

### **6.495 Relocation Eligibility Listing**

After contacting the affected tenants on the property being acquired, the agent enters the information into RITS. (See [Chapter 8](#).)

### **6.500 Report of Personal Interview**

The right of way agent shall maintain an accurate, written record of negotiations on a report of personal interview in RITS for each file assigned. The contact record is to be completed within a reasonable time after each contact with the owner, preferably within 24 hours of the contact. The report should include, but is not limited to, date and place of contact, parties of interest contacted, offers and counteroffers made, reasons settlements could not be reached, and other pertinent data. Any discussion relating to relocation must also be included in this contact report.

### **6.505 Negotiation Activities**

After the initiation of negotiations (as described in [Section 6.460 et seq](#)), the right of way agent must provide a minimum of 40 days from the date of receipt of the initial written offer for property owners to consider the offer and respond to it before filing any action for condemnation ([ORS 35.346](#)). The negotiation period allows the agent to address questions and concerns of the owners regarding the project and/or the state's proposed offer and to develop solutions, if possible, which will lead to an agreement. If, however, the property owners formally reject the state's offer prior to the end of this 40-day period, the agent can proceed, if necessary, with the initiation of condemnation.

If it appears that the property owners understand the issues being discussed and have no apparent disagreement with the state's proposal, the agent should request that the owners sign the documents at the initial meeting. If the owners decline, the agent can determine what elements stand in the way of obtaining a signed agreement. This approach allows the agent to determine the areas of agreement and identify remaining problems to overcome. An agent should seek to reach an agreement with a property owner within the first three to four contacts and 40 days from the initiation of negotiation. On more complicated files or on files where the owner is out of town or obtaining their own appraisal, additional time and contacts may be necessary.

If the negotiation activities reach an impasse, the agent should discuss the situation with the right of way project manager or with the region right of way manager/program manager. If deemed appropriate, an RC should be prepared; however, prior to beginning the RITS workflow, the right of way project manager or region right of way manager/program manager should contact the grantor to make a final attempt to reach a settlement. If this effort is unsuccessful, the agent is to then promptly submit the RC. The agent should not delay in submitting RCs, in the interests of both fairness to the property owner and meeting project timelines.

### **6.510 Updating Offer of Just Compensation**

ODOT shall have an appraisal updated or obtain a new appraisal if substantial information showing a material change in the character or condition of the property is identified, or if there is a significant delay since the appraisal was recommended. If the latest appraisal information indicates that a change in the purchase offer is warranted, the state shall promptly reestablish just compensation and offer that amount to the owner in writing.

### **6.515 Owner's Appraisal**

The property owner is to be given reasonable opportunity to present material which they believe is relevant to determining the value of their property, and to suggest modification in the proposed terms and conditions of the purchase. When an owner obtains an appraisal and makes it available to the right of way agent, the agent shall upload the report in RITS for review by the appraisal reviewer. If the owner's appraisal provides valid information not considered in the state's appraisal, the right of way agent may settle the acquisition file under the delegated authority provided to the region right of way manager/program manager. If the information presented by the owner indicates the need for new appraisal information, the state shall have the appraisal(s) updated or obtain a new appraisal.

The agent must explain to the property owner that submission of the appraisal for review is no guarantee that the offer of just compensation will be increased. The owner should be advised that the appraisal should comply with generally accepted appraisal standards to ensure that proper consideration will be given to it in the review process. (See [Section 5.180.](#))

### **6.520 Revised Offers**

If just compensation is revised by appraisal review due to a change in the area to be acquired, or due to conditions or information which have changed the underlying appraisal premises, the right of way agent must provide the property owner with a revised acquisition summary statement and a new legal description, if necessary. If the revision results in a new offer that is higher than the prior offer, Form 734- 2647 must be used to rescind the prior offer and make a new initial written offer, including a new 40-day minimum time period in which to consider the offer.

### **6.525 Purchase of Uneconomic Remnants**

Once an offer has been made to the property owner to purchase an uneconomic remnant, the right of way agent needs to determine whether the property owner wishes to sell it. The value of

the remnant needs to be agreed upon and included as a part of an overall agreement for the acquisition of the right of way. The owner can provide information regarding compensation for the remnant, and this information must be considered. The agreement needs to contain language specifying the terms of the purchase of the uneconomic remnant. If no agreement can be reached for the property rights necessary for the project, the uneconomic remnant portion of the property will not be a part of any condemnation action.

### **6.530 Purchase of Economic Remnants**

The purchase of excess property other than uneconomic remnants must have prior approval from the state right of way manager. The agent, right of way project manager or region right of way manager/program manager might consider recommending such an action if it would:

1. Avoid litigation.
2. Prevent hardship to grantors, or
3. Be in the state's interest to do so. Acquiring such a parcel might provide a construction staging area, enhance adjacent state surplus land, or provide a resource for trading with another grantor.

Purchases of excess property should be set out separately on the final report. If no agreement can be reached for the property rights necessary for the project, the economic remnant portion of the property will not be a part of any condemnation action.

### **6.535 Exchange for Surplus Property**

Property owned by ODOT and declared surplus to present or expected future needs may be exchanged for required rights of way under the following conditions:

1. Established procedures are followed in declaring the property surplus (see [Chapter 9](#)). A trade should not be committed to until the property has been declared surplus.
2. The value of the surplus to be exchanged has been established through normal appraisal and review processes.
3. The surplus property is not surrounded by the ownership from which it was created. A trade under this situation is permissible only if the abutting owner disclaims in writing a desire to purchase at appraised value.
4. Parcels to be traded must be adjacent or in close proximity to each other. They must also reasonably compare in value and area.
5. The agent should check with property management staff in the right of way section property management unit about the standard access, sign, junk yard, noise and air pollution, and possible mineral reservation clauses, which may be required in the deed. If these clauses are required, the buyer must understand these obligations before signing the deed to the state.

### **6.536 Project-Related Property Trades**

Project-related property trades are typically used in the negotiations to acquire property needed for a highway project.

Property to be traded may or may not be located within the limits of an active project. If the property to be traded is located within an active project area, the parcel must first be declared surplus to ODOT needs by written statement from the region manager authorizing disposal of the property. ODOT is required to receive full fair market value for its surplus property.

If the property to be traded is not within an active project area, law requires that the process to declare the property surplus must include additional notifications. These include notifying the Department of Administrative Services (DAS) to offer the property to other public agencies, such as state, county, cities, and certain non-profit housing agencies, as well as offering to a current lessee, and adjacent property owners. (See [Section 9.415](#).)

It is easier to trade property that is a legal lot of record; however, many of the properties owned by ODOT are remnants. These remnants may be combined to contiguous property via boundary adjustments. This may require a lot line adjustment, a single lot partition or other land use planning procedure to qualify the property as a legally created lot of record. To help determine the legal status of the parcel, the agent needs to obtain a “Statement of Conformance” (RITS 6427, Form 734-2074) from the local land use planning agency. This statement will allow the local planning agency to specify the legal status and identify any deficiencies of an ODOT property. All land use planning issues such as partitions, lot line adjustments and boundary surveys must be approved, and all conditions met so that ODOT can issue a deed to the trade parcel at transaction closing.

Legal descriptions may be requested from right of way engineering or from another source. If a legal description was acquired from a non-ODOT source, the agent should have the description reviewed and approved by right of way engineering.

FHWA must approve the sale or trade of a property when federal funds were involved in the initial acquisition of the property for the interstate or operating right of way of the National Highway System (NHS), or if the trade is part of an active transportation project.

As part of a trade or a sale, the hazardous material status of the surplus parcel and the property being acquired must be considered. It is ODOT’s policy to avoid acquiring contaminated sites.

Prior to a trade, an appraisal and an acceptable review of the appraisal for both properties to be traded are required to establish a fair market value. These appraisals shall take into account any enhancement or diminution of the property that may result from a highway project.

An agenda letter recommending the fair market value of the surplus property, and summarizing the deed type and restrictions, must be prepared and sent to the state right of way manager for approval prior to the transfer of the property.

All processing costs are charged to the related project.

## **6.540 State's Obligations**

During the negotiation period, the grantor may propose that the state be obligated to perform a specific task or confirm that it will complete the portion of the project impacting the grantor's property in a specific way. Any obligation the state is willing to undertake must be clearly stated in a state’s obligations agreement. Those obligations relating to construction or access locations must be approved by the region manager or district manager, and the area manager. (See [Section 6.425](#).)

**6.545 Grantor's Obligations**

During the negotiation period, concerns of the grantor might be resolved by requiring the grantor to perform a specific task, such as removing items repurchased at salvage value, removing timber, replacing fencing, or performing costs to cure. Any grantor obligation agreed to within the acquisition must be clearly stated in a grantor's obligations agreement, including a date by which the grantor must complete the specified work, and the consequences for failure to complete the stated obligations. (See [Section 6.435](#).)

**6.550 Continued Occupancy by Rental**

If it is necessary for a displacee to remain in occupancy after the date of possession, the state can rent the premises to the displacee for a short term, if permitted by the project. The displacee must sign a rental agreement prepared by the right of way project manager at a rental amount not to exceed the fair market rent for short-term occupancy.

**6.555 Access Modification**

During negotiations, the agent may learn that circumstances controlling the location of the access points have changed and the property owner may request a revision in access locations as a condition of signing an agreement. The agent will discuss this matter with the region right of way manager/program manager and the region access management engineer for approval to relocate the access points. If approved, the agent should consult the right of way project manager to determine whether the change will impact the estimate of just compensation. The agent shall negotiate with the grantor on the basis of the revised access after any necessary appraisal revision has been made. The final report must include signature statement that the region manager or district manager authorizes the access revision.

**6.560 Repurchase of Improvements**

The owner of improvements located on lands being acquired as right of way may be offered the option of retaining those improvements if the region right of way manager/program manager determines it will not be detrimental to the best interests of the state, e.g., it will not cause a delay or other interference with a construction contract letting. The improvements can be retained by the owner at a salvage value which is determined by the right of way project manager. Property owners should be made aware of this possibility early in the acquisition process and, if a property owner wishes to pursue it, the right of way agent should provide the necessary assistance to the owner.

The salvage value should be made available at the initiation of negotiations or within a reasonable period of time after the owner expresses an interest in retaining the improvements. Salvage value must be deducted from the total compensation being paid. The Repurchase of Improvements Agreement (RITS 2045 Form 734-3930) is used to outline the terms of the repurchase.



## **6.565 Administrative Settlements**

The Uniform Act requires the state to avoid litigation and relieve congestion in the courts. Since the procedure by which just compensation is determined is inexact, bona fide efforts to resolve differences with property owners are required.

If a property owner rejects the state's proposal and claims that greater compensation is owed, the right of way agent needs to determine the amount the owner requires, along with the owner's underlying reasons for requesting greater compensation. Relying on their knowledge of the real estate market, the appraisal process and the file's negotiation history, the agent should discuss potential increases in compensation with the right of way project manager to determine the merits of seeking an agreement in excess of the approved amount. If the potential increase is outside the delegated authority (see [Section 6.591](#)), the region right of way manager/program manager must contact the deputy state right of way manager for authorization to proceed with an administrative settlement.

An agreement in excess of the approved amount, and/or including additional state construction obligations, requires a written justification letter supporting a settlement. Per the parameters detailed in [Section 6.591](#), the justification letter is used by either the deputy state right of way manager or the region right of way manager/program manager as a basis for approving an administrative settlement and to document the file. The extent of the explanation is a matter of judgment which should be consistent with the circumstances and amount of money involved, and must give full consideration to all pertinent information including, but not limited to the following:

1. All available appraisals, including any owner supplied appraisal, and probable range of testimony in a condemnation trial.
2. Ability of the state to acquire the property, or obtain possession, through the condemnation process to meet the construction schedule.
3. The right of way agent's record of negotiation.
4. Recent court awards in cases involving similar acquisition and appraisal problems.
5. Likelihood of obtaining an impartial jury in the local jurisdiction.
6. Estimate of the cost of having a trial weighed against other factors.

## **6.570 Concluding Negotiations**

Once an agreement with property owners is reached, the agent needs to obtain the signatures on attachments containing all the terms of that agreement and on the appropriate deeds. The agent will also need to obtain the social security numbers of all individuals to be paid. In the case of a business or partnership, the agent will also need to obtain their Taxpayer Identification Number (TIN).

## **6.575 Necessary Signatures**

As a rule, deeds and other documents must be signed by all parties having an interest in the property. With the exception of the Exhibit A, all attachments incorporated into the agreement must be signed by the parties listed on the deed. The right of way agent must review exceptions

to this guideline with the right of way project manager. On deeds, the parties must sign their names as they appear in the instrument's heading. Persons unable to write may sign with an X, but such a signature must be witnessed by two other parties.

In general, it is necessary for the contract purchasers, any lien interest holders, and the fee owners to sign the deed, related conveyance or subordination especially if the consideration will not be adequate to pay off the contract or lien. If the fee owners refuse to sign, and the consideration for the property exceeds the balance due on the contract, the contract purchasers or lien holders may choose to pay off the contract or lien by adding an assignment of consideration to the agreement (see [Section 6.426](#)). This would eliminate the fee owners' interest and the necessity of obtaining their signatures. When there are numerous grantors, the agent should attempt to have payment assigned to one of them to facilitate check preparation.

When an agreement has been reached to acquire tenant owned fixtures or improvements, the tenants must transfer and release to ODOT all of their right, title and interest in the improvements. The owner of the land where the improvements are located must also disclaim all interest in the improvements being acquired. This disclaimer can be made by having both the tenant owner and landowner sign a separate disclaimer form prepared by the right of way agent.

## **6.580      Notarization**

It is the agent's responsibility to obtain notarized signatures on deeds and other conveyance documents. Without notarization, a conveyance is good only between the parties named in it. It cannot be recorded or used as evidence in court without additional proof of its execution. Oregon notaries can only notarize within the state. The notary must witness the signing of a document and must know or have satisfactory evidence that the parties signing are the persons they claim to be.

Acceptable formats for notarizing signatures are identified in [ORS 93](#), and include the following:

### **1. By Individuals:**

STATE OF OREGON, County of \_\_\_\_\_

Dated \_\_\_\_\_, 20\_\_\_\_. Personally appeared the above named \_\_\_\_\_, who acknowledged the foregoing instrument to be \_\_\_\_\_ voluntary act. Before me:

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

### **2. By a Corporation:**

STATE OF OREGON, County of \_\_\_\_\_

Dated \_\_\_\_\_, 20\_\_\_\_. Personally appeared \_\_\_\_\_ and \_\_\_\_\_, who, being sworn, stated that they are the President and Secretary of



grantor corporation and that this instrument was voluntarily signed on behalf of the corporation by authority of its Board of Directors. Before me:

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

### 3. By an Attorney in Fact:

STATE OF OREGON, County of \_\_\_\_\_

Dated \_\_\_\_\_, 20\_\_\_\_. Personally appeared the above named \_\_\_\_\_, who, being duly sworn, did say that (s) he is the Attorney in Fact for \_\_\_\_\_ and that \_\_\_\_\_ executed the foregoing instrument by authority of and on behalf of said principal, and acknowledged to me that \_\_\_\_\_, as the Attorney in Fact for said principal executed the same freely and voluntarily for the uses and purposes therein mentioned. Before me:

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

## 6.585 Real Estate Commissions and Involuntary Sales

A sale of real property under the threat of condemnation is considered an involuntary sale. The listing broker is not considered the procuring cause of the sale. Therefore, the property owner is not liable for payment of a realty commission.

## 6.590 Final Reports

On all transactions that require commission approval, the right of way agent assembles a final report packet in RITS and begins the workflow. Each final report packet must contain:

1. Final Report (RITS 2075 Form 734-3300) Names and addresses must be shown correctly. If a mailing address differs from the street address, both should be entered. The name and address of any attorney representing the grantors should be included on the form.

It is important that the basis for settlement be broken down in detail to facilitate administrative decisions on settlements and the completion of necessary records and reports. The itemization should correspond to the breakdown, if any, shown in the appraisal review.

Final reports for signs and/or sign sites must include the sign permit number, if applicable. The final report must state that the region construction manager approves of any construction obligations or access changes other than those previously approved or included in the plans.

2. Fully executed conveyance document.

3. Justification letter for administrative settlements, if applicable.
4. region right of way manager/program manager's Acquisition Report (RITS 2015 Form 734- 1714).
5. Preliminary title report.
6. Owner Information Sheet (RITS 2030 Form 734-2999).
7. Reports of Personal Interview.
8. State's Offer (RITS 2020 Form 2020 & 2018D & 2019D).
9. Statement of Negotiator (RITS 2077 Form 734-3715).
10. Other pertinent information, including such things as sign purchase agreements or pertinent correspondence.
11. Copies of all correspondence sent or received.

### **6.591 Authority to Approve Final Reports**

The OTC or its delegee holds the authority to approve acquisition of real property. The OTC or its delegee approves the acquisition of real property by resolution and directs the state right of way manager to take all actions necessary to complete the transactions.

The state right of way manager has authority to establish the procedures necessary to complete the transactions including condemnation. The procedures approved by the state right of way manager, and included in this manual, establish the authority to approve final reports, agreements, conveyance documents and all other documents relating to property the OTC or its delegee has authority to acquire.

The state right of way manager authorizes the region right of way manager/program managers ([Section 6.203](#)) to approve monetary settlements in the following instances:

1. For all monetary settlements not exceeding the approved just compensation amount.
2. For settlements over the just compensation amount but less than \$100,000 total price.
3. For settlements over the just compensation amount and exceeding \$100,000 but within 20% of the approved just compensation amount.

Negotiated construction obligations and other state obligations approved by the region are included in the final settlement total and subject to the above limits.

The state right of way manager authorizes settlement approval to the deputy state right of way manager. All settlements over the approved just compensation amount must be supported by a justification letter. This letter must clearly lay out the rationale for settling over the approved amount and why it is in the best interests of the state to do so. The region right of way manager/program manager must approve the justification letter in RITS so it is included in the final report packet.

Proposed settlements that are significantly over the reviewed amount and which will require the approval of the state right of way manager or deputy state right of way manager should be discussed with the deputy state right of way manager as early as possible, prior to submitting a final report packet.

Settlements involving the trade of surplus ODOT property in lieu of money must have the written approval of the state right of way manager.

### **6.595 Agreement Follow-Up**

The right of way agent's responsibilities do not end with the submission of a final report, but continue until title is cleared, final payment is made, and through construction as necessary.

### **6.600 Letter of Acceptance**

Upon acceptance of an agreement by the OTC or its delegatee, the title services unit must send to the grantor a letter of acceptance. This letter is generally delivered at the time payment is made to the grantor.

### **6.605 Prorating of Taxes**

The grantors will pay their prorated share of all unpaid or deferred real property taxes due and payable during the fiscal year of July 1 through June 30 of the following year. Prorating is based on the date the property is deeded or the date of possession, whichever is earlier.

When farm property is zoned for exclusive farm use (EFU), it is valued as farmland rather than for its highest and best use. When such land is put to non-farm use, deferred taxes, normally for the previous 10 years, become due. The property owner is not responsible for these deferred taxes if the property is sold for public use under the threat of eminent domain. ([ORS 308.709 \(1\)](#).)

The agent should check the exceptions in the title report for information regarding special farm use assessments. ([ORS 308A.709 \(1\)](#).) (See also [Section 6.640](#) for designated forest land.)

### **6.610 Clearance of Title**

It is the policy of the Right of Way Section to acquire sufficient title to real property to accomplish the purposes of the project for which the property is being acquired. The purpose of this policy is to provide guidelines, not inflexible rules, covering the extent to which title must be cleared before a file can be closed.

This policy, as detailed below, is subject to change, depending on the current economic climate, current real estate values and any other determining factors. The cost and time of clearing title exceptions must be weighed against the risk of default.

1. A Preliminary Title Report should be obtained for files with estimated values over \$20,000. For files under \$20,000, Regions may choose to order a list pack/trio instead of a PTR when appraisals will be completed in-house. For all appraisals that will be contracted out to a fee appraiser, a PTR should be obtained. If specific concerns with title arise, such as files with right of way engineering concerns, liens, unusual information provided in the owner information sheet, and other circumstances, a PTR should be obtained.

2. The Region Right of Way Manager/Program Manager is authorized to decide what encumbrances are acceptable to not clear when closing a file with a fee purchase price under \$30,000. On these files the manager should decide to take “subject to” specific title encumbrances only when the risk in doing so is determined to be low and it is beneficial to the State to move the file forward. A written explanation of this decision should accompany the final report. Under normal circumstances, no interests other than possessory interests (e.g. Fee Owner, Contract Purchaser and, when impacted, a Lessee) will be cleared for files with a purchase price of \$20,000 or less;
3. The Region Right of Way Manager/Program Manager is authorized to decide what encumbrances are acceptable to not clear when closing a file with a permanent and/or temporary easement purchase price under \$40,000. On these files the manager should decide to take “subject to” specific title encumbrances only when the risk in doing so is determined to be low and it is beneficial to the State to move the file forward. A written explanation of this decision should accompany the final report. Under normal circumstances, no interests other than possessory interests (e.g. Fee Owner, Contract Purchaser and, when impacted, a Lessee) will be cleared for files with a purchase price of \$20,000 or less;
4. On files with a fee purchase price greater than \$30,000, the decision to take “subject to” specific encumbrances is to be made by the Region Right of Way Manager/Program Manager in collaboration with the Deputy State Right of Way Manager;
5. On files with a permanent and/or temporary easement purchase price greater than \$40,000, the decision to take “subject to” specific encumbrances is to be made by the Region Right of Way Manager/Program Manager in collaboration with the Deputy State Right of Way Manager;
6. The Title Services Unit will provide guidelines and advice to the Regions on evaluating title issues and risks; and
7. The Region should consult with Title Services Unit whenever there is a question regarding the proper application and execution of this policy.

Right of Way Agents will have increased responsibility and a need for alertness and thoroughness when interviewing grantors.

Agents will be responsible for informing grantors of the potential for the enforcement of due on sale clauses by lenders when the interest of the lenders is not cleared. Agents should assist the grantors in obtaining a release when required by a lender. The state will continue to pay any release fees required by the lenders. Note: The Oregon Department of Veterans Affairs (ODVA) requires that releases be obtained on all files, with the exception of temporary easements.

This policy applies to both state and federal aid projects. On Local Public Agency (LPA) projects, regardless of the funding source, the local agency must decide the extent to which title must be cleared. This decision should be made when the services agreement is prepared. The services agreement must specify whether the LPA will accept the State’s policy or require some other level of title clearance.

### **6.615 Expenses Incidental to Transfer of Title to the State**

Property owners shall be reimbursed for all necessary and reasonable expenses they incurred for:

1. Recording fees, transfer taxes, evidence of title, legal descriptions of the real property, and similar expenses incidental to conveying the subject property to the state. However, the state is not required to pay costs solely required to perfect the owner's title to the real property.
2. Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.
3. The pro rata portion of any prepaid real property taxes which are allocated to the period after the state obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the state shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the state.

If property owners believe that the state has failed to properly determine their eligibility for or the amount of a payment of any such incidental expense, they may file a written appeal with the state which must be promptly reviewed. The appeals process follows the procedures for relocation benefit appeals. (See [Chapter 8](#).)

### **6.620 Delivery of Payment**

As a rule, payments for property are mailed. The deputy state right of way manager should be consulted prior to any deviation from this procedure. No payment shall be made in such a way as to violate the Section's policies.

### **6.625 Notices to Vacate**

According to Section policy, no owner shall be required to surrender possession prior to payment. See [Chapter 8](#) for an explanation of required possession notices.

The title services unit sends the 30-day notice to owners of property when such a notice is required. The right of way agent must then send the applicable 30-day notice to any eligible tenant occupants.

### **6.630 Special Situation Acquisitions**

#### **6.635 Acquisitions Conducted from Headquarters**

Some special situation acquisitions are not carried out within the region. Region may request assistance from headquarters with appraisals and relocation activities if necessary. Such acquisitions include land owned by railroads. Negotiations for railroad property are normally conducted by the railroad specialist.

### **6.640 Designated Forest Lands**

When a project requires acquisition of designated forest land (formerly called classified reforestation land), the grantor may be liable for the deferred taxes. The title report normally indicates if the land is designated. (Ref. [ORS 308.709 \(1\).](#))

### **6.645 Water Rights Acquisition**

When the state purchases irrigated lands located within an irrigation district, or under prescriptive right to a stream, it purchases the land and the water rights that go with the land, unless the water rights are retained by the owner. Owners of land with these water rights can also allocate their water rights to their respective irrigation district and/or the Oregon Water Resources Department as recorded in an owner's obligation agreement.

The agent acquiring such lands should receive reviewed appraisals based on both irrigated and non- irrigated values. The agent should explain to the grantors that they may choose to:

1. Sell their water rights to the state and be paid based on the value of irrigated land, or
2. Apply to their irrigation district or to the Oregon Water Resources Department for a transfer of the water rights to other property. In this case, the acquisition offer would be based on the value of the land as if did not have water rights. In limited situations, OWRD rules or state statute may include exceptions that prevent transfer of water rights, in which case the agent can only offer the option to sell the water rights to the state.

If the owners are permitted to retain the water rights, the agent needs to obtain an owner's obligation agreement that requires the owners to complete the transfer of the water rights prior to possession and payment of the right of way file to be acquired, and before execution of the right of way certification.

### **6.650 Signs - Outdoor Advertising and Others**

According to Oregon law, no sign can be erected or maintained within the right of way of a state highway, except for a traffic control sign or device. Except for outdoor advertising signs (see [Glossary](#) for definition), signs are considered real property, and the right of way agent must prepare an offer to acquire signs located within the acquisition area, including any signs which will overhang or encroach upon the state highway right of way. Signs may be allowed to overhang or encroach upon easement areas acquired by ODOT, as long as they are not within the right of way, nor interfere with the safety of the motoring public or state's intended use. The agent is to negotiate the acquisition of a sign with its owner.

#### **Income-Producing Sign**

A sign in this category should be treated in the same manner as personal property. (See [Section 8.809.](#))

#### **Non-Income Producing Sign**

A sign in this category is acquired in the same manner as real property and included in the appraisal.

## Outdoor Advertising Sign Compensation

If a highway construction project causes an Outdoor Advertising Sign (OAS) to be removed from its current location or causes the face of the OAS to be totally or partially blocked, Oregon law (ORS 377.713) requires that the owner be compensated for the total or partial loss if the OAS cannot be relocated to a comparable location. The OAS structure and OAS permit are considered personal property; however, ORS 377.713 requires compensation to the OAS owner when, after reasonable efforts, the OAS owner is unable to find a comparable location to relocate the OAS. The following section of the manual outlines the OAS compensation process to be followed when an OAS is impacted by a highway construction project. Definitions for terms used in this section are found in OAR 734-064-0010.

ORS 377.713(6) prohibits ODOT from compensating an OAS owner when federal funds are used on a project that completely or significantly obstructs the sign. If a federally funded construction project results in the complete or substantial obstruction of an outdoor advertising sign, contact the Deputy State Right of Way Manager. The procedure for handling these situations may differ from what is described in this section of the manual.

## Impact Determination

In the early phases of design, the right of way project manager should determine if there are any permitted outdoor advertising signs within the project area that may be impacted as a total or partial loss due to the project. An OAS is “impacted” if due to the highway project the sign will need to be moved from its current location, or the project, as constructed, will substantially impact visibility of an OAS within 500ft. Once the signs in the project area have been identified, the right of way project manager should reach out to the ODOT sign program. The ODOT sign program will provide current information regarding the OAS. If any unpermitted outdoor advertising signs are discovered, the ODOT sign program should be notified by the right of way project manager.

If an OAS will be impacted as a total or partial loss, the project should plan on an extended ROW delivery time frame of 18-24 months, similar to a complex relocation file. It is recommended that ODOT staff handle the relocation and/or compensation process for any OAS affected by the project. When a file contains an OAS, there should always be two files created in RITS, even if the OAS and land are under the same ownership. The OAS file should be labeled with a letter following the file number (e.g., 9896-001A). If there are multiple sign files associated with the same file number, use consecutive letters to distinguish each sign file.

Region ROW will need to complete the OAS Impact Notice Form, OAS Impact Determination Form, and the OAS Compensation Request Form (in cases of Total or Partial loss). All forms should be sent first to the Region ROW manager for review and then to the Deputy State Right of Way Manager for approval prior to sending anything to the OAS owner. The Deputy State Right of Way Manager should consult the ODOT sign program for any additional information needed to make the determination.

1. **Impact Notice Form** - If a total or partial loss is determined for an OAS, the OAS Impact Notice form notifies the OAS owner of the highway project's impact and makes the owner eligible for relocation benefits. The Impact Notice Form may serve as the Notice of Intent to Acquire and makes the OAS owner eligible for relocation benefits prior to start of negotiations for the underlying land.
2. In cases where the highway project may cause an impact to the OAS but not to the extent that a partial or total loss is determined, an OAS Impact Notice Form should be sent out notifying the OAS owner that "no impact" was determined.
3. **Impact Determination Form** - This form should be used to determine the type of loss a project may cause to a specific OAS and will document the research and correspondence that went into the determination of a total loss, partial loss, or no impact. This is an internal document only and does not go to the OAS Owner.
4. **OAS Compensation Request Form** - This form will be sent with the OAS Impact Notice when it has been determined that the OAS has suffered a total or partial loss. The form allows the OAS owner to document efforts in searching for a relocation site. If no relocation site is found, the form must be returned within 6 months of issuance to remain eligible for compensation.

After the OAS Impact Notice, OAS Impact Determination, and OAS Compensation Request form are approved by the Deputy State Right of Way Manager, all forms should be uploaded into RITS and the ODOT Sign Program should be notified and sent copies. The OAS Impact Notice Form and OAS Compensation Request Form (in total loss and partial loss situations) should be mailed along with the relocation and acquisition flyers and OAS relocation benefit summary. The OAS Impact Determination Form is an internal document only and does not go to the OAS owner.

When the OAS Impact Notice form is sent, the Region Relocation Assistance Agent should work with the owner to provide relocation advisory services and assist the owner with any questions regarding relocation of the OAS. The OAS Owner should actively start looking for relocation sites. In accordance with the ORS 377.713 (4)(a) the impacted OAS must first always be attempted to be relocated to a comparable location prior to compensation being paid. As stated in the OAS Compensation Request form, the OAS owner has six months from the date of the impact notice to complete and submit the compensation request form to remain eligible for compensation.

As noted in the OAS Impact Notice Form, the OAS Owner has 30 days to request a contested case hearing if an agreement cannot be reached regarding the decision of a total loss, partial loss, or no impact. If a request is received, immediately contact the Deputy State ROW Manager and State Right of Way Manager.

### **Relocation of an OAS**

For an OAS to be relocated the owner will need to find a site that is legal as defined by federal, state, and local regulations. An OAS may only be relocated to another legal site and reconstructed in compliance with any existing restrictions on its current OAS permit.



An overview of the relocation benefits available for outdoor advertising signs can be found in section 8.804 of ODOT Right of Way Manual. Compensation must be offered to an OAS owner if a comparable location for an OAS impacted by a total or partial loss cannot be achieved (OAR 734-064-0020). To remain eligible for compensation the OAS Owner should return the completed OAS Compensation Request form within the specified time frame stated on the form.

In the case of a partial loss where a sign owner has found a relocation site that is considered a less than comparable location, the relocation process should be completed before any partial compensation is paid to the OAS owner.

### **ODOT Sign Program Role in Relocation**

Once an OAS owner begins their search for a relocation site the ODOT Relocation Assistance Agent should advise the OAS owner to coordinate with the ODOT Sign Program for site feasibility and to process any permit applications. If a relocation site is identified, it is recommended that the OAS owner request a preliminary review of the relocation site from the ODOT sign program. Upon request, the ODOT Sign Program will complete the preliminary review prior to any relocation permit application being submitted.

Once a relocation site is identified, the OAS owner will need to submit a relocation permit application as stipulated in ORS 377.725. If the application is accepted the original permit will be surrendered and the relocation permit issued. Once the relocation permit is issued the OAS Owner has 180 days to erect the sign in the new location (ORS 377.768). As required in ORS 377.725(12), the OAS owner must notify the ODOT Sign Program with pictures showing the sign has been erected and the permit is displayed.

In a partial loss situation, if the OAS owner identifies a relocation site that is not on or visible from the State or National Highway System (NHS), the original permit may need to be surrendered. The ODOT Sign Program should still conduct a preliminary review of the location; however, in these situations the OAS owner will not need to complete a relocation permit application. Documentation should be provided by the OAS owner showing approval from the local governing agency where the OAS will be relocated.

### **Valuation Methodology**

The value of the OAS is often derived from the income production of the OAS. It is noted that while the OARs call an OAS personal property, the market standard is to value them as if they are real estate. All approaches to value should be considered by the appraiser. The valuation of an OAS is complicated and includes several different market derived conclusions. A Specialist Appraiser must be utilized to value the OAS. Specialist Appraiser is defined as a state certified appraiser or state licensed appraiser under ORS 674.010 with experience in valuing an OAS (OAR 734-064-0010 (11)).

### **Valuation Components**

There are two primary components to the value of an OAS. They include the value of the OAS itself and the contributory value of the land needed to support the OAS. The contributory value of the OAS must be performed by a Specialist Appraiser as defined by statute. Typically, an OAS appraisal will include a market derived lease rate capitalized after expenses much like an appraiser would do for any income producing property. The capitalized value of the OAS is proportionally divided pursuant to market standards with an allocation to the land and an allocation to the OAS itself. If the land is leased

for the OAS, then the existing lease should be compared against market lease rates to determine if the lease represents market value or not.

The contributory value of the real property where the OAS is located can be performed by the Specialist Appraiser or a QAL approved real estate appraiser. It is not mandatory that a Specialist Appraiser determine the value of the real property.

### **Valuation Process**

To facilitate the project needs, a specialty report should always be obtained regardless of any ownership similarities or differences between the real property and the OAS structure. Depending on if a total or partial loss is determined, a specialty report for full compensation or partial compensation will need to be obtained when an OAS is unable to be relocated or relocated to a less than comparable location.

As with any specialty report, the appraisal of the OAS will need to be reviewed by the Appraisal Review department before it can be used in any offer for compensation. For a Specialist Appraiser to properly value an OAS, income information from the OAS must be obtained from the OAS owner. OAR 734-064-0030 (6) states that 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 relevant information, to assist the Department or its Specialist Appraiser in evaluating the OAS for Total or Partial Loss or appraising for Partial or Full Compensation. It should be noted that sales, leases advertising or other proprietary information will be considered Trade Secrets under ORS 192.345 (2). It is recommended that, if project timelines allow, the Specialist Appraiser request this information from the OAS owner as opposed to the Department. Income and sales information related to an OAS should not be shared with the landowner if the landowner is different from the OAS owner.

### **Appraisal of Real Property**

In most cases the real property appraisal is performed by a real property appraiser. If the Specialist Appraiser completes this analysis the specialty report and the real property appraisal must still be independent reports.

In the real property appraisal report the appraiser should state “the billboard is considered personal property under OAR 734-064-0015. The information utilized in estimating value of the OAS is considered a Trade Secret and is not included in the body of the real property appraisal.” If the real property appraiser feels the need to use an Extraordinary Assumption regarding this situation, they may do so. The language of the Extraordinary Assumption must be approved by Appraisal Review prior to its incorporation into the real property appraisal. It should be noted, if the OAS and the underlying land is owned and vested identically, the real property appraisal and the specialty report will still be separate reports however, the real property appraisal may simply state, “the billboard is considered personal property under OAR 734-064-0015 and will be valued in a separate report”.

### **Full Compensation**

A determination of the value of full compensation must be obtained when an OAS that is identified as a total loss is unable to be relocated. Full compensation is 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. This includes the sign structure and permit less the salvage value (OAR 734-064-0010 (5)).

When the OAS owner has submitted a completed OAS Compensation Request form that has been reviewed and accepted, the department should obtain a specialty report for the full compensation valuation.

1. Scope of Work – Full Compensation
  - a. Value of the OAS itself.
  - b. **Must** be performed as a specialty report.
  - c. **Must** be performed by a Specialist Appraiser.
  - d. Salvage Value must be estimated and deducted from the value of the OAS.
  - e. Specialty report to be obtained after the OAS Compensation Request form is submitted.

### **Partial Compensation**

There are two situations in which a determination of value for partial compensation may be needed. Partial compensation is defined as 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 a less than comparable location or substantially blocked ((OAR 734-064-0010 (10))). In both situations the valuation of the partial compensation will be determined using a before and after format specialty report.

#### **Partial compensation (blockage)**

If it is determined that there is a partial loss due to the OAS being substantially but not totally blocked in its current location, a specialty report for the difference in value before and after the project impacts, will need to be obtained.

When the OAS owner has submitted a completed OAS Compensation Request form that has been reviewed and accepted, the department should obtain a specialty report for the partial compensation valuation.

1. Scope of Work – Partial Compensation (blockage)
  - a. Value of the OAS itself.
  - b. **Must** be performed as a before and after format specialty report.
  - c. **Must** be performed by a Specialist Appraiser.
  - d. Specialty report to be obtained after the OAS Compensation Request form is submitted.

#### **Partial compensation (less than comparable location)**

If it is determined that there is a total loss to the OAS due to the project, the owner is required to seek out a comparable location to relocate the sign. In some cases, an OAS owner may find a suitable relocation site that is in a less than comparable location and the OAS Owner may still be eligible for partial compensation. In these situations, in addition to the relocation efforts to move the sign to the new site, the department will need to obtain a specialty report to establish the value of the partial compensation. Partial compensation in this case is the difference between the market value of the OAS before the project and the market value of the OAS after the project as relocated to a less than comparable location.

1. Scope of Work – Partial Compensation (less than comparable location)

- a. Value of the OAS itself.
- b. **Must** be performed as a before and after format specialty report.
- c. **Must** be performed by a Specialist Appraiser.
- d. Specialty Report to be obtained after a less than comparable location is determined.
- e. Prior to the valuation of the partial compensation being determined, the department and the OAS owner should agree that the relocation site is a less than comparable location and eligible for partial compensation.

### **Two Sided OAS**

If the Department determines that 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 by the rules. If the single sign face cannot be relocated on the same property or another legal site, the OAS Owner may receive full compensation for the loss of the single face of the OAS (OAR 734-064-0030 (10)).

A two-sided OAS that suffers a total loss must follow the same rules for relocation and compensation as any other OAS. If an OAS owner is unable to find a relocation site for the two-sided OAS but can find a legal relocation site for one side of the OAS, the Department and the OAS Owner may agree to the relocation of one side with partial payment for the loss of the other side. In these situations, the same procedures apply for relocation and compensation.

### **Compensation for an OAS**

An offer for compensation should be made when an OAS owner is unable to find a comparable location to move the impacted OAS to. An OAS owner impacted by a total or partial loss is only entitled to compensation if they have shown they have made a good faith effort to acquire a relocation site for the OAS (OAR 734-064-0030 (7)(a)). If after reasonable efforts the OAS owner is unable to acquire a comparable location in the same market area for the OAS, ODOT must pay the owner compensation (ORS 377.713)(4)(a).

To determine if a good faith effort has been made the OAS owner must complete and return the OAS Compensation Request Form by the date specified. The OAS owner should include all details regarding their efforts to find a comparable location for the impacted OAS including but not limited to:

1. Documentation of Efforts:
  - a. Records of all properties considered for relocation, including addresses and property owner contact information.
  - b. Correspondence (emails, letters, phone call logs) with property owners, leasing agents, and real estate agents about potential relocation sites.
2. Copies of any formal offers made to property owners for new locations or leases.
3. Responses from property owners and record of negotiations.
4. Engagement with Local Authorities:
  - a. Communications with local governing agencies about potential relocation of the OAS.

- b. Copies of any applications submitted for permits or variances needed to relocate the sign to a new location.
  - c. Records of any meetings or hearings attended concerning the relocation.
- 5. Engagement with Department
  - a. Copies of requests for assistance from ODOT in finding a new location.
  - b. Documentation of any site evaluations or preliminary reviews conducted with ODOT's assistance.
- 6. Professional Consultations
  - a. Agreements or contracts with professionals hired to assist with the relocation process (if applicable).
  - b. Reports or recommendations from these professionals regarding potential relocation sites.
- 7. Market Research
  - a. Traffic count data and visibility analysis for potential new locations.
  - b. Market analysis comparing potential new sites with the original location.
- 8. Efforts to Modify the Sign
  - a. Plans or proposals for modifications to the sign to fit original site, if possible.
  - b. Cost estimates and feasibility analysis for modifications to the OAS required at new locations.
  - c. Applicable information explaining why a modification is not feasible.

When the completed OAS Compensation Request Form has been submitted, ODOT must review the provided information to determine if the OAS Owner has satisfied the requirements to remain eligible for compensation. Prior to any compensation payment the Internal Sign Review Report must be completed. The purpose of the Internal Sign Review Report is to ensure the OAS owner has met all requirements to be eligible for compensation. The Internal Sign Review Report should be completed by the Right of Way project manager and reviewed by the Region Right of Way manager prior to being sent over to the Deputy State Right of Way manager. When completing the Internal Sign Review Report, the Right of Way project manager should include all justifications provided by the OAS owner in the OAS Compensation Request form, detailing their good faith efforts to acquire a comparable location. The Deputy State Right of Way manager will review all the information provided by the OAS owner and consult with the ODOT Sign Program for more information as needed. Ultimately it is the Deputy State Right of Way managers role in this process to confirm that the OAS owner has met the requirements provided in OAR 734-064-0030 (7)(a)(b). The Deputy State Right of Way manager may ask the Region Right of Way Project manager to request more information from the OAS owner to make final determination for compensation in accordance with ORS 377.713 (2)(b), which states, ODOT may require the owner to provide information about the owner's efforts to acquire a comparable location for the outdoor advertising sign. Once the Internal Sign Review Report is signed, it will be returned to the Region Right of Way Project Manager and

should be uploaded into RITS in the Final Report section. This report will need to be filled out for both full and partial compensation payments.

Once the OAS owner has proven a good faith effort but is unable to secure a comparable location, the Right of Way project manager should obtain a specialty report to determine the compensation for the OAS.

After reviewing the specialty report for an OAS that is determined to be a Total or Partial Loss, the offer packet should be prepared and sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery to the OAS owner.

The offer of compensation to the OAS owner should always be separate from the underlying land offer. The offer for compensation and all forms associated with it will be processed using the OAS file number in RITS.

The offer packet for the OAS should include the following:

1. OAS – Owner Offer Letter (This form indicates the written offer of compensation)
2. Copy of the reviewed specialty appraisal
3. OAS Bill of Sale form (Total loss only)
4. OAS Partial Compensation Agreement (Partial loss only)
5. Tax form (W-9)

The OAS owner will have 40 days from receipt of the written offer of compensation to consider accepting or rejecting. During this time the OAS owner and ODOT may negotiate compensation. At the end of the 40-day period, if the OAS owner and ODOT cannot reach an agreement regarding the compensation due, ODOT will provide written notice of the final offer of compensation to the OAS owner. Written notice of the final offer of compensation should be sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. Region Right of Way should contact the Deputy State Right of Way Manager to review the final offer of compensation prior to sending out the written notice.

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 734-06400030 (5). It should be noted that the OAS owner may request a contested case hearing during the 40-day negotiation period.

When an agreement for full compensation has been reached, a signed OAS Bill of Sale form must be completed. The owner of the OAS should be notified that payment will be made after the Bill of Sale document has been signed by the State Right of Way Manager. Once payment is sent, the ODOT Sign Program should be notified, and the permit should be permanently canceled. Note in these cases the Internal Sign Review Report will need to be signed and uploaded into RITS with the final report before payment can proceed.

If an agreement of compensation has been reached in a partial loss situation where the sign is blocked and staying in its original location, or the impacted sign is relocated to a less than comparable location, there will be no need for a Bill of Sale since the State is not acquiring the OAS permit, rather, paying the OAS owner compensation for their loss. In these cases, a signed OAS partial compensation agreement will need to be signed by the OAS owner and payment will follow once this document is

signed by the State Right of Way Manager. Note in these cases the Internal Sign Review Report will also need to be signed and uploaded into RITS with the final report before payment can proceed.

In situations where partial compensation may be applicable due to the sign being relocated to a less than comparable site, the OAS must be moved and reestablished prior to any partial compensation payment being made. This ensures that all permits and processes related to the ODOT sign program will be complete prior to final compensation. It should be noted that an agreement on the amount of partial compensation can be agreed to prior to the move.

### **Removal of OAS**

As previously stated, the OAS Impact Notice serves as the notice of intent to acquire making the OAS owner eligible for relocation benefits, however, this is not an official notice to move. Coinciding with an offer for the real property made to the owner of the underlying land, the OAS owner will be given notice that requires 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 landowner, whichever is later. If the OAS owner is the underlying landowner, the notice to move personal property will be a part of the offer. If the OAS owner is a tenant, a tenant benefit letter should be sent to notify the OAS owner of the requirement to move.

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 (OAR 734-064-0060).

In accordance with ORS 377.773 an OAS that is not displaying a message for a period of six months is deemed to be abandoned and as a noncomplying sign, is subject to removal and cancellation of its permit. If a sign is to be removed from its location for any reason, the ODOT sign program should be contacted.

### **Completion of Highway Project**

Following the completion of the highway project OAS owners may request reconsideration of ODOT's notice of determination regarding a partial loss or no impact. Completion of the highway project is defined as the date of ODOT's issuance of a third notice following construction. When third notice is issued the right of way project manager should mail a notice of completion to all OAS owners that received a "no impact" or "partial loss" OAS Impact Notice form at the beginning of the project.

For the OAS owner to qualify for reconsideration, an OAS owner's request for reconsideration must include the following two items (OAR 734-064-0070):

1. The request must be made 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.
2. The request must establish that the highway project, as constructed, substantially impacted visibility of the OAS within 500 ft of the OAS, and that these impacts were not considered in the Department's earlier notice of decision of partial loss or no impact.

If a request for reconsideration is made, region should immediately contact the deputy state right of way manager. Within 60 days ODOT should issue an order on whether the OAS owner has met the requirements for reconsideration. In these circumstances the ODOT right of way team should work together to determine if the OAS owner will be approved or denied in their request for reconsideration. If it is determined that the OAS owner will be denied their request, a written notice of the denial should be sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. The OAS owner may request a contested case hearing within 30 days of the mailing. If the request for reconsideration is approved, the compensation and/or relocation process will need to be reinitiated from the beginning.

## **6.655 Recommendation for Condemnation**

(See [Section 7.300 through Section 7.380.](#))

## **6.660 When to Submit a Recommendation for Condemnation**

To avoid delays in awarding construction contracts, the acquisition effort must be coordinated with the construction schedule. If the right of way agent cannot reach agreement with all owners of real property on a file, and if the region right of way manager/program manager agrees that further negotiations appear futile, the agent should immediately prepare a recommendation for condemnation (RC).

An RC must be submitted through RITS at least 17 weeks in advance of the desired possession date. On federal aid projects the state must have possession of all needed right of way approximately five weeks before bid opening.

The 30-day notice to vacate cannot be given to an occupant until the state has made final payment for the property, or until the amount of the reviewed appraisal has been deposited into court.

The region right of way manager/program manager must notify the deputy state right of way manager immediately if there are any serious delays in field negotiations, or in the submittal of an RC which may make it difficult to meet project deadlines.

## **6.665 How to Recommend Condemnation**

To begin condemnation proceedings, the right of way agent ensures the necessary materials are up to date, including:

1. Recommendation for Condemnation (Form 734-3311).
2. Form 3300 (State's Obligations).
3. Exhibit A from which the offer was made.
4. Report of personal interview with contact information for the grantor and any opposing attorney.
5. All offer documents including the terms of state's offer and relocation benefit summary.
6. Copies of all correspondence, including all emails
7. The highest written offer if higher than original offer amount.



8. Preliminary title report and if available, a completed owner information sheet.

The agent begins the workflow in RITS. If the appraisals of the property are not current, the region right of way manager/program manager should request that the right of way project manager have them updated as soon as possible. If the condemnation is going to be initiated based upon an administrative determination of just compensation rather than an appraisal, additional appraisal review actions are required before the RC workflow begins. The region right of way manager/program manager should notify the chief appraiser of this intent prior to or at the time the RC is submitted.

### **6.670 Final Offer Letter**

Either the right of way section DOJ liaison or the right of way agent is responsible for contacting property owners promptly after their receipt of the final offer letter to obtain their response. The region may request from the DOJ liaison authorization to make the follow-up contact with the property owners.

### **6.675 Negotiation of Legal Files**

Once a complaint has been filed and a legal file number assigned, there shall be no further negotiations by region without prior approval from the deputy state right of way manager or DOJ liaison who has been assigned the case.

When parties of interest named in a complaint advise an agent they desire to continue negotiations, the agent should promptly notify the DOJ liaison.

The trial division is responsible for the acquisition through legal action of all interests named in an RC and the subsequent complaint.

Communications between the trial division and ODOT for condemnation issues will typically pass through the DOJ liaison in the right of way headquarters section.

### **6.680 Condemnation of Uneconomic Remnants**

The state cannot condemn property unless it is needed for public purposes. A complaint can be filed only for that part of the property actually needed for a project, even though the remainder may be uneconomic.

### **6.685 Reimbursable Litigation Expenses**

Consistent with ORS 35, property owners can be reimbursed for any reasonable expenses, including attorney, appraisal, and engineering fees, that the owners incurred because of a condemnation proceeding.

If property owners believe that the state has failed to properly determine their eligibility for, or the amount of, a reimbursable litigation expense, they may file a written appeal with the state, which must be reviewed promptly. The appeals process follows the procedures for relocation benefit appeals. (See [Chapter 8.](#))

APPENDIX A – EARLY & ADVANCE ACQUISITION OPTIONS

Revised for Oregon Use; 23 CFR 710.501

Table 1: Early Acquisition (EA) Option

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement / Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
<b>1) State-funded early Acquisition without Federal Credit or Reimbursement</b>  23 CFR 710.501(b) 23 USC 108€(1)	NO	No, if the State wishes to maintain Federal eligibility for future Federal assistance on any part of the transportation project.	When legally permissible by State Law.	N/A	Yes, if the project maintains Federal eligibility for other phases of the project (i.e. construction)	YES, if State law allows use of condemnation	<p>A State may carry out early acquisition entirely at its expense. However, a State may maintain eligibility for future Federal assistance on a project. To maintain eligibility, early acquisition must comply with the following requirements of 23 CFR 710.501€(1)-(5):</p> <ul style="list-style-type: none"><li>• Property lawfully obtained by the State agency;</li><li>• Not 4F property; (unless Sec. 4F determination has been made by FHWA)</li><li>• Acquisitions and relocations comply with the Uniform Act;</li><li>• State agency complies with Title VI of the Civil Rights Act;</li><li>• FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including:<ul style="list-style-type: none"><li>◦ The need to construct,</li><li>◦ The consideration of alternatives, or</li></ul></li></ul> <p><b>The selection of design or location.</b></p>
<b>2) State-funded Early acquisition eligible for future credit</b>  23 CFR 710.501€	NO	NO	When legally permissible by State Law.	Request credit for the portion of the property incorporated in the Federal-aid project. FHWA Division office must approve request.	YES	YES, if State law allows use of condemnation	<ul style="list-style-type: none"><li>• Property lawfully obtained by the State agency;</li><li>• Not 4F property; (unless Sec. 4F determination has been made by FHWA)</li><li>• Acquisitions and relocations comply with the Uniform Act;</li><li>• State agency complies with Title VI of the Civil Rights Act;</li><li>• FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including:<ul style="list-style-type: none"><li>◦ The need to construct,</li><li>◦ The consideration of alternatives, or</li><li>◦ The selection of design or location;</li></ul></li><li>• Property is incorporated in the project to which the credit will be applied; and</li></ul> <p><b>The amount of the credit may be current fair market value <u>or</u> historic acquisition cost to acquire; however, this credit must be applied consistently within the project. 23 U.S.C. 323(b)(2).</b></p>

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement / Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
<b>3) State-funded Early Acquisition Eligible for future reimbursement</b>  23 CFR 710.501(d) 23 USC 108€	NO	NO	When legally permissible by State law.  And Proper paperwork is submitted to ODOT ROW HQ and FHWA authorizes the early acquisitions.	After NEPA is completed and real property interests are incorporated into the federal aid project and all applicable requirements are met.	YES	YES, if State law allows use of condemnation	<ul style="list-style-type: none"> <li>Property lawfully obtained by the State agency;</li> <li>Not 4F property; (unless Sec. 4F determination has been made by FHWA)</li> <li>Acquisitions and relocations comply with the Uniform Act;</li> <li>State agency complies with Title VI of the Civil Rights Act;</li> <li>FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed project including:               <ul style="list-style-type: none"> <li>The need to construct,</li> <li>The consideration of alternatives,</li> <li>The selection of design or location;</li> </ul> </li> <li>State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State transportation planning process;</li> <li>The State actually selects the alternative for which the real property interest is acquired pursuant to NEPA;</li> <li>Prior to approval for Federal participation, NEPA is completed; and</li> </ul> <b>Reimbursement is based on the usual costs to acquire—23 CFR 710.203(b)(1).</b>
<b>4) Federally funded Early Acquisition (Stand-alone project)</b>  23 CFR 710.501€ 23 USC 108(d)	YES, NEPA decision required for the early acquisition, stand-alone project only (not the transportation project).  Rarely applicable to ODOT project development. Consult ODOT ROW HQ and Division office for guidance on use of this method.	NO	After NEPA is complete for the Early Acquisition Project  Rarely applicable to ODOT project development. Consult ODOT ROW HQ and Division office for guidance on use of this method.	This is a reimbursable, stand- alone, Federal-aid Project based on FHWA authorization to proceed with acquisition	YES  Rarely applicable to ODOT project development. Consult ODOT ROW HQ and Division office for guidance on use of this method.	NO	<ul style="list-style-type: none"> <li>State certifies and FHWA concurs that the following requirements have been met:               <ul style="list-style-type: none"> <li>State has authority to acquire under State law;</li> <li>Is for a Title 23 eligible transportation project and does not involve 4F properties;</li> <li>Will not cause significant adverse environmental impacts as a result of the EA project or from cumulative effects of multiple EA projects;</li> <li>Will not limit the choice or otherwise influence the NEPA decision of FHWA;</li> <li>Will not prevent the lead agency from making an impartial decision as to alternatives;</li> <li>Is consistent with the State transportation planning process under 23 U.S.C. 135;</li> <li>Complies with other applicable Federal laws (including regulations);</li> <li>Will be acquired through negotiation, without the threat or use of condemnation.</li> <li>Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act;</li> <li>The Early Acquisition project is in the Transportation Improvement Plan; and</li> <li>NEPA for the Early Acquisition project is complete and approved by FHWA.</li> </ul> </li> <li>Real property interests acquired cannot be developed in anticipation of the transportation project until a NEPA decision for that transportation project has been completed. No development activity related to demolition, site preparation, or construction that is not necessary to protect health or safety may be undertaken.</li> <li>If reimbursement is made and the real property interests are not incorporated in a project within 20 years, FHWA must offset the amount against Federal-aid funds apportioned to the State.</li> <li>Eligibility for Relocation Assistance—a person is considered displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest. Options to purchase and similar agreements do not create an immediate commitment and do not create eligibility.</li> </ul> <p><b>Note:</b> The “Option” to purchase the property at a later day allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings.</p>

Table 2: Advance Acquisition (AA) Options & Requirements

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement / Credits	Comply w/ Federal Law	Subject to Condemnation	Requirements
1) Protective Buying 23 CFR 710.503	**Yes, typically a CE. See 23 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F.	Usually during the NEPA process. FHWA Division office must give prior approval.	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows	Development of the property is imminent.
2) Hardship Acquisition 23 CFR 710.503	**Yes, typically a CE. See 23 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F.	Usually during the NEPA process. FHWA Division office must give prior approval	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows. See comment	A request for hardship acquisition based on a property owner’s written submission.  Note: While the agency may condemn if a settlement cannot be reached on a hardship acquisition, great care should be taken to ensure that the decision is warranted both for the property owner and the agency.

\* Relevant Federal Law includes the Uniform Act, Title VI Civil Rights Act, and Federal Regulations (primarily, 23 CFR Part 710).

\*\*Note: Protective Buying and Hardship Acquisitions usually occur during the transportation project’s NEPA phase. However, prior to approving an AA, NEPA clearance is necessary for the AA parcels. This requires the AA parcels to be carved out from the overall project so that NEPA clearance provided on those parcels, typically in the form of a CE.

## **Chapter 7 – Condemnation and Alternate Dispute Resolution**

### **7.100 Introduction**

Eminent domain is the right of a government to appropriate private property for public use through condemnation. The Fifth Amendment to the U.S. Constitution states that “...nor shall private property be taken for public use, without just compensation.” Likewise, 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 public purposes.

The purpose of the ODOT condemnation process is to ensure that all private property rights needed for public purposes is acquired legally through a valuation and offer of payment of just compensation to property owners, while maintaining good stewardship of taxpayer resources and delivering public projects on schedule. In the event that a negotiated settlement cannot be reached, this process provides ODOT and property owners the option of an alternate dispute resolution (ADR) alternative, such as mediation, in lieu of a potential trial.

### **7.110 Policies**

The condemnation process shall be carried out in conformance with the policies of ODOT’s right of way section, ODOT’s right of way manual, all applicable state statutes, administrative rules, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and other applicable laws and regulations.

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 right.

The right of way section and Oregon Department of Justice (DOJ) trial division have agreed that all condemnation settlements must have prior approval of the deputy state right of way manager.

### **7.200 Responsibilities**

#### **7.210 Deputy State Right of Way Manager**

The deputy state right of way manager is appointed by the state right of way manager and is delegated the lead role in the condemnation process. In condemnation matters, the deputy state right of way manager is responsible for the following:

1. Provide departmental leadership to the DOJ trial attorneys.
2. Provide and distribute condemnation policies and procedural instructions, forms and other materials to appropriate right of way section and region staff.
3. In cooperation with the DOJ 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.
4. Review and approve DOJ condemnation expenditures.

5. Supervise and provide needed support for all right of way operations unit staff performing condemnation functions. Review the appraisal for condemnation purposes and recommend the amount for the final offer letter and the Complaint.

## **7.220 Right of Way DOJ Liaison**

The DOJ liaison is a senior right of way agent in the right of way operations unit who reports to the deputy state right of way manager. The DOJ liaison may also act in the role of the ADR coordinator if assigned that role by the deputy state right of way manager (see [Section 7.415](#)). The DOJ 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 as soon as the recommendation for condemnation (RC) packets are received from the regions.
3. Attempt further settlement contacts with the property owners and their attorneys where feasible, prior to and after the Department's filing a condemnation complaint in court.
4. Provide all needed assistance to the DOJ trial attorneys on condemnation files.
5. Keep the deputy state right of way manager informed of developments and status on condemnation files.
6. Attend pre-settlement and settlement hearings, as well as other court functions as needed by DOJ and by the deputy state right of way manager.
7. Remain in regular contact with the region right of way project manager through the course of the condemnation process for context specific to the right of way file, and with the region right of way manager/program manager in the event any monetary or non-monetary considerations are being considered for a settlement.
8. Consult with the region right of way manager/program manager in anticipation of trial or hearing regarding the appropriate region representative to serve in a testifying capacity before the court.

## **7.240 Title Services Specialist (Condemnation)**

The title services specialist (condemnation) is a member of the right of way operations unit whose responsibilities include:

1. Prepare and process all legal documents necessary to carry out the condemnation process.
2. Work with DOJ regarding the filing of condemnation complaints and other documents with the courts. Make deposits into court as well as final judgment payments.
3. Work with DOJ liaison to review RC packets sent in by the regions for completeness, accuracy and compliance with statutory requirements, and request necessary changes or corrections.
4. Assist the DOJ trial attorneys, the deputy state right of way manager, and DOJ liaison in condemnation matters, as needed.

5. Manage review of and distribution of trial and settlement reports.
6. Enter and maintain all pertinent condemnation data into RITS database.
7. Request fund withdrawal from court and dismissal of cases filed for condemnation and subsequently settled by region, ADR or the DOJ liaison.

### **7.250 Title Services Specialist**

The title services specialist reports to the deputy state right of way manager and has responsibility for all title-related activities on condemnation files. This includes:

1. Order supplemental title reports (STRs) to ensure 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 office 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 right of way operations unit condemnation staff.

### **7.260 Region Right of Way Manager/Region Right of Way Program Manager**

The region right of way manager/program manager has the authority to approve a file for RC and the subsequent handoff to the title services specialist (condemnation) and DOJ liaison.

The region right of way manager/program manager has the responsibility for coordinating any non-monetary or state's obligation settlement terms that directly impact the region's budget or project resources. region right of way manager/program manager must also be consulted on any final settlement amounts to confirm that the settlement is within the project budget.

### **7.270 Region Right of Way Project Manager**

The region right of way staff acting as project manager has responsibility for managing acquisition of all right of way files for a project up to the point an RC is made. Following an RC, it is generally the responsibility of the DOJ liaison to manage the acquisition through ODOT's condemnation process.

Under some circumstances, it can be appropriate for the region right of way office to temporarily remain the primary point of contact with the property owner following receipt of the final offer letter and RC as further discussed in [Section 7.330](#). The region right of way project manager and DOJ liaison should confer with the region right of way manager and deputy state right of way manager regarding the handoff of negotiating right of way files following RC.

As the expert on the project and acquisition file, region right of way project managers should remain in contact with the DOJ liaison following RC to provide context for any negotiation activities, including and especially if any non-monetary considerations are being requested by the property owner or suggested by the DOJ liaison. Any proposed state's obligations for the property owner should be vetted by the region through the right of way project manager.

## **7.280 Right of Way Consultants**

Right of way consultants may be used to perform some or all of the property acquisitions and resulting initiation of condemnation functions performed by right of way agents and/or right of way project managers discussed in this chapter. The extent of consultant use and level of responsibility will be detailed in the consultant contract. When consultants are working for ODOT, 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.

## **7.300 Condemnation Process Procedures**

### **7.310 Condemnation Resolution**

The condemnation resolution, also known as a resolution of necessity, declares the need to use condemnation for the described real property if necessary. The resolution is passed by the OTC or its delegee at the beginning of a project, and is discussed in more detail in Sections [1.321](#), [6.201](#), and [6.460](#).

### **7.320 Initiation of Condemnation**

If an acquisition agent cannot secure an agreement (with executed deeds and releases) from a property owner, the agent prepares an RC in RITS (see [Section 6.655 through Section 6.680](#)). The region right of way manager/program manager reviews the RC and if approved, the workflow moves to the title services specialist (condemnation) in headquarters.

Following an approved RC, a contiguous property report and a STR (when deemed necessary by the title services coordinator) are secured. The title services coordinator prepares a condemnation title report, listing interests and encumbrances of record.

The DOJ liaison reviews the file and recommends an administrative settlement or approves the issuance of a final offer letter.

### **7.330 Final Offer Letter**

After receiving the necessary supplemental reports from the title services coordinator, a final offer letter may be prepared by the title services specialist (condemnation), signed by the state 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 a 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 title services specialist (condemnation) also forwards a copy to the acquisition agent and DOJ liaison.



When the RC packet is sent in, the region indicates whether the acquisition agent would prefer to contact the property owners following the final offer letter, or whether the contact should be made by the DOJ liaison. The DOJ liaison will decide whether to allow the agent to continue negotiations.

### **7.340 Complaint**

Provided that all owners have had at least 40 days to consider the initial written offer, the title services specialist (condemnation) prepares a draft of the complaint proceedings in eminent domain in proper legal form, along with the summons and lis pendens, which are required for initiating the court action. The draft complaint and all appropriate attachments are forwarded to the DOJ trial division for review, along with a copy of the right of way file. The Assistant Attorney General handling the case examines the file, has the final complaint prepared, and signs it. The title services specialist (condemnation) in conjunction with the DOJ liaison and deputy state right of way manager authorizes DOJ to send the complaint to the appropriate court for filing.

### **7.350 Deposit and Possession**

The title services specialist (condemnation) 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 title services specialist (condemnation) prepares and sends a possession letter (with a 30-day notice when required), to all known defendants and deposits the money into court. The region takes possession of the property at the time possession is allowed.

### **7.360 Service of Summons**

Using a legal process service company or other appropriate service methodology, DOJ arranges to have the defendant property owners and persons of interest served with the court summons.

### **7.370 Court Process**

The owner pro se or the owner's 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 title services specialist (condemnation) obtains the certified copy of the judgment and prepares vouchers for payments in excess of the sum already deposited, plus calculations of interest owed and for attorney fees and other costs. Upon receipt of the check from highway finance, the title services specialist (condemnation) forwards it for deposit into court or follows other instructions received from DOJ per the judgment.

Settlements on a file that result in a stipulated judgment are also paid through the courts or as directed by the judgment or DOJ, then reviewed and processed by the title services specialist (condemnation).

The title services coordinator orders title insurance and records the certified judgment.

### **7.380 Case Load Management**

In order to ensure close coordination between the right of way section and the Trial Division, the personnel of both agencies will comply with the policies outlined in [Section 7.110](#).

The assigned trial attorney is responsible for keeping the deputy state right of way manager and the DOJ liaison informed regarding condemnation activities. 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 describe how the results are reasonable, prudent and in the public interest. After the state right of way manager or deputy state right of way manager signs the settlement report, copies are distributed by the title services specialist (condemnation) to FHWA. A copy is also provided to the property management unit if excess property is a part of the acquisition.

### **7.400 Alternate Dispute Resolution Options**

In an effort to settle right of way files prior to trial, the right of way section can consider using the ADR program as a tool when face-to-face negotiation has reached an impasse but could still potentially be resolved prior to trial. When it is deemed to be in the state's best interests, the right of way section may offer owners the option of a non-binding mediation using a third-party mediator agreed upon by both sides from the Section's approved list.

### **7.410 Responsibilities**

#### **7.415 Alternate Dispute Resolution Coordinator**

The ADR coordinator is a member of the right of way operations unit and reports to the deputy state right of way manager. The duties of this position are often performed by a DOJ liaison.

This position works with the deputy state right of way manager, trial division and region right of way staff to assess whether mediation should be offered to property owners in an attempt to reach a settlement.

## **Chapter 8 – Relocation**

### **8.100 General Section**

#### **Introduction to Relocation**

The “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” and the “Uniform Relocation Act Amendments of 1987” ensure the fair and equitable relocation and reestablishment of persons, businesses, farms and nonprofit organizations (NPOs) displaced as a result of federal or federally assisted programs. The purpose of this is to ensure that displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. It is the objective of the right of way section, through its relocation review component and of the region right of way offices, to ensure compliance with the Uniform Act and to implement rules and regulations. No project shall be advertised for construction until all eligible displacees have either obtained comparable replacement house or have the right of possession to comparable replacement housing, or an agent has offered them comparable replacement housing which is within their financial means and available for immediate occupancy.

### **8.101 Policies**

#### **8.102 Dissemination of Relocation Information**

Complete and correct relocation information shall be provided at project public meetings and to all potential displaced persons.

#### **8.103 Provision of Advisory Services**

Relocation advisory services shall be offered and promptly provided to all eligible persons, and, when determined necessary, to persons adjacent to the project area.

#### **8.104 Offer of Benefits**

All eligible displacees shall be informed of their relocation benefits and the requirements to obtain them. This shall be done both verbally and in writing. The most current benefits will be offered to displacees.

#### **8.105 Cannabis/Controlled Substance Operations**

If any relocation assistance is required in Federal-aid projects which include cannabis/controlled substance operations, these files must be separated out and charged to a state funded EA. For more information, see Section 3.322.

#### **8.110 Reports and Records**

The right of way section will maintain adequate reports and records to document all relocation efforts on any project. The reports and records shall be sufficient to indicate compliance with current relocation laws and regulations. Forms and records, including updated information, shall be promptly forwarded to the relocation reviewer in the right of way relocation review unit.

### **8.111 Confidentiality of Relocation Records**

Current policy in the Oregon Public Records Law states that every person has a right to inspect any record of a state agency, unless the record is excluded from disclosure by [ORS 192.501 through 192.505](#). Some relocation documents may qualify for exclusion from disclosure. Any third-party requests for disclosure of relocation information should be directed to the deputy state right of way manager or the relocation reviewer.

### **8.112 Title VI – Civil Rights Act**

Relocation policies and procedures under the administration of ODOT shall be non-discriminatory in accordance with Title VI of the Civil Rights Act of 1964, which states:

“Section 601: No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance.”

### **8.115 No Duplication of Payments**

No person shall receive any payment under relocation benefits if that person receives a payment under federal, state, or local law, or from insurance proceeds, which is determined by the right of way agent to have the same purpose and effect as such payment under this part.

ODOT is prohibited from making payment to a person under these regulations that would duplicate another payment the person receives under federal, state, or local law.

The right of way agent is not required to conduct an exhaustive search for such other payments; the agent is only required to avoid creating duplication based on their knowledge at the time a payment under these regulations is computed.

### **8.116 Project Relocation Offices**

When the region right of way manager/program manager believes a project relocation office is justified on any federal-aid project, the manager may establish a project office and determine the location, hours of operation and staffing.

### **8.117 Aliens Not Lawfully Present in the United States**

Relocation payments and relocation advisory services, pursuant to state and federal law, may not be provided to an alien unless the alien is lawfully present in the United States, except in cases of exceptional or extreme hardship. Displacees will be asked to sign a certification of legal residency in the United States.

This certification shall be obtained by having the displaced person complete and sign the Certification of Legal Residency in the United States form (RITS 2216 Form 734-2521). This should be done at initiation of negotiations or, for a tenant, as soon as possible after initiation of negotiations. The completed form shall be uploaded to RITS prior to relocation assistance or the payment of relocation claims.

Criteria for certification:

1. In the case of an individual, that he or she is either a citizen or national of the United States or an alien who is lawfully present in the United States.

2. In the case of a family, that each family member is either a citizen or national of the United States or an alien who is lawfully present in the United States. The head of the household may make the certification on behalf of other family members.
3. In the case of an unincorporated business, farm, or NPO, that each owner is either a citizen or national of the United States or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.
4. In the case of an incorporated business, farm, or NPO, that the corporation is authorized to conduct business within the United States.

If the agent determines that any member(s) of a household or owner(s) of an unincorporated business, farm, or NPO is (are) ineligible because of an unlawful presence in the United States, the agent shall contact the relocation reviewer for direction and approval before proceeding with relocation activities. Direction from the relocation reviewer will be based on individual situations and whether denial would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child when such spouse, parent, or child is a citizen, or an alien admitted for permanent residence.

In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or NPO is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to them. Any payment(s) for which such household, unincorporated business, farm, or NPO would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or NPO, based on the ratio of ownership between eligible and ineligible owners.

If a person who is a member of a family being displaced is in the United States unlawfully, that person's income shall not be excluded from the computation of the family income unless the agent is certain that the ineligible person will not continue to reside with the family. To exclude the ineligible person's income may result in a windfall by providing a higher relocation benefit to the remaining members of the household.

If ODOT has reason to believe that the certification of a person who has certified that they are a citizen or national is invalid, ODOT shall follow the processes in accordance with the Uniform Act (49 CFR 24.208) and Oregon Revised Statutes ([ORS 180.805](#), [ORS 180.810](#), and [ORS 181A.820 through ORS 181A.829](#)).

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section, unless such person can demonstrate to ODOT's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

For purposes of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

1. A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child.
2. A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member, or
3. Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

### **8.118 Relocation Payments Not Considered as Income**

No relocation payment received by a displaced person or person required to move temporarily under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (title 26, U.S.C.), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal law, except for any federal law providing low-income housing assistance.

Further, expenditure of relocation funds by displacee does not constitute federal financial assistance.

Displacees who are on public assistance should be advised to keep all ODOT correspondence to present as verification of their displacement and receipt of their relocation payments. The agent must make every effort to assist displacees in contacts with their caseworkers during the relocation process.

### **8.120 Persons Required to Move Temporarily**

1. Appropriate notices must be provided in accordance with Section 8.130, 8.330, 8.530, and 8.730, and appropriate advisory services must be provided in accordance with Section 8.103, 8.160, 8.303, 8.360, 8.503, 8.560, 8.703, and 8.760.
2. For persons occupying a dwelling, at least one comparable dwelling, is made available prior to requiring a person to move, except in the case of an emergency move such as:
  - a. A major disaster (as defined in Section 02 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122); or
  - b. A presidentially declared national emergency; or
  - c. Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.
3. If a person's business will be shut down due to a project which either requires the occupant to vacate the property or which denies physical access to the property, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be permanently displaced at ODOT's option.

4. Payment is provided for all out-of-pocket expenses incurred in connection with the temporary relocation as ODOT determines to be reasonable and necessary, associated with comparable replacement dwelling, and incidental to selecting a temporary comparable replacement dwelling. Such payments may include the reasonable and necessary costs of temporarily moving personal property from the real property and returning to the real property. Storage of the personal property may be allowed when approved by ODOT.
5. A person's temporary move from their dwelling or business for the project may not exceed 12 months. ODOT must contact any person who has temporarily moved from their dwelling or business when that temporary move has lasted for a period beyond 12 months because that person is considered permanently displaced and eligible as a displaced person. ODOT shall offer such eligible persons all required relocation assistance benefits and services for permanently displaced persons. ODOT may not deduct any temporary relocation assistance benefits previously provided when determining permanent relocation benefits eligibility; and
6. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 8.117 is not eligible for temporary relocation assistance unless such denial of benefits would create an extremely unusual hardship to a designated family member in accordance with 8.117.

## **8.127 Transfer of Ownership**

Upon request and in accordance with applicable law, the displacee shall transfer to ODOT ownership of any personal property that has not been moved, sold, or traded in, pursuant to [Section 9.135](#).

## **8.130 Notices and Forms**

### **8.131 General Information Notice**

After project authorization the region right of way staff must deliver a general information notice, which may include acquisition and relocation flyers, and a copy of the right of way map, marked "Preliminary" showing the parcel(s) to be purchased to property owners, contract purchasers, permanent or temporary displacees, or other persons determined to be directly affected by the acquisition.

The general information notice form is available in RITS (document ID 2005). The project manager updates RITS with the GIN Date and other details and uploads the completed form to RITS. In order to avoid duplication of effort, this is generally done by the project manager at the initiation of the appraisal phase. If the occupant will be displaced, it must be sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery.

### **8.132 Notice of Intent to Acquire**

In rare instances, the right of way administration may establish a permanent or temporary displacee's eligibility for relocation benefits prior to initiation of negotiations for the parcel. At such times, the relocatee is given a notice of intent to acquire, qualifying that person for relocation benefits.

As a rule, this practice is discouraged, because serious problems could result if the acquisition process is delayed or if the project is cancelled. The preferred procedure, where the displacee may suffer a hardship, is to obtain an appraisal and initiate negotiations as soon as possible.

However, in those few cases where the agent determines that a notice of intent to acquire is necessary, approval for the notice must be obtained from the deputy state right of way manager. Conditions for approval of a notice of intent include, but may not be limited to the following:

1. The project, including the subject file, has already been approved for acquisition.
2. The displaced person can show a real need for the Letter of Intent to Acquire.
3. It is not possible to initiate negotiations in time.
4. Negotiations will be initiated in a reasonable and timely manner.

### **8.133 The Offer-Benefit Letter**

Eligibility for relocation assistance shall begin on the date of the initiation of negotiations for acquiring the occupied property or the receipt of notice of intent to acquire the property.

The agent may either meet in person with the owners or affected tenants to deliver their offer benefit letters or send the letter and flyers by United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. (see [Section 6.460](#) regarding the initiation of negotiations by mail or delivery service.). The letter to tenants must be delivered as soon as possible after initiation of negotiations. The agent must follow up by attempting to make a personal contact with any displacees as soon as possible after initiation of negotiations.

The agent must be certain that the date on the offer benefit letter to the owner is the date of initiation of negotiations. The letter to the tenant should be dated the date of delivery.

The offer benefit package should be assembled in the following combinations by type of displacee:

#### **Personal Property Only (Owner-Occupant)**

1. Offer Benefit Letter
2. Relocation Benefit Summary, Personal Property Only (RITS 2212 Form 734-2963)

#### **Personal Property Only (Tenant-Occupant)**

1. Offer Benefit Letter with 90-day Notice
2. Relocation Benefit Summary, Personal Property Only (RITS 2212 Form 734-2963)

#### **Residential (Owner-Occupant)**

1. Offer Benefit Letter
2. Relocation Benefit Summary, Residential (RITS 2210 Form 734-1715)

#### **Residential (Tenant-Occupant)**

1. Offer Benefit Letter with 90-day Notice
2. Relocation Benefit Summary, Residential (RITS 2210 Form 734-1715)



**Non-residential (Owner-Occupant)**

1. Offer Benefit Letter
2. Relocation Benefit Summary, Non-residential (RITS 2211 Form 734-1717)

**Non-residential (Tenant-Occupant)**

1. Offer Benefit Letter with 90-day Notice
2. Relocation Benefit Summary, Non-residential (RITS 2211 Form 734-1717)

In certain situations when the standard letter is not appropriate, the agent may prepare an individualized offer benefit letter with the approval of the region right of way manager/program manager.

**8.131 90-Day Notice to Vacate**

Lawful occupants shall not be required to move unless they have received at least 90 days advance written notice of the earliest date by which they may be required to move.

Notices to vacate are not required when the property being acquired is vacant and unused or if the occupant's move of their own volition prior to the time the notice would have been given. Notices are required for any acquisition from which personal property must be relocated.

If the agent determines that the notice is not necessary, the offer benefit forms should be modified to delete the notice language. If the agent determines that the notice is necessary, the following 90-day notice must be included in the offer benefit letter delivered to owners on the date of initiation of negotiations:

Notice To Vacate:

“The state will not require you to vacate the property being acquired earlier than 90 days following the date of this letter or within 30 days after payment (less deposits), whichever is later. You will be given the specific date to vacate the area acquired when payment is made to you.”

The agent includes the following 90-day notice to tenants in the offer benefit letter when appropriate:

Notice To Vacate:

“The state will not require you to vacate the property being acquired earlier than 90 days from the date of this letter or within 30 days after final payment to the property owner, whichever is later.

You will be notified at least 30 days before you must vacate.”

These notices can only be given if the displacees are advised of the dollar amount of their replacement housing benefits. In some cases, it may be desirable to make the offer to purchase prior to completion of the relocation study. This may be done as long as the 90-day notice is not included in the offer letter.

The appropriate notice must be given upon presentation of the replacement housing benefits. In unusual circumstances, where there is an urgent need to protect their health and safety, occupants may be required to vacate the property on less than 90 days advance written notice, if the deputy state right

of way manager determines that a 90-day notice is impractical. Such cases would be when continued occupancy would constitute a substantial danger to the health or safety of the occupants. A copy of this determination must be documented in the file.

### **8.132 30-Day Notice to Vacate**

The 30-day notice to vacate to owners will be included in the closing letter accompanying final payment sent by the central office or the letter notifying the owner of the date of deposit into court.

The agent must deliver a written 30-day notice of final payment for the property to tenants (RITS 2062 ODOT Form 734-3972,) as soon as the region receives notice of payment. This notice must contain the specific date by which the tenant must vacate the property.

For residential displacees, it is vitally important that the agent ascertain if the comparable dwelling on which the replacement housing benefit study was based or equally comparable replacement dwellings in the same price range are available on the date the 30-day notice is given. If the original dwelling on which the replacement housing benefit was based or equally comparable dwellings in the same price range are not available, then a new replacement housing study shall be prepared. If a new study is necessary, the 30-day notice must be given in writing as of the date comparable replacement housing is made available to the displacee.

The agent shall bear in mind the amount of time necessary to close the purchase of a replacement property and monitor the availability of replacement dwellings in order that the displacee is given enough time to close the purchase of the replacement property and move before the required vacation date.

### **8.133 Relocation Report of Personal Interview**

An entry into the RITS diary of contacts is to be made each time an agent makes a personal contact with landowners, displacees, or their representatives. All relevant discussions regarding the acquisition or relocation transaction should be recorded. The time spent in relocation discussions should be charged to the relocation activity code. Relocation interviews conducted subsequent to submission of a final report packet or recommendation for condemnation must also be documented and uploaded to RITS for subsequent review by the relocation reviewer.

### **8.134 Certification of Legal Residency Form**

Relocation payments and relocation advisory services, pursuant to state and federal law, may not be provided to an alien unless the alien is lawfully present in the United States, except in cases of exceptional or extreme hardship. Displacees will be asked to sign a Certification of Legal Residency in the United States.

This certification shall be obtained by having the displaced person complete and sign the Certification of Legal Residency in the United States form (RITS 2216 Form 734-2521). This should be done at initiation of negotiations or, for a tenant, as soon as possible after initiation of negotiations. The completed form shall be uploaded to RITS prior to relocation assistance or the payment of relocation claims. (See [Section 8.117](#).)

## **8.140 Procedures**

## **8.141 Planning**

## **8.142 Relocation Planning**

During the early stages of development, federal and federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations (NPOs) are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by ODOT which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

1. An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.
2. An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households permanently or temporarily displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.
3. An estimate of the number, type and size of the businesses, farms, and NPOs to be displaced and the approximate number of employees that may be affected.
4. An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing or temporarily moving the businesses should be considered and addressed. Planning for permanently or temporarily displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.
5. Consideration of any special relocation advisory services that may be necessary from the agency displacing a person and other cooperating agencies.

The planning information gathered in the survey or study is generally incorporated in the EIS or the EA document and the right of way cost estimate developed.

## **8.143 Relocation Information during Project Development**

Information regarding relocation benefits must be provided by the region staff at project public meetings and hearings and to any interested persons who inquire about relocation benefits. This is done by:

1. Reading record information regarding the relocation program at a public meeting.

2. Answering questions regarding the relocation program.
3. Providing copies of the flyer “Moving Because of Highway or Public Projects?” (RITS 2205/2206 Form 734-3772/3775S).
4. Providing advisory services.

### **8.144 Relocation Responsibilities at Initiation of Negotiations**

The agent must carry out several relocation responsibilities at initiation of negotiations, including:

1. Delivering to the owner and any tenant occupants to be displaced as a result of the acquisition, the appropriate Terms of State’s Offer Letter, the flyers “Moving Because of Highway or Public Projects?” (RITS 2205/2206 Form 734-3772/3772S), “Acquiring Land for Highways & Public Projects” (RITS 2009/2010 Form 734-3773/3773S), and FHWA’s relocation booklet, “Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program”.
2. Providing detailed information regarding all available benefits, including time limitations for claims and other restrictions.
3. Informing all residential displacees in writing of the specific comparable dwelling(s) used, advising if it has or has not been inspected, and the price or rent used to establish the maximum replacement housing benefit.
4. Offering all residential displacees transportation to inspect housing to which they are referred.
5. Explaining to residential displacees eligible for replacement housing payments the necessity of a replacement housing inspection, the requirements for decent, safe, and sanitary housing, and the possibility of a relocation carve-out.
6. Entering eligibility listing information and generating offer benefit letters through the Right of Way Information Tracking System (RITS).

### **8.146 Instructions for Completing Occupant Interview Form**

The agent completes the Relocation Occupant Interview (RITS 2220 Form 734-3600, RITS 2221 Form 734-2613 and RITS 2222 Form 734-5017) during the occupant interview. See [Section 8.160](#) for details of Advisory Services and [Sections 8.346](#), [8.546](#) and [8.746](#) for occupant interview instructions for each relocation type.

The Residential Occupant Interview (RITS 2220 Form 734-3600) contains personal data. DO NOT upload to RITS. Fax the completed form to the relocation reviewer. The agent and the reviewer will keep the original document and the faxed copy until the relocation file is closed, after which the documents will be shredded.

### **8.154 Ineligible Moving and Related Expenses**

The following is a nonexclusive list of payments a displaced person is not entitled to:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this does not preclude the computation under [Section 8.605](#), or
2. Interest on a loan to cover moving expenses, or
3. Loss of goodwill, or
4. Loss of profits, or
5. Loss of trained employees, or
6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in [Section 8.797](#) regarding reestablishment expenses, or
7. Personal injury, or
8. Any legal fee or other cost for preparing a claim for relocation payment or for representing the claimant before ODOT, or
9. Expenses for searching for a temporary or replacement dwelling which include costs for mileage, meals, lodging, time and professional real estate broker or attorney fees, or
10. Physical changes to the real property at the temporary or replacement location of a business or farm operation except as provided in [Section 8.782](#) regarding utility reconnection and personal property adaptation and in [Section 8.797](#), regarding reestablishment expenses, or
11. Costs for storage of personal property on real property already owned or leased by the displaced person or person to be moved temporarily, or
12. Refundable security and utility deposits, and
13. Cosmetic changes to a replacement or temporary dwelling, which are not required by State or local law, such as painting, draperies, or replacement carpet or flooring.

### **8.155 Determining Displacement as a Result of a Partial Acquisition**

Many partial acquisitions leave residential or business improvements on the remainder. Sometimes region personnel face the problem of determining whether these occupants will be displaced from that remainder. One example of when relocation may occur in this circumstance is when the impact of the acquisition will diminish the earning potential of a business or farm to such an extent that it would not be a viable economic unit.

In the case of partial acquisitions where it is not obvious that the occupants would be displaced from the remainder, such as where there may be a loss of parking, the region right of way manager/program manager or project manager in the region shall make a preliminary determination of who is eligible for displacement as a direct result of the acquisition. Where there is no indication of displacement in the appraisal report, then determination of displacement should be supplemented by statements of justification and documentation why the occupants are eligible for displacement.

This preliminary determination of displacement shall be submitted to the relocation reviewer and approved by the deputy state right of way manager prior to relocation assistance or benefits being offered to the occupant(s) in question.

On such properties, where the occupants are determined to be eligible for displacement from the remainder, all claims for relocation benefit payments must be submitted by the claimant within 18 months of:

1. For tenants, the date of displacement from the acquisition area, or, if no displacement from the acquisition area, the date ODOT takes physical possession of the property.
2. For owners, the date of displacement from the acquisition area, or, if no displacement from the acquisition area, the date of the final payment for acquisition of the real property or deposit into court in the case of condemnations, whichever is later.

## **8.160      Advisory Services**

### **8.161      Eligibility - Advisory Assistance**

All displacees from public projects are eligible for advisory assistance. In addition, those who occupy property adjacent to real property being acquired may be eligible for advisory assistance if the region right of way manager/program manager and the deputy state right of way manager determine that there may be substantial economic injury because of their proximity.

### **8.162      Advisory Assistance**

ODOT shall carry out a relocation assistance advisory program which satisfies the requirement of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*, as amended), and Executive Order 11063 (3 CFR, 1959-1963 Comp., p 652). The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to provide relocation assistance.

The agent shall assist both residential and non-residential displacees by:

1. Minimizing hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.
2. Supplying persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans, and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and that duplication of functions is minimized.

Any person, who occupies property acquired by ODOT, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by ODOT.

## **Residential**

The agent shall assist residential displacees in the following manner:

1. Determine the relocation needs and preferences of each person to be displaced, or temporarily displaced when ODOT determines it to be necessary; and
2. Explain the relocation payments and other assistance for which the person may be eligible, along with the related eligibility requirements and procedures for obtaining such assistance.

This shall include a personal interview with each residential displaced person and, when ODOT determines it to be necessary, each temporarily displaced person.

The agent must provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings and explain that the displacee cannot be required to move until at least one comparable replacement dwelling is made available.

As soon as feasible, ODOT shall inform displacees in writing of the specific comparable replacement dwelling, the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination, so that the displacees are aware of the maximum replacement housing payment for which they may qualify.

The agent should always attempt to inspect comparable replacement housing prior to its being made available to ensure that it meets applicable standards. If such an inspection is not done, the displacee shall be notified in writing of the reason that an inspection was not made and, that if the comparable is purchased or rented by the displaced person, a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

Whenever possible, minority persons, including those temporarily displaced, shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings not located in the area of minority concentration, that are within their financial means. This policy, however, does not require ODOT to provide a larger payment than necessary to enable a person to relocate to a comparable replacement dwelling.

The agent should be aware of the individual needs of the different groups of people - minority and non-minority - and use methods which will ensure that relocation program services, benefits, and opportunities are provided equally to persons affected by the programs.

All persons shall be offered transportation to inspect housing to which they are referred. Any displaced person who may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see [Glossary](#)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

## **Non-residential**

The agent shall assist non-residential displacees in the following manner:

1. Determine, for non-residential (businesses, farm and NPOs) displacements, the relocation needs and preferences of each business (farm and NPO) to be displaced or, when determined to be necessary by ODOT, temporarily displaced; and
2. Explain the relocation payments and other assistance for which the business may be eligible, as well as the related eligibility requirements and the procedures for obtaining such assistance.

This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

1. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
2. Determination of the need for outside specialists that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
3. For businesses, an identification and resolution of personalty and/or realty issues. Every effort must be made to identify and resolve personalty and/or realty issues prior to, or at the time of, the appraisal of the property.
4. An estimate of the time required for the business to vacate the site.
5. An estimate of the anticipated difficulty in locating a replacement property.
6. An identification of any advance relocation payments required for the move, and ODOT's legal capacity to provide them.
7. Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location.

### **8.163 No Waiver of Relocation Assistance/Benefits**

ODOT may not propose or suggest that a displaced person waive their rights or entitlements to relocation assistance and benefits as provided in the Uniform Act and detailed in this chapter. After having been fully advised in writing by the department of all eligible payments and benefits to which they are entitled, a displaced person may, by written statement, refuse some or all of those benefits on their own initiative.

### **8.164 Applicability**

These requirements apply to the relocation of any permanently or temporarily displaced person as defined in the glossary. Any person who qualifies as a displaced person must be fully informed of their rights and entitlements to relocation assistance and payments provided by the Uniform Act and these procedures.



## **8.270 Appeals**

### **8.271 Right of Appeal**

All displacees have the right of appeal as to their eligibility for, or the amount of, payment for any relocation benefit. The right of appeal shall be described in information distributed at public meetings and to individual displacees as part of the information delivered at the initiation of negotiations.

### **8.272 Denials**

If the relocation reviewer, or the region right of way manager, when permitted, disallows all or any part of a payment claimed, or refuses to consider a claim because of untimely filing or on other grounds, the claimant shall be promptly notified in writing. This notification should include the basis for the denial and the procedures for appealing that determination.

### **8.273 Appeals**

The agent shall provide the displacee with RITS 2270 Form 734-3623 for any appeal of relocation assistance.

The relocation appeal process is an administrative rule subject to the Administrative Procedures Act 734-001-0025:

1. Within 60 days of a final determination granting or denying eligibility for a relocation payment, or of an amount of payment under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) and any regulations adopted thereunder, any person dissatisfied with such determination may file a request for appeal upon forms provided by ODOT.
2. The relocation appeal process and hearing concerning the determination of eligibility or amount of payment shall be conducted as a contested case pursuant to the Oregon Administrative Procedures Act, [ORS 183.310 through 183.550](#), and
3. An optional reconsideration conference may be offered.

Within 60 days of a final determination granting or denying eligibility for a relocation payment or of an amount of payment under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 (Public Law 91-646) and any regulations adopted thereunder, a person dissatisfied with such final determination may petition for a reconsideration conference upon forms provided by ODOT.

A reconsideration conference is an optional process, which must be agreed to by both the claimant and ODOT, that occurs prior to the formal appeal process identified in (1) and (2) and is an opportunity for a claimant to provide additional relevant information that was not considered by ODOT or to correct factual errors and for the department to reconsider the claim with the new or corrected information.

The time period to file a request for an appeal pursuant to subsection (1) shall be stayed from the date of request for a reconsideration conference until ODOT either issues a decision to

decline the request for a reconsideration conference, or until ODOT issues a determination after the reconsideration conference.

ODOT will arrange for the reconsideration conference within 60 days of receipt of the claimant’s request for the conference, or as soon thereafter as all parties can be assembled.

ODOT’s final determination resulting from the reconsideration conference will be issued in writing within 60 days of the conference. If the full relief requested by claimant is not granted, ODOT shall inform the claimant that the determination is ODOT’s final decision and that the claimant may seek judicial review by filing an appeal pursuant to subsection (1) above.

## **8.274 File Closing**

### **8.275 Relocation Activity and Closing Report**

Any file involving relocation requires that the agent mark the relocation file “closed” in RITS. RITS will not allow the file to be closed until all required relocation activities are complete.

RITS provides a field for relocation closing notes. All relocation data and documents (except those with personal information) are stored in RITS.

## **8.280 Roles and Responsibilities**

### **8.281 Deputy State Right of Way Manager**

The deputy state right of way manager serves as the state relocation manager with responsibilities including:

1. Determining on a case-by-case basis whether other moving related expenses are reasonable, necessary and actual and therefore eligible for payment.
2. Reconsidering items not listed as reimbursable under non-residential reestablishment to determine those that are essential to the reestablishment of the business.
3. Providing prior determination of displacee’s request for actual cost moves to be utilized.
4. Approving determination to utilize and provide replacement housing of last resort.
5. Approving other items determined to be reasonable, necessary, and actual.

### **8.282 Right of Way Lead Relocation Reviewer**

The deputy state right of way manager appoints the lead relocation liaison. It is the responsibility of the lead relocation liaison to:

1. Assist the administration in any matters relating to relocation.
2. Prepare and distribute policy and procedural instructions, forms, and other materials necessary to ensure the professional quality of the relocation program.
3. Coordinate relocation and relocation review policy and procedures with applicable state and federal laws to ensure equitable treatment of displacees and maximum federal participation in project costs.

4. Have each relocation reviewed for accuracy, completeness, and adequacy of documentation and to see that deficiencies are corrected.
5. Recommend in-service training or other courses on relocation principles and practices for agents to the deputy state right of way manager.

### **8.283 Relocation Reviewer**

The relocation reviewer is a senior agent in the operations unit. It is the responsibility of the relocation reviewer to:

1. Review environmental documents and reports to ensure that relocation planning is adequate and current.
2. See that the relocation objectives of the policy & quality control unit are met.
3. Review relocation activities of region offices to ensure full compliance with state and federal policies and regulations.
4. Assist region personnel with relocation problems.
5. Keep region offices advised of any changes in the law or regulations which govern relocation.
6. Keep complete records of relocation activities on all files.
7. Coordinate the relocation appeal hearing process by informing displacees of the Section's policies and procedures, convening the appeal hearing, and advising the hearings officer regarding these policies and procedures.
8. Serve as a liaison between the Federal Highway Administration and ODOT, such as by requesting interpretations of the act or regulations, and handling citations issued by the Federal Highway Administration.

### **8.284 Region Right of Way Manager/Program Manager**

The region right of way manager/program manager shall designate a project manager to coordinate the provision of relocation services within the scope of the project.

### **8.285 Project Manager**

The project manager is a senior agent in a region office responsible for region review of relocation claims prepared by agents when they are uploaded to RITS for processing. Project managers are also responsible for providing guidance in relocation matters.

### **8.286 Right of Way Agent**

After the project footprint is established, the need for personal property, residential, and non-residential displacements shall be determined. The right of way agent giving relocation assistance is responsible for providing current and continuing information and assistance throughout the relocation process, including but not limited to:

1. A personal interview conducted with each occupant to determine the relocation needs and preferences of each person being displaced.

2. An explanation of eligibility requirements for relocation payments and the appeal process.
3. Translation services to adequately explain the relocation program to persons with limited English proficiency.
4. Information on the availability, purchase prices and rental costs of comparable residential replacement dwellings and/or nonresidential sites.
5. Assurance that no residential displacees will be required to move unless at least one comparable replacement dwelling is made available.
6. Inspection of the residential replacement property to ensure it meets decent, safe and sanitary standards.
7. Offer of transportation for all residential displacees to inspect housing to which they are referred.
8. Assistance in locating and obtaining a replacement property, including assistance in completing required applications and other forms.
9. Assistance in completing the relocation claim forms, and if necessary, a request for appeal.
10. Counseling advice as to other sources of benefits that may be available, such as information on federal and state housing programs, disaster loans, and other programs.
11. Other advisory assistance, as needed, to minimize hardship.

Relocation assistance activities vary according to the type of relocation (personal property only, residential, and non-residential) and the complexity of the relocation situation. If personal contact cannot be made, the agent shall document the file to show that conscientious efforts to make personal contact were made and why such efforts were unsuccessful.

## **8.287 Right of Way Consultants**

On a given project, right of way consultants may be hired to perform some or all of the field relocation 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 Personal Property Only**

### **8.301 Policies**

### **8.303 Provision of Advisory Services**

Relocation advisory services shall be offered and promptly provided to all eligible persons, and, when determined necessary, to persons adjacent to the project area.

### **8.304 Offer of Benefits**

All eligible displacees shall be informed of their relocation benefits and the requirements to obtain them. This shall be done both verbally and in writing. The most current benefits will be offered to displacees.

### **8.305 Reminder of Benefits**

Displacees who are potentially eligible for relocation benefits but have not fulfilled the requirements for payment shall be sent timely written notifications of the possible loss of benefits and their expiration dates. The agent is responsible for reminding displacees of these time limitations and assisting them in filing timely claims.

### **8.306 90-Day Provisional Notice to Vacate**

A 90-day notice will be given to all eligible persons lawfully occupying property within a project area who are required to relocate or have personal property to be moved.

### **8.307 30-Day Notice to Vacate**

All occupants required to relocate will be given a 30-day notice to vacate. This notice will not be given prior to payment for the real property. At least one comparable replacement housing unit must be available within the financial means of the displacees at the time the notice is delivered to residential occupants.

### **8.315 No Duplication of Payments**

No person shall receive any payment under relocation benefits if that person receives a payment under federal, state, or local law, or from insurance proceeds, which is determined by the right of way agent to have the same purpose and effect as such payment under this part.

ODOT is prohibited from making payment to a person under these regulations that would duplicate another payment the person receives under federal, state, or local law.

The right of way agent is not required to conduct an exhaustive search for such other payments; the agent is only required to avoid creating duplication based on their knowledge at the time a payment under these regulations is computed.

### **8.327 Transfer of Ownership**

Upon request and in accordance with applicable law, the displacee shall transfer to ODOT ownership of any personal property that has not been moved, sold, or traded in, pursuant to Chapter 9.135, Taking Possession.

### **8.330 Notices and Forms**

#### **8.331 General Information Notice**

After project authorization the region right of way staff must deliver a general information notice, acquisition and relocation flyers, and a copy of the right of way map, marked

“Preliminary” showing the parcel(s) to be purchased to property owners, contract purchasers, displacees, or other persons determined to be directly affected by the acquisition.

The general information notice form is available in RITS (document ID 2005). The project manager updates RITS with the GIN Date and other details and uploads the completed form to RITS. In order to avoid duplication of effort, this is generally done by the project manager at the initiation of the appraisal phase. If the occupant will be displaced, it must be sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery.

### **8.332 Notice of Intent to Acquire**

In rare instances, the right of way administration may establish a displacee’s eligibility for relocation benefits prior to initiation of negotiations for the parcel. At such times, the relocatee is given a notice of intent to acquire, qualifying that person for relocation benefits.

As a rule, this practice is discouraged, because serious problems could result if the acquisition process is delayed or if the project is cancelled. The preferred procedure, where the displacee may suffer a hardship, is to obtain an appraisal and initiate negotiations as soon as possible.

However, in those few cases where the agent determines that a notice of intent to acquire is necessary, approval for the notice must be obtained from the deputy state right of way manager. Conditions for approval of a notice of intent include, but may not be limited to the following:

1. The project, including the subject file, has already been approved for acquisition.
2. The displaced person can show a real need for the letter of intent to acquire.
3. It is not possible to initiate negotiations in time.
4. Negotiations will be initiated in a reasonable and timely manner.

### **8.333 The Offer Benefit Letter**

Eligibility for relocation assistance shall begin on the date of the initiation of negotiations for acquiring the occupied property or the receipt of notice of intent to acquire the property.

The agent may either meet in person with the owners or affected tenants to deliver their offer benefit letters or send the letter and flyers by United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. (see [Section 6.460](#) regarding the initiation of negotiations by mail or delivery service). The letter to tenants must be delivered as soon as possible after initiation of negotiations. The agent must follow up by attempting to make a personal contact with any displacees as soon as possible after initiation of negotiations.

The agent must be certain that the date on the offer benefit letter to the owner is the date of initiation of negotiations. The letter to the tenant should be dated the date of delivery.

The offer benefit package should be assembled in the following combinations by type of displacee:

### **Personal Property Only Owner-Occupant**

1. Offer Benefit Letter
2. Relocation Benefit Summary, Personal Property Only (RITS 2212 Form 734-2963)

### **Personal Property Only Tenant-Occupant**

1. Offer Benefit Letter with 90-day Notice
2. Relocation Benefit Summary, Personal Property Only (RITS 2212 Form 734-2963)

In certain situations when the standard letter is not appropriate, the agent may prepare an individualized offer benefit letter with the approval of the region right of way manager/program manager.

### **8.334 90-Day Notice to Vacate**

Lawful occupants shall not be required to move unless they have received at least 90 days advance written notice of the earliest date by which they may be required to move.

Notices to vacate are not required when the property being acquired is vacant and unused or if the occupant's move of their own volition prior to the time the notice would have been given. Notices are required for any acquisition from which personal property must be relocated.

If the agent determines that the notice is not necessary, the offer benefit forms should be modified to delete the notice language. If the agent determines that the notice is necessary, the following 90-day notice must be included in the offer benefit letter delivered to owners on the date of initiation of negotiations:

Notice To Vacate:

“The state will not require you to vacate the property being acquired earlier than 90 days following the date of this letter or within 30 days after payment (less deposits), whichever is later. You will be given the specific date to vacate the area acquired when payment is made to you.”

The agent includes the following 90-day notice to tenants in the offer benefit letter when appropriate: Notice To Vacate:

“The state will not require you to vacate the property being acquired earlier than 90 days from the date of this letter or within 30 days after final payment to the property owner, whichever is later.

You will be notified at least 30 days before you must vacate.”

### **8.335 30-Day Notice to Vacate**

The 30-day notice to vacate to owners will be included in the closing letter accompanying final payment sent by the central office or the letter notifying the owner of the date of deposit into court.

The agent must deliver a written 30-day notice of final payment for the property to tenants (RITS 2062 ODOT Form 734-3972,) as soon as the region receives notice of payment. This notice must contain the specific date by which the tenant must vacate the property.

### **8.336 Relocation Report of Personal Interview**

An entry into the RITS diary of contacts is to be made each time an agent makes a personal contact with landowners, displacees, or their representatives. All relevant discussions regarding the acquisition or relocation transaction should be recorded. The time spent in relocation discussions should be charged to the relocation activity code. Relocation interviews conducted subsequent to submission of a final report packet or recommendation for condemnation must also be documented and uploaded to RITS for subsequent review by the relocation reviewer.

### **8.337 Certification of Legal Residency Form**

Relocation payments and relocation advisory services, pursuant to state and federal law, may not be provided to an alien unless the alien is lawfully present in the United States, except in cases of exceptional or extreme hardship. Displacees will be asked to sign a certification of legal residency in the United States.

This certification shall be obtained by having the displaced person complete and sign the certification of legal residency in the United States (RITS 2216 Form 734-2521,). This should be done at initiation of negotiations or, for a tenant, as soon as possible after initiation of negotiations. The completed form shall be uploaded to RITS prior to relocation assistance or the payment of relocation claims. (See [Section 8.117](#).)

### **8.340 Procedures**

#### **8.341 Planning**

#### **8.344 Relocation Responsibilities at Initiation of Negotiations**

The agent must carry out several relocation responsibilities at initiation of negotiations, including:

1. Delivering to the owner and any tenant occupants to be displaced as a result of the acquisition, the appropriate Terms of State's Offer Letter, the flyers "Moving Because of Highway or Public Projects?" (RITS 2205/2206 Form 734-3772/3772S), "Acquiring Land for Highways & Public Projects" (RITS 2009/2010 Form 734-3773/3773S), and FHWA's relocation booklet, "Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program".
2. Providing detailed information regarding all available benefits, including time limitations for claims and other restrictions.
3. Entering eligibility listing information and generating offer benefit letters through the Right of Way Information Tracking System (RITS).



### **8.346 Instructions for Completing Occupant Interview Form**

The agent completes the Relocation Personal Property Interview (RITS 2222 Form 734-5017) during the occupant interview. See [Section 8.360](#) for details of advisory services.

### **8.347 Moves of Personal Property Only**

Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or non-profit organization include those expense described in [Section 8.370](#) and [Section 8.381 through 8.388](#).

Move options available for moves of personal property only are common carrier move ([Section 8.375](#)); self-move based on estimates and move cost finding ([Section 8.376](#)), or self-move based on actual cost ([Section 8.377](#)). A combination of two or more of these moves may be used if appropriate and reasonable and necessary. Agents are to follow normal procedures for each of these types of moves as outlined in the Sections noted above.

### **8.350 Move Agreement Review and Approval**

After completing the benefit determination, the agent creates the move agreement in RITS and initiates the move agreement workflow.

After preliminary review by the project manager, RITS sends the determination to the relocation reviewer.

The relocation reviewer examines all aspects of the determination and either approves the move agreement in RITS or, if there are questions about the determination, the relocation reviewer may do a field examination or request additional information from the region.

### **8.351 Move Specifications**

Move specifications are instructions as to how the move is to be performed. They are contained in a detailed, written agreement between the displacee and the right of way unit on what is to be moved, how it is to be moved, and where it will be moved. Further, it becomes the basis for preparation of the estimates because it informs the estimator of what must be done to accomplish the move and must be reviewed by the relocation reviewer prior to commencement of the move.

The following are some of the details that must be included in the specifications:

1. The order in which the move is to occur (to minimize down time and facilitate move monitoring).
2. The timing of the move should be specifically addressed (Is a weekend or a night move justified? How many days will the move take? etc.)
3. Items requiring special handling, packing, detachment and/or reinstallation need to be identified.
4. An inventory of the items to be moved needs to be developed prior to the move and adjustments, if any, to the inventory need to be made prior to the move.
5. A specific replacement site needs to be identified.

6. Unique circumstances of the move need to be addressed, such as whether convenient loading docks or elevators will be available during the move.

The move specifications should be developed in collaboration with the displacee. In specialized or complex moves, the specifications may require the assistance of a consultant who has expertise in the type of property or business being moved. The specifications should be developed and have the concurrence of the region project manager and the HQ relocation reviewer before move estimates are secured or an actual cost move is started.

### **8.352 Notification and Inspection**

The displaced person must provide the agent reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved.

However, the relocation reviewer may waive this notice requirement after documenting the file accordingly.

The displaced person must permit the agent to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

The agent shall inform the displaced person, in writing, of the above requirements of this section, as indicated on the various moving claim forms, as soon as possible after initiation of negotiations. This provides notification to the displaced person of their responsibilities in completing the optional move types.

### **8.353 Move Monitoring and Monitoring Report**

Moves are monitored to ensure that the inventory the estimates were based on is moved to the specified location, and that the charges are actual and reasonable. All moves require monitoring, but it is the self- move based upon estimates or actual which requires the most extensive monitoring. The amount of monitoring required on a move is determined by the region right of way manager/program manager, the agent, and the move monitor, if a third person is chosen to carry out this activity. Some moves may require only one visit, while others may require the full-time presence of a monitor.

The agent should prepare a signed monitoring report and submit it to the relocation reviewer. This is a written report stating, at a minimum, the date(s) the monitoring was done, the monitor's observations whether or not the move was done according to the move specifications described in the move agreement ([Section 8.351](#)), and actions taken or recommended to resolve any inconsistencies between the planned move as estimated and the actual move. Deviations from the planned move may require an adjustment in the payment.

### **8.354 Ineligible Moving and Related Expenses**

The following is a nonexclusive list of payments a displaced person is not entitled to:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership, or
2. Interest on a loan to cover moving expenses, or

3. Loss of goodwill, or
4. Loss of profits, or
5. Loss of trained employees, or
6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in Section 8.797 regarding reestablishment expenses, or
7. Personal injury, or
8. Any legal fee or other cost for preparing a claim for relocation payment or for representing the claimant before ODOT, or
9. Expenses for searching for a temporary or replacement dwelling which include costs for mileage, meals, lodging, time and professional real estate broker or attorney fees, or
10. Physical changes to the real property at the temporary or replacement location of a business or farm operation except as provided in Section 8.782 regarding utility reconnection and personal property adaptation and in Section 8.797, regarding reestablishment expenses, or
11. Costs for storage of personal property on real property already owned or leased by the displaced person or person to be moved temporarily, or
12. Refundable security and utility deposits, and
13. Cosmetic changes to a replacement or temporary dwelling, which are not required by State or local law, such as painting, draperies, or replacement carpet or flooring.

### **8.355 Determining Displacement as a Result of a Partial Acquisition**

Many partial acquisitions leave residential or business improvements on the remainder. Sometimes region personnel face the problem of determining whether these occupants will be displaced from that remainder. One example of when relocation may occur in this circumstance is when the impact of the acquisition will diminish the earning potential of a business or farm to such an extent that it would not be a viable economic unit.

In the case of partial acquisitions where it is not obvious that the occupants would be displaced from the remainder, such as where there may be a loss of parking, the region right of way manager/program manager or project manager in the region shall make a preliminary determination of who is eligible for displacement as a direct result of the acquisition. Where there is no indication of displacement in the appraisal report, then determination of displacement should be supplemented by statements of justification and documentation why the occupants are eligible for displacement.

This preliminary determination of displacement shall be submitted to the relocation reviewer and approved by the deputy state right of way manager prior to relocation assistance or benefits being offered to the occupant(s) in question.

On such properties, where the occupants are determined to be eligible for displacement from the remainder, all claims for relocation benefit payments must be submitted by the claimant within 18 months of:

1. For tenants, the date of displacement from the acquisition area, or, if no displacement from the acquisition area, the date ODOT takes physical possession of the property.
2. For owners, the date of displacement from the acquisition area, or, if no displacement from the acquisition area, the date of the final payment for acquisition of the real property or deposit into court in the case of condemnations, whichever is later.

## **8.360 Advisory Services**

### **8.361 Eligibility - Advisory Assistance**

All displacees from public projects are eligible for advisory assistance. In addition, those who occupy property adjacent to real property being acquired may be eligible for advisory assistance if the region right of way manager/program manager and the deputy state right of way manager determine that there may be substantial economic injury because of their proximity.

### **8.362 Advisory Assistance**

ODOT shall carry out a relocation assistance advisory program which satisfies the requirement of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*, as amended), and Executive Order 11063 (3 CFR, 1959-1963 Comp., p 652). The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to provide relocation assistance.

The agent shall assist displacees by:

1. Minimizing hardships to persons in adjusting to relocation by providing counseling advice as to other sources of assistance that may be available, and such other help as may be appropriate.
2. Supplying persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans, and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and that duplication of functions is minimized.

Any person, who occupies property acquired by ODOT, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by ODOT.

The agent shall assist displacees in the following manner:

1. Determine the relocation needs and preferences of each person to be displaced, or temporarily displaced when ODOT determines it to be necessary; and

2. Explain the relocation payments and other assistance for which the person may be eligible, along with the related eligibility requirements and procedures for obtaining such assistance.

This shall include a personal interview with each displaced person and, when ODOT determines it to be necessary, each temporarily displaced person.

### **8.363 No Waiver of Relocation Assistance/Benefits**

ODOT may not propose or request that a displaced person waive their rights or entitlements to relocation assistance and benefits as provided in the Uniform Act and detailed in this chapter.

After having been fully advised in writing by the department of all eligible payments and benefits to which they are entitled, a displaced person may, by written statement, refuse some or all of those benefits on their own initiative.

### **8.364 Applicability**

These requirements apply to the relocation of any permanently or temporarily displaced person as defined in the glossary. Any person who qualifies as a displaced person must be fully informed of their rights and entitlements to relocation assistance and payments provided by the Uniform Act and these procedures.

### **8.370 Move Options**

#### **8.371 Personal Property Only Move Options**

Displaced persons required to move personal property from real property but are not required to move from a dwelling (including a mobile home), business, farm or non-profit organization are entitled to payment of their actual, reasonable, and necessary moving expenses for moving personal property from a dwelling or mobile home. The relocation reviewer shall determine if the expenses are reasonable and necessary. Eligible move expenses are detailed in Sections 8.381 through 8.388.

The move benefit may be determined based on the cost of one, or a combination of, the following methods.

1. Commercial move (Common Carrier Move – see Section 8.375) performed by a professional mover; or
2. Self-move. With advance approval, self moves that may be performed by the displacee in one or a combination of the following methods (see Section 8.376):
  - a. Commercial mover estimate based on the lower of two bids from a commercial mover.

- b. Actual Cost Move supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. Receipts are required for reimbursements based actual costs moves, and this type of move requires extensive supervision and move monitoring by the agent.
- c. Moving cost estimate prepared by a qualified ODOT staff person, as developed from ODOT's thorough review of the personal property to be moved and documented costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

### **8.372      Transportation of Personal Property**

Transportation costs for a distance beyond 50 miles are not eligible for reimbursement, unless the deputy state right of way manager determines that relocation beyond 50 miles is justified.

The move can be accomplished by hiring a common carrier, or displacees may move themselves and be paid based on move estimates, or, in special circumstances, based on actual receipted expenses incurred by the displacee.

### **8.375      Common Carrier Move Procedures**

Residential and nonresidential displacees may choose a PUC licensed common carrier to move personal property by following the instructions on the applicable RITS move agreement form for the relocation type (Personal Property Only RITS 2283 Form 2970). This form and the accompanying Instructions for Moving Companies (RITS 2224 Form 734-3625) must be given to the carrier in advance of the move so the carrier will understand the required procedures to provide a written estimate.

The following are details that the agent must consider and be aware of when advising the displaced person and the common carrier providing the service:

1. The order in which the move is to occur (to minimize down time and facilitate move monitoring).
2. The timing of the move should be specifically addressed (is a weekend or a night move justified? How many days will the move take?)
3. Items requiring special handling, packing, detachment and/or reinstallation need to be identified.

4. An inventory of the items to be moved needs to be developed prior to the move and adjustments, if any, to the inventory need to be made prior to the move.
5. A specific replacement site needs to be identified.
6. Unique circumstances of the move need to be addressed, such as whether convenient loading docks or elevators will be available during the move.

The agent is to monitor the move to the extent necessary to ensure that the items moved are eligible for relocation. On this type of move, the billing from the mover should be only for those items actually moved and should meet the criteria of actual and reasonable.

A review of the estimate and bill may then be sufficient for monitoring and should reveal if any non-eligible items have been included. Questions about specific items should have been resolved with the owner prior to the move. Reasons for significant amounts billed over the estimates must be documented and forwarded with the claim.

### **8.376 Self-Move Based on Estimates and Move Cost Finding**

Displacees may choose to move all or any part of their personal property and claim payment on the basis of a signed self-move agreement for the portion they move. The agreement must be made prior to the move, contain the specifications of the planned move (see [Section 8.351](#)), and be based on estimates prepared by qualified personnel whether done by commercial movers or region right of way staff.

Qualified region personnel are those who have specific knowledge of rates charged by commercial moving firms, plus familiarity with equipment and trade skills required for the move. When two or more estimates are being prepared, only one of these move estimates may be prepared by a staff estimator.

#### **Move Cost Finding**

On moves costing less than \$2,500 (move cost finding), the agent is only required to obtain one moving estimate. In most cases this estimate will be prepared by qualified region personnel. Where direct comparisons can be made to prior moves (goods and costs) this will be sufficient for the move cost finding. Should there be no information of this nature a complete move cost finding based upon rates charged by commercial moving firms and dealing with items such as time, wages, number of people, and vehicle costs must be submitted.

#### **Move Based Estimates**

On moves greater than \$2,500, the agent is to obtain two acceptable moving estimates, and payment is not to exceed the lower of the two estimates. In the event there is a wide disparity between the two estimates they should be closely scrutinized to be sure they are based on the same set of circumstances. Should there be no apparent technical error, omission, etc. causing the disparity a third estimate may be obtained to assist in arriving at a reasonable moving payment.

The agent must advise the displacees that once they have moved under this method of reimbursement, they cannot later claim a larger payment based on actual cost. However, a new moving agreement may be made prior to the move to reflect changes in the move plans.

In advance of the move the agent obtains the estimate(s) by providing (RITS 2240 Form 734-3762), Move Estimate Request, to the estimators. Displacees must submit an inventory of items to be moved on which the estimates are to be based. The agent is to provide the estimators with further instructions, in writing, regarding the move. The agent should request the estimators to prepare the estimates as though they would be required to do the work. The agent should also request a commercial estimator to bill the region right of way office for the cost to prepare the estimate.

The estimates developed for a self-move based on estimates business, farm, or NPO must be approved by the project manager or the region right of way manager/program manager prior to development of an agreed upon moving amount. The agreed upon moving amount shall not exceed the move cost finding or be greater than the lower of two commercial estimates.

The agent is to see that the move is sufficiently monitored to ensure the inventory the estimates are based upon is actually moved to the specified location. If the inventory has changed significantly by the move date, the agent must obtain new estimates.

Claims for payment under the self-move based on estimates method are to be submitted on the applicable RITS claim form for the relocation type (Personal Property Only 2284). The agent or a designee must inspect the subject property and complete the inspection report before the claim may be processed.

### **Minimum Relocation Payment**

Moves costing less than \$300 may be paid as a minimum payment of \$300. The region right of way manager/program manager or relocation reviewer approves the use of the minimum relocation payment upon request by the right of way project manager.

Generally, the region ROW manager uses their judgment regarding whether or not the move will likely cost more than \$300, depending on the items to be moved and the complexity of the move. For instance, a 10 x 10 storage unit filled with miscellaneous household items could probably be moved in a couple of hours for less than \$300. Therefore, it would be appropriate to apply the minimum relocation payment in this situation. However, it may be more appropriate to get estimates or do a move cost finding if the same 10 x 10 storage unit is filled with items that require special handling (fragile hand-blown art glass, for example).

Only one minimum relocation payment per household or business will be allowed.

### **8.377 Self-Move Based on Actual Costs**

With prior approval from the deputy state right of way manager, displacees may move themselves and be reimbursed for their actual reasonable expenses. Generally, this is allowed only when the agent cannot obtain acceptable moving estimates, or in cases in which there are specialized move requirements. The agent must advise the displacee in advance of the move that move monitoring for actual cost self-moves will be extensive, and that this move option is only available under special circumstances.

Businesses, farms and NPOs may claim reimbursement for actual costs of a self-move. This kind of move requires careful monitoring by the agent to be certain that claims are valid. The



monitor must confirm that hours claimed for each employee are reasonable, the move was conducted in a workman-like manner, and that no ineligible expenses are included.

Use the Non-residential Relocation Claim form (RITS form 2274). The agent must inspect the subject property and complete the inspection report before a self-move actual cost claim may be processed.

Eligible expenses may include truck or cargo trailer rental, special moving equipment rental, and wages for hired movers. All expenses must be supported by paid invoices, prior written agreement on move specifications or other documentation. No payment may be made for the time of the displacee or the displacee's family. If the displacee's own equipment is used, payment may be made for gasoline, oil, depreciation, or other expense incurred by the use of the equipment during the move, provided such expense is actual, reasonable, necessary, documented, and approved by the deputy state right of way manager.

### **8.380 Benefits**

### **8.381 Packing**

Packing, crating, unpacking, and uncrating of the personal property.

### **8.382 Utility Reconnection Charges**

Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property are reimbursable expenses.

Reconnection fees may be paid separately from the moving expense claim. Reconnection cannot exceed the number of, nor differ in kind from the connections found in the acquired improvement, unless the hook-up is necessary to provide the same level of utility service as found in the displacement building.

Reimbursement of these expenses will be on an actual and reasonable cost basis only, requiring submittal of an invoice or paid receipt with the claim.

Deposits and/or costs incurred in extending services from the right of way to the replacement building are not reimbursable.

If a connection problem arises and it is not clearly eligible, ODOT should be consulted for a decision regarding eligibility for payment in advance of incurring the expense.

### **8.383 Storage of Personal Property**

Displacees required to move permanently or temporarily may be eligible for reimbursement of actual and reasonable expenses for the costs of interim off-premise storage of personal property for a maximum of 12 months if it is determined that storage is necessary in effecting a move of the displacees. ODOT may approve a payment for storage when the process of relocating from the acquired site to the replacement site is delayed for reasons beyond the control of the displaced person. Eligibility and approval are determined by the relocation reviewer and deputy state right of way manager.

Proper written justification and the length of storage must always be included in the file both in region and in headquarters as a requirement for approving storage costs. As a rule, storage will only be approved when its denial would cause a hardship to the displacee.

Storage may not be longer than 12 months, starting at the date of vacation from the acquired site and ending when the replacement site becomes available. Displacees may be entitled to storage expenses for a period greater than 12 months in exceptional circumstances or in cases of extreme hardship as justified, documented, and approved upon written application of the Storage Expense Application (RITS 2251 Form 734-3624) with prior approval of the deputy state right of way manager.

Storage may be in a licensed and bonded warehouse, a mini-storage facility, or other rented space. Boarding of animals is not considered to be storage of personal property.

The costs for initial move into storage and the final move out of storage are eligible for reimbursement, but each move requires an inventory and monitoring by the agent. For monitoring requirements, see [Section 8.353](#).

To request an interim storage benefit, the agent provides the Storage Expense Application (RITS 2251 Form 734-3624) for the displacees to complete and sign. The agent reviews the application to determine whether storage is required by the move. If it is required, the agent submits the application to the relocation reviewer, and notifies the displacees of the decision about eligibility.

#### **8.384 Insurance**

An insurance premium for the replacement value of the property in connection with the move and necessary storage is eligible for reimbursement.

#### **8.386 Replacement Value of Uninsured Property**

The replacement value of property lost, stolen, or damaged in the process of moving (but not through the fault or negligence of displacees, their agents, or employees) where insurance covering such loss, theft, or damage is not reasonably available is eligible for reimbursement.

#### **8.387 Rental Application Fees and Credit Reports**

A displaced tenant is entitled to reasonable reimbursement, as determined by ODOT, for actual expenses not to exceed \$1,000 incurred for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

#### **8.388 Low Value/High Bulk Items**

When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value, the allowable moving cost payment shall not exceed the lesser of:

The amount which would be received if the property were sold at the site, or

The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel minerals, metals and other similar items of personal property as determined, on a case-by-case basis, by the deputy state right of way manager.

### **8.395 Other Moving-Related Expenses**

Other moving related expenses that are not listed as ineligible in [Section 8.354](#), as the deputy state right of way manager determines to be reasonable and necessary are also eligible for reimbursement.

### **8.450 Claims**

#### **8.451 Relocation Benefit Payment Procedure**

After a relocation claim is completed by the displacee, reviewed by the agent, and any comments necessary to support approval are added, the agent signs the bottom of the form and uploads the claim to RITS for review and approval. Documentation to support the payment must be attached.

Once it is determined that the claim meets all the standards and documentation required by state and federal regulations, the approved claim is forwarded for processing and payment.

#### **8.452 Relocation Payment Approval Process**

Each relocation type has a unique relocation claim form: Residential (RITS form 2264), Non-residential (RITS form 2274), Personal Property Only (RITS form 2284) and outdoor advertising signs (RITS form 2294). These forms must include supporting comments and documentation. The claim is uploaded to RITS by the relocation agent and automatically routed to the region ROW project manager and relocation reviewer for review and approval. If approved by the relocation reviewer, the claim is routed to the relocation payment specialist for payment approval and processing.

#### **8.453 Documentation**

Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as a bill or invoice, certified prices, appraisals, or other evidence of such expenses. A displaced person, or person required to move temporarily, must be provided the reasonable assistance necessary to complete and file any required claim for payment.

#### **8.454 Expeditious Claim Processing**

All displacees shall be given assistance in securing documentation needed to support their claims for payment and in the preparation of relocation forms. Required inspections of dwellings and properties and payment of claims will be made promptly.

#### **8.455 Expeditious Payments**

ODOT shall review claims in an expeditious manner. The displacee making the claim shall be promptly notified as to any additional documentation required to support the claim. Payment for

a claim shall be made as soon as possible following receipt of sufficient documentation to support the claim.

### **8.456 Advance Payments**

Displacees demonstrating the need for an advance relocation payment in order to avoid or reduce a hardship shall be issued such a payment, subject to the safeguards to ensure the objective of the payment is accomplished.

Advance partial payments for moving expenses may be made when it is necessary to assist the displacees in moving. All requests for advance payments shall be reviewed by the relocation reviewer. The agent must use judgment in determining the prudence of making a partial payment for moving in order to ensure that the payment will be applied toward the move. If warranted, the agent can recommend that the payment be made to a third party such as a new landlord or utility company for deposits rather than directly to the displacees. The Assignment of Relocation Benefit Form (RITS 2255 Form 734-3816) may be modified to initiate the request for advance payment.

### **8.457 Assignment of Relocation Benefits**

Except when circumstances require otherwise, assignments of relocation benefits must be made on the Assignment of Relocation Benefit Form (RITS 2255 Form 734-3816).

The agent should explain to the displacee that they do not have to assign their benefits, that the assignment process is a service provided by ODOT for the displacee's convenience to help them relocate.

Assignments of replacement housing payments cannot be used for any purpose other than to provide replacement housing. Assignments of moving expense payments are not restricted.

### **8.458 Deductions from Relocation Payments**

An agent shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. ODOT shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

### **8.459 Time Limitations for Benefit Claims**

Except as provided in [Section 8.523](#) and [Section 8.524](#), all claims for relocation benefit payments must be submitted by the claimant within 18 months of:

1. The date of displacement (for tenants).
2. The date of displacement, or the date of the final payment for acquisition of the real property (for owners), whichever is later.

The time period shall be waived if the deputy state right of way manager determines there is good cause to do so.

The deposit into court is considered payment in the case of condemnation.

### **8.460 Notice of Denial of Claim**

If the relocation reviewer, or the region right of way manager/program manager, when permitted, disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, the claimant shall be promptly notified in writing of the denial of approval of that claim, the basis for that determination, and the procedures for appealing that determination.

The agent shall provide the displacee with an Appeal of Relocation Assistance (RITS 2270 Form 734-3623), in such cases where the displacee may be dissatisfied with the relocation benefits offered.

### **8.470 Appeals**

#### **8.471 Right of Appeal**

All displacees have the right of appeal as to their eligibility for, or the amount of, payment for any relocation benefit. The right of appeal shall be described in information distributed at public meetings and to individual displacees as part of the information delivered at the initiation of negotiations.

#### **8.472 Denials**

If the relocation reviewer, or the region right of way manager, when permitted, disallows all or any part of a payment claimed, or refuses to consider a claim because of untimely filing or on other grounds, the claimant shall be promptly notified in writing of the denial, the basis for the denial, and the procedures for appealing the determination.

#### **8.473 Appeals**

The agent shall provide the displacee with an Appeal of Relocation Assistance (RITS 2270 Form 734-3623).

The relocation appeal process is an administrative rule subject to the Administrative Procedures Act 734-001-0025:

1. Within 60 days of a final determination granting or denying eligibility for a relocation payment, or of an amount of payment under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) and any regulations adopted thereunder, any person dissatisfied with such determination may file a request for appeal upon forms provided by the ODOT.
2. The relocation appeal process and hearing concerning the determination of eligibility or amount of payment shall be conducted as a contested case pursuant to the Oregon Administrative Procedures Act, [ORS 183.310 through 183.550](#), and
3. An optional reconsideration conference may be offered.

Within 60 days of a final determination granting or denying eligibility for a relocation payment or of an amount of payment under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 (Public Law 91-646) and any regulations adopted

thereunder, a person dissatisfied with such final determination may petition for a reconsideration conference upon forms provided by the ODOT.

A reconsideration conference is an optional process, which must be agreed to by both the claimant and ODOT, that occurs prior to the formal appeal process identified in (1) and (2) and is an opportunity for a claimant to provide additional relevant information that was not considered by the department or to correct factual errors and for the department to reconsider the claim with the new or corrected information.

The time period to file a request for an appeal pursuant to subsection (1) shall be stayed from the date of request for a reconsideration conference until ODOT either issues a decision to decline the request for a reconsideration conference, or until ODOT issues a determination after the reconsideration conference.

ODOT will arrange for the reconsideration conference within 60 days of receipt of the claimant's request for the Conference, or as soon thereafter as all parties can be assembled.

ODOT's final determination resulting from the reconsideration conference will be issued in writing within 60 days of the conference. If the full relief requested by claimant is not granted, ODOT shall inform the claimant that the determination is ODOT's final decision, and that the claimant may seek judicial review by filing an appeal pursuant to subsection (1) above.

## **8.500 Residential Relocations**

### **8.501 Policies**

### **8.503 Provision of Advisory Services**

Relocation advisory services shall be offered and promptly provided to all eligible persons, and, when determined necessary, to persons adjacent to the project area.

### **8.504 Offer of Benefits**

All eligible displacees shall be informed of their relocation benefits and the requirements to obtain them. This shall be done both verbally and in writing. The most current benefits will be offered to displacees.

### **8.505 Reminder of Benefits**

Displacees who are potentially eligible for relocation benefits but have not fulfilled the requirements for payment shall be sent timely written notifications of the possible loss of benefits and their expiration dates. The agent is responsible for reminding displacees of these time limitations and assisting them in filing timely claims.

### **8.506 90-Day Provisional Notice to Vacate**

A 90-day Notice will be given to all eligible persons lawfully occupying property within a project area who are required to relocate or have personal property to be moved.

### **8.507 30-Day Notice to Vacate**

All occupants required to relocate will be given a 30-day notice to vacate. This notice will not be given prior to payment for the real property. At least one comparable replacement housing unit must be available within the financial means of permanent displacees at the time the notice is delivered to residential occupants.

### **8.508 Decent, Safe, and Sanitary Housing**

All residential displacees will be offered replacement housing which is decent, safe, and sanitary, as defined within the glossary of this manual.

### **8.509 Protective Renting**

In order to preclude the rental of the unit to a subsequent tenant who might be eligible for relocation benefits, ODOT may rent a vacant dwelling unit being acquired.

### **8.510 Persons Required to Move Temporarily**

1. Appropriate notices must be provided in accordance with Section 8.530, and appropriate advisory services must be provided in accordance with Sections 8.503 and 8.560.
2. For persons occupying a dwelling, at least one comparable dwelling, is made available prior to requiring a person to move, except in the case of an emergency move such as:
  - a. A major disaster (as defined in Section 02 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122)); or
  - b. A presidentially declared national emergency; or
  - c. Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.
3. Payment is provided for all out-of-pocket expenses incurred in connection with the temporary relocation as ODOT determines to be reasonable and necessary, associated with comparable replacement dwelling, and incidental to selecting a temporary comparable replacement dwelling. Such payments may include the reasonable and necessary costs of temporarily moving personal property from the real property and returning to the real property. Storage of the personal property may be allowed when approved by ODOT.
4. A person's temporary move from their dwelling or business for the project may not exceed 12 months. ODOT must contact any person who has temporarily moved from their dwelling or business when that temporary move has lasted for a period beyond 12 months because that person is considered permanently displaced and eligible as a displaced person. ODOT shall offer such eligible persons all required relocation assistance benefits and services for permanently displaced persons. ODOT may not deduct any temporary relocation assistance benefits previously provided when determining permanent relocation benefits eligibility; and

5. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 8.117 is not eligible for temporary relocation assistance unless such denial of benefits would create an extremely unusual hardship to a designated family member in accordance with 8.117.

### **8.513 Availability of Fair Housing**

Comparable replacement housing will be made available to all displacees prior to construction of a project, and replacement housing will be open to all persons regardless of race, color, religion, sex, national origin, familial status, or handicap in conformance with the Fair Housing Act (42 U.S.C. 3601 et seq.), as amended.

### **8.514 Conflicts of Interest**

1. The appraiser or acquisition agent on a file shall not compute the replacement housing payments on that file without the approval of the region right of way manager or designee.
2. The agent who has computed a relocation benefit shall not deliver the benefit check.

There is no conflict for the agent to compute replacement housing payments and provide relocation assistance, as long as this agent does not deliver the benefit check.

### **8.515 No Duplication of Payments**

No person shall receive any payment under relocation benefits if that person receives a payment under federal, state, or local law, or from insurance proceeds, which is determined by the right of way agent to have the same purpose and effect as such payment under this part.

ODOT is prohibited from making payment to a person under these regulations that would duplicate another payment the person receives under federal, state, or local law.

The right of way agent is not required to conduct an exhaustive search for such other payments; the agent is only required to avoid creating duplication based on their knowledge at the time a payment under these regulations is computed.

### **8.518 Availability of Replacement Dwelling Before Displacement**

No permanent displacees shall be required to move from their dwelling unless at least one comparable replacement dwelling has been made available to them. Information on comparable replacement dwellings that were used in the determination process must be provided to permanently displaced persons. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling is considered to have been made available to the displacees if:

1. The displacees are informed in writing of its location, and
2. The displacees have sufficient time to negotiate and enter into a purchase agreement or rental/lease agreement for the property, and



3. The displacees are ensured of receiving the acquisition and relocation assistance payments to which they are entitled in sufficient time to complete the purchase or rental/lease of that property, subject to reasonable safeguards.

For temporary displacees occupying a dwelling, at least one comparable dwelling, is made available prior to requiring a person to move. However, the Federal funding agency may grant a waiver of this requirement when it is demonstrated that a displacee must move because of:

1. A major disaster (as defined in Section 02 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122));
2. A presidentially declared national emergency; or
3. Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

Whenever a person to be displaced is required to move from the displacement dwelling for a temporary period because of an emergency as described above, ODOT shall:

1. Take whatever steps are necessary to assure that the person who is required to move from their dwelling is relocated to a DSS dwelling;
2. Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the emergency move; and
3. Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from their dwelling due to the emergency.)

### **8.519 Rent of ODOT-Owned Dwellings**

Although it is not encouraged, housing owned by ODOT within the new right of way may occasionally be made available for the convenience of displacees for temporary rental. This is not displacement as set forth in federal and state relocation laws and regulations, which require agencies to assist displacees in finding permanent decent, safe, and sanitary replacement housing.

The agent must, in writing, inform displacees who want to rent other ODOT-owned housing within any right of way that:

1. Any relocation benefits, other than moving expenses, will not be due them until they move into a permanent decent, safe, and sanitary dwelling outside of the right of way.
2. The 12-month period within which they must occupy a decent, safe, and sanitary house begins with the day they vacate their dwelling purchased for right of way.

### **8.520 Subsequent Tenants**

Any person who occupies property subsequent to initiation of negotiations by ODOT, shall be eligible for advisory assistance, reimbursement of moving expenses, and, if replacement

housing is determined to be not within their financial means, may be eligible for replacement housing under last resort.

If they are still in occupancy on the date of acquisition and/or they are given written notice that they are required to move, they will be eligible to submit claims for the relocation benefits named above. (See [Section 8.628](#).)

### **8.521 Fair Housing Concerns and Complaints**

Whenever agents either discover or suspect that they might have difficulty in fulfilling the obligations of the Fair Housing Act (42 U.S.C. 3601 et seq.), as amended, they are to notify their immediate manager in writing at once.

Two brochures: “Fair Housing – It’s Your Right” and “Are You a Victim of Housing Discrimination?” are available through local HUD offices. They explain coverage by the 1968 Fair Housing Act and Amendments of 1988 and the steps to be taken if the displacee has experienced discrimination.

Fair housing complaints may be handled on a more local basis. ORS 659A.820 provides that any person alleging discrimination regarding housing may file a complaint, in writing, with the Commissioner of the Bureau of Labor and Industries. An investigation and hearing will follow receipt of the complaint, and an appropriate cease and desist order will be filed against any person found to have been engaged in any unlawful practice.

### **8.522 Certification of Residential Displacement to Other Agencies**

When low-income individuals or families are required to relocate because of a public project, they may receive preferential admittance to subsidized housing administered by other public agencies. If requested, the agent shall prepare a letter verifying the fact that the low-income individual or family is indeed being displaced for a public project.

### **8.523 Occupancy Requirements for Displacement or Replacement Dwelling**

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond their control, including:

1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the federal agency funding the project, or ODOT, or
2. Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the deputy state right of way manager.

### **8.524 Purchase of Replacement Dwelling**

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

1. Purchases a dwelling, or
2. Purchases and rehabilitates a substandard dwelling, or

3. Relocates a dwelling which he or she owns or purchases, or
4. Constructs a dwelling on a site he or she owns or purchases, or
5. Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases, or
6. Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

### **8.525 Replacement Housing of Last Resort**

Whenever a \$41,200 replacement housing payment or a \$9,570 maximum rental assistance payment would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, ODOT shall provide additional or alternate assistance under the housing of last resort provisions of the Uniform Act. This may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means. (See [Section 8.641.](#))

### **8.526 Eviction for Cause**

Eviction for cause must conform to applicable Federal, State and local law. Any person who occupies the real property and is in lawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless ODOT determines that:

1. The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted, or
2. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement.
3. In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this manual.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

### **8.527 Transfer of Ownership**

Upon request and in accordance with applicable law, the displacee shall transfer to ODOT ownership of any personal property that has not been moved, sold, or traded in, pursuant to [Section 9.135.](#)

### **8.530 Notices and Forms**

#### **8.531 General Information Notice**

After project authorization the region right of way staff must deliver a general information notice, acquisition and relocation flyers, and a copy of the right of way map, marked “Preliminary” showing the parcel(s) to be purchased to property owners, contract purchasers,

permanent or temporary displacees, or other persons determined to be directly affected by the acquisition.

The general information notice form is available in RITS (document ID 2005). The project manager updates RITS with the GIN date and other details and uploads the completed form to RITS. In order to avoid duplication of effort, this is generally done by the project manager at the initiation of the appraisal phase. If the occupant will be displaced, it must be sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery.

### **8.532 Notice of Intent to Acquire**

In rare instances, the right of way administration may establish a permanent or temporary displacee's eligibility for relocation benefits prior to initiation of negotiations for the parcel. At such times, the relocatee is given a notice of intent to acquire, qualifying that person for relocation benefits.

As a rule, this practice is discouraged, because serious problems could result if the acquisition process is delayed or if the project is cancelled. The preferred procedure, where the displacee may suffer a hardship, is to obtain an appraisal and initiate negotiations as soon as possible.

However, in those few cases where the agent determines that a notice of intent to acquire is necessary, approval for the notice must be obtained from the deputy state right of way manager. Conditions for approval of a Notice of Intent include, but may not be limited to the following:

1. The project, including the subject file, has already been approved for acquisition.
2. The displaced person can show a real need for the letter of intent to acquire.
3. It is not possible to initiate negotiations in time.
4. Negotiations will be initiated in a reasonable and timely manner.

### **8.533 The Offer-Benefit Letter**

Eligibility for relocation assistance shall begin on the date of the initiation of negotiations for acquiring the occupied property or the receipt of notice of intent to acquire the property.

The agent may either meet in person with the owners or affected tenants to deliver their offer benefit letters or send the letter and flyers by United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. (see [Section 6.460](#) for a discussion on initiation of negotiations by mail or delivery service). The letter to tenants must be delivered as soon as possible after initiation of negotiations. The agent must follow up by attempting to make a personal contact with any displacees as soon as possible after initiation of negotiations.

The agent must be certain that the date on the offer benefit letter to the owner is the date of initiation of negotiations. The letter to the tenant should be dated the date of delivery.

The offer benefit package should be assembled in the following combinations by type of displacee:

### **Residential Owner-Occupant**

1. Offer Benefit Letter and Summary Statement
2. Benefit Summary, Residential (RITS 2210 Form 734-1715)

### **Residential Tenant-Occupant**

1. Offer Benefit Letter with 90-day Notice
2. Benefit Summary, Residential (RITS 2210 Form 734-1715)

In certain situations when the standard letter is not appropriate, the agent may prepare an individualized offer benefit letter with the approval of the region right of way manager/program manager.

### **8.534 90-Day Notice to Vacate**

Lawful occupants shall not be required to move unless they have received at least 90 days advance written notice of the earliest date by which they may be required to move.

Notices to vacate are not required when the property being acquired is vacant and unused or if the occupant's move of their own volition prior to the time the notice would have been given. Notices are required for any acquisition from which personal property must be relocated.

If the agent determines that the notice is not necessary, the offer benefit forms should be modified to delete the notice language. If the agent determines that the notice is necessary, the following 90-day notice must be included in the offer benefit letter delivered to owners on the date of initiation of negotiations:

Notice To Vacate:

“The state will not require you to vacate the property being acquired earlier than 90 days following the date of this letter or within 30 days after payment (less deposits), whichever is later. You will be given the specific date to vacate the area acquired when payment is made to you.”

The agent includes the following 90-day notice to tenants in the offer benefit letter when appropriate: Notice To Vacate:

“The state will not require you to vacate the property being acquired earlier than 90 days from the date of this letter or within 30 days after final payment to the property owner, whichever is later.

You will be notified at least 30 days before you must vacate.”

These notices can only be given if the displacees are advised of the dollar amount of their replacement housing benefits. In some cases, it may be desirable to make the offer to purchase prior to completion of the relocation study. This may be done as long as the 90-day notice is not included in the offer letter.

The appropriate notice must be given upon presentation of the replacement housing benefits.

In unusual circumstances, where there is an urgent need to protect their health and safety, occupants may be required to vacate the property on less than 90 days advance written notice, if the deputy state right of way manager determines that a 90-day notice is impractical. Such cases would be when continued occupancy would constitute a substantial danger to the health or safety of the occupants. A copy of this determination must be documented in the file.

### **8.535      30-Day Notice to Vacate**

The 30-day notice to vacate to owners will be included in the closing letter accompanying final payment sent by the central office or the letter notifying the owner of the date of deposit into court.

The agent must deliver a written 30-day notice of final payment for the property to tenants (RITS 2062 ODOT Form 734-3972,) as soon as the region receives notice of payment. This notice must contain the specific date by which the tenant must vacate the property.

For residential displacees, it is vitally important that the agent ascertain if the comparable dwelling on which the replacement housing benefit study was based or equally comparable replacement dwellings in the same price range are available on the date the 30-day notice is given. If the original dwelling on which the replacement housing benefit was based or equally comparable dwellings in the same price range are not available, then a new replacement housing study shall be prepared. If a new study is necessary, the 30-day notice must be given in writing as of the date comparable replacement housing is made available to the displacee.

The agent shall bear in mind the amount of time necessary to close the purchase of a replacement property and monitor the availability of replacement dwellings in order that the displacee is given enough time to close the purchase of the replacement property and move before the required vacation date.

### **8.536      Relocation Report of Personal Interview**

An entry into the RITS diary of contacts is to be made each time an agent makes a personal contact with landowners, displacees, or their representatives. All relevant discussions regarding the acquisition or relocation transaction should be recorded. The time spent in relocation discussions should be charged to the relocation activity code. Relocation interviews conducted subsequent to submission of a final report packet or recommendation for condemnation must also be documented and uploaded to RITS for subsequent review by the relocation reviewer.

### **8.537      Certification of Legal Residency Form**

Relocation payments and relocation advisory services, pursuant to state and federal law, may not be provided to an alien unless the alien is lawfully present in the United States, except in cases of exceptional or extreme hardship. Displacees will be asked to sign a certification of legal residency in the United States.

This certification shall be obtained by having the displaced person complete and sign the certification of legal residency in the United States (RITS 2216 Form 734-2521,). This should be done at initiation of negotiations or, for a tenant, as soon as possible after initiation of

negotiations. The completed form shall be uploaded to RITS prior to relocation assistance or the payment of relocation claims. (See [Section 8.117.](#))

## **8.540 Procedures**

### **8.541 Planning**

### **8.544 Relocation Responsibilities at Initiation of Negotiations**

The agent must carry out several relocation responsibilities at initiation of negotiations, including:

1. Delivering to the owner and any tenant occupants to be displaced as a result of the acquisition, the appropriate Terms of State’s Offer Letter, the flyers “Moving Because of Highway or Public Projects?” (RITS 2205/2206 Form 734-3772/3772S), “Acquiring Land for Highways & Public Projects” (RITS 2009/2010 Form 734-3773/3773S), and FHWA’s relocation booklet, “Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program”.
2. Providing detailed information regarding all available benefits, including time limitations for claims and other restrictions.
3. Informing all displaced persons in writing of the specific comparable dwelling(s) used, advising if it has or has not been inspected, and the price or rent used to establish the maximum replacement housing benefit.
4. Offering all displaced persons transportation to inspect housing to which they are referred.
5. Explaining to displacees eligible for replacement housing payments the necessity of a replacement housing inspection, the requirements for decent, safe, and sanitary housing, and the possibility of a relocation carve-out.
6. Entering eligibility listing information and generating offer benefit letters through the Right of Way Information Tracking System (RITS).

### **8.545 Initiation of Benefit Determination**

The completion of an appraisal of a residential property signals the project manager to determine whether displacement is anticipated. On files requiring displacement, the project manager assigns an agent to determine replacement-housing benefits.

The agent does this by:

1. Interviewing the members of the household to determine who occupies the displacement dwelling and what their needs will be upon displacement.
2. Completing the Residential Occupant Interview (RITS 2220 Form 734-3600).
3. Calculating the appropriate benefits as explained in [Section 8.600](#) through [Section 8.640](#). The replacement housing differential payment should not be calculated until the appraisal has been reviewed, except in case of designated hardships when benefits can be calculated subject to an appraisal review at the amount used in the study.

4. Submitting the completed benefit study to the right of way project manager for review and submittal to the relocation reviewer for review and approval.

## **8.546 Instructions for Completing Occupant Interview Form**

The agent completes the Residential Occupant Interview (RITS 2220 Form 734-3600) during the occupant interview. See [Section 8.560](#) for details of advisory services. Special needs of occupants, desired relocation assistance, information needed for rent supplement determination and determining household income are some of the elements that need to be recorded on the occupant interview form. See [Sections 8.547](#), [8.548](#), [8.621](#) and [8.622](#).

RITS 2220 Form 734-3600 contains personal data. DO NOT upload to RITS. Fax the completed form to the relocation reviewer. The agent and the reviewer will keep the original document and the faxed copy until the relocation file is closed, after which the documents will be shredded.

## **8.547 Special Needs of Occupants**

Any health problems, special school needs, or other requirements that might affect the displacees' choice of a replacement dwelling should be noted on the interview form. These needs should be addressed in the replacement housing study.

## **8.548 Relocation Assistance Desired**

If the displacee desires any special relocation assistance, such as transportation, this should be noted on the interview form. Such requests should be addressed by the agent.

## **8.549 Occupant of Less than 90 Days**

When the displacee has not been in occupancy 90 days prior to initiation of negotiations, the agent shall check the box, "less than 90-day occupancy" at the top of the Residential Occupant Interview (RITS 2220 Form 734-3600).

## **8.550 Move Agreement Review and Approval**

After completing the benefit determination (as covered in [Section 8.600 through Section 8.640](#)), the agent creates the move agreement in RITS and initiates the move agreement workflow.

After preliminary review by the project manager, RITS sends the determination to the relocation reviewer.

The relocation reviewer examines all aspects of the determination and either approves the move agreement in RITS or, if there are questions about the determination, the relocation reviewer may do a field examination or request additional information from the region.

RITS incorporates an approved determination into the offer benefit letter.

## **8.551 Move Specifications**

Move specifications are instructions as to how the move is to be performed. They are contained in a detailed, written agreement between the displacee and the right of way unit on what is to be moved, how it is to be moved, and where it will be moved. Further, it becomes the basis for preparation of the estimates because it informs the estimator of what must be done to



accomplish the move and must be reviewed by the relocation reviewer prior to commencement of the move.

The following are some of the details that must be included in the specifications:

1. The order in which the move is to occur (to minimize down time and facilitate move monitoring).
2. The timing of the move should be specifically addressed (Is a weekend or a night move justified? How many days will the move take? etc.)
3. Items requiring special handling, packing, detachment and/or reinstallation need to be identified.
4. An inventory of the items to be moved needs to be developed prior to the move and adjustments, if any, to the inventory need to be made prior to the move.
5. A specific replacement site needs to be identified.
6. Unique circumstances of the move need to be addressed, such as whether convenient loading docks or elevators will be available during the move.

The move specifications should be developed in collaboration with the displacee. In specialized or complex moves, the specifications may require the assistance of a consultant who has expertise in the type of property or business being moved. The specifications should be developed and have the concurrence of the region project manager and the HQ relocation reviewer before move estimates are secured or an actual cost move is started.

### **8.552 Notification and Inspection**

The displaced person must provide the agent reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved.

However, the relocation reviewer may waive this notice requirement after documenting the file accordingly.

The displaced person must permit the agent to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

The agent shall inform the displaced person, in writing, of the above requirements of this section, as indicated on the various moving claim forms, as soon as possible after initiation of negotiations. This provides notification to the displaced person of their responsibilities in completing the optional move types.

### **8.553 Move Monitoring and Monitoring Report**

Moves are monitored to ensure that the inventory the estimates were based on is moved to the specified location, and that the charges are actual and reasonable. All moves require monitoring, but it is the self- move based upon estimates or actual which requires the most extensive monitoring. The amount of monitoring required on a move is determined by the region right of way manager/program manager, the agent, and the move monitor, if a third

person is chosen to carry out this activity. Some moves may require only one visit, while others may require the full-time presence of a monitor.

The agent should prepare a signed monitoring report and submit it to the relocation reviewer. This is a written report stating, at a minimum, the date(s) the monitoring was done, the monitor's observations whether or not the move was done according to the move specifications described in the Move Agreement ([Section 8.551](#)), and actions taken or recommended to resolve any inconsistencies between the planned move as estimated and the actual move. Deviations from the planned move may require an adjustment in the payment.

### **8.554 Ineligible Moving and Related Expenses**

The following is a nonexclusive list of payments a displaced person is not entitled to:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this does not preclude the computation under [Section 8.605](#), or
2. Interest on a loan to cover moving expenses, or
3. Personal injury, or
4. Any legal fee or other cost for preparing a claim for relocation payment or for representing the claimant before ODOT, or
5. Expenses for searching for a temporary or replacement dwelling which include costs for mileage, meals, lodging, time and professional real estate broker or attorney fees, or
6. Costs for storage of personal property on real property already owned or leased by the displaced person or person to be moved temporarily, or
7. Refundable security and utility deposits, and
8. Cosmetic changes to a replacement or temporary dwelling, which are not required by State or local law, such as painting, draperies, or replacement carpet or flooring.

### **8.555 Determining Displacement as a Result of a Partial Acquisition**

Many partial acquisitions leave residential or business improvements on the remainder. Sometimes region personnel face the problem of determining whether these occupants will be displaced from that remainder. One example of when relocation may occur in this circumstance is when the impact of the acquisition will diminish the earning potential of a business or farm to such an extent that it would not be a viable economic unit.

In the case of partial acquisitions where it is not obvious that the occupants would be displaced from the remainder, such as where there may be a loss of parking, the region right of way manager/program manager or project manager in the region shall make a preliminary determination of who is eligible for displacement as a direct result of the acquisition. Where there is no indication of displacement in the appraisal report, then determination of displacement should be supplemented by statements of justification and documentation why the occupants are eligible for displacement.

This preliminary determination of displacement shall be submitted to the relocation reviewer and approved by the deputy state right of way manager prior to relocation assistance or benefits being offered to the occupant(s) in question.

On such properties, where the occupants are determined to be eligible for displacement from the remainder, all claims for relocation benefit payments must be submitted by the claimant within 18 months of:

For tenants, the date of displacement from the acquisition area, or, if no displacement from the acquisition area, the date ODOT takes physical possession of the property.

For owners, the date of displacement from the acquisition area, or, if no displacement from the acquisition area, the date of the final payment for acquisition of the real property or deposit into court in the case of condemnations, whichever is later.

## **8.560 Advisory Services**

### **8.561 Eligibility - Advisory Assistance**

All displacees from public projects are eligible for advisory assistance. In addition, those who occupy property adjacent to real property being acquired may be eligible for advisory assistance if the region right of way manager/program manager and the deputy state right of way manager determine that there may be substantial economic injury because of their proximity.

### **8.562 Advisory Assistance**

ODOT shall carry out a relocation assistance advisory program which satisfies the requirement of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*, as amended), and Executive Order 11063 (3 CFR, 1959-1963 Comp., p 652). The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to provide relocation assistance.

The agent shall assist residential displacees by:

1. Minimizing hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.
2. Supplying persons to be displaced with appropriate information concerning federal and state housing programs, disaster loans, and other federal and state programs offering assistance to displaced persons.

Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and that duplication of functions is minimized.

Any person, who occupies property acquired by ODOT, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by ODOT.

The Agent shall assist residential displacees in the following manner:

Determine the relocation needs and preferences of each person to be displaced, or temporarily displaced when ODOT determines it to be necessary, and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person and, when ODOT determines it to be necessary, each temporarily displaced person.

The agent must provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings and explain that the displacee cannot be required to move until at least one comparable replacement dwelling is made available.

As soon as feasible, ODOT shall inform displacees in writing of the specific comparable replacement dwelling, the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination, so that the displacees are aware of the maximum replacement housing payment for which they may qualify.

The agent should always attempt to inspect comparable replacement housing prior to its being made available to ensure that it meets applicable standards. If such an inspection is not done, the displacee shall be notified in writing of the reason that an inspection was not made and, that if the comparable is purchased or rented by the displaced person, a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

Whenever possible, minority persons, including those temporarily displaced, shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings not located in the area of minority concentration, that are within their financial means. This policy, however, does not require ODOT to provide a larger payment than necessary to enable a person to relocate to a comparable replacement dwelling.

The agent should be aware of the individual needs of the different groups of people - minority and non-minority - and use methods which will ensure that relocation program services, benefits, and opportunities are provided equally to persons affected by the programs.

All persons shall be offered transportation to inspect housing to which they are referred. Any displaced person who may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see [Glossary](#)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

### **8.563 No Waiver of Relocation Assistance/Benefits**

ODOT may not propose or suggest that a displaced person waive their rights or entitlements to relocation assistance and benefits as provided in the Uniform Act and detailed in this chapter. After having been fully advised in writing by the department of all eligible payments and benefits to which they are entitled, a displaced person may, by written statement, refuse some or all of those benefits on their own initiative.

### **8.564      Applicability**

These requirements apply to the relocation of any permanently or temporarily displaced person as defined in the glossary. Any person who qualifies as a displaced person must be fully informed of their rights and entitlements to relocation assistance and payments provided by the Uniform Act and these procedures.

### **8.570      Move Options**

#### **8.571      Residential Move Options**

Displaced owner-occupants or tenants of dwellings, including mobile homes, who qualify as displaced persons are entitled to payment of their actual, reasonable, and necessary moving expenses for moving personal property from a dwelling or mobile home. The relocation reviewer shall determine if the expenses are reasonable and necessary. Eligible move expenses are detailed in Sections 8.581 through 8.595.

The move benefit may be determined based on one, or a combination of, the following methods.

1. Commercial move (Common Carrier Move – see Section 8.575) performed by a professional mover; or
2. Self-move. With advance approval, self moves that may be performed by the displacee in one or a combination of the following methods:
  - a. Fixed Residential Moving Cost Schedule (see Section 8.573); or
  - b. Actual Cost Move supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. Receipts are required for reimbursements based actual costs moves. This type of move requires extensive supervision and move monitoring by the agent.
  - c. Move cost estimate prepared by a qualified ODOT staff person, as developed from ODOT's thorough review of the personal property to be moved and documented costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.
  - d. Commercial mover estimate based on the lower of two bids from a commercial mover.

## **8.572      Transportation of the Displaced Person and Personal Property**

Transportation costs for a distance beyond 50 miles are not eligible, unless the relocation reviewer determines that relocation beyond 50 miles is justified.

The move can be accomplished by several available relocation moving benefits, or a combination of them. See [Section 8.571](#), [Section 8.573](#), [Section 8.574](#), and [Section 8.575](#).

## **8.573      Residential Self-Moves Based on a Schedule**

Any person displaced from a dwelling or seasonal residence or a dormitory style room is entitled to receive, as an alternate to reimbursement for actual moving and related expenses, a payment determined from a schedule based on the number of rooms or items to be moved. The payment shall be determined according to the Fixed Residential Moving Cost Schedule approved by FHWA and published in the Federal Register on a periodic basis.

The agent performs a room count with the occupant. Large rooms or rooms with an unusual amount of possessions may be counted as more than one room. Outbuildings and other storage buildings may be added to the room count within reason.

The room count for the displacement dwelling is as follows:

1. Unfurnished (Occupant owns furniture)

1 room: \$600; 2 rooms: \$800; 3 rooms: \$1,000; 4 rooms: \$1,200;  
5 rooms: \$1,400; 6 rooms: \$1,600; 7 rooms: \$1,800; 8 rooms: \$2,000  
Each additional room: \$200

2. Furnished (Occupant does not own furniture)

a. \$350 for the first room + \$100 for each additional room.

The moving expense allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person is limited to \$100.

This moving payment is claimed on Residential Relocation Claim (Form 2264), which is filled out by the agent and the displacee. The agent must inspect the displacement property and complete the inspection report before the claim is processed.

Payment will be made after the dwelling has been vacated.

The schedule move includes allowances for all moving costs, therefore displacees choosing the schedule move may not apply for reimbursement of utility reconnection charges or other moving or moving related expenses, with the exception of storage expense.

ODOT may determine that the storage of personal property is a reasonable and necessary moving expense for a person displaced utilizing the fixed residential move cost schedule. The determination shall be based on the needs of the displaced person; the nature of the move; the plans for permanent relocation; the amount of time available for the relocation process; and whether storage will facilitate relocation.

If ODOT determines that storage is reasonable and necessary in conjunction with a fixed cost moving payment, ODOT shall pay the actual, reasonable, and necessary storage expenses outlined in Section 8.583.

If storage is approved, the Fixed Residential Move Cost Schedule provides a one-time payment for the move from the displacement dwelling to the replacement dwelling, or the storage facility. The fixed cost moving payment, plus storage expense if approved, is the full reimbursement for the eligible move costs.

### **8.574 Residential Combination Moves – Schedule/Actual Costs**

The actual cost move based on reasonable moving and related expenses (see [Section 8.571](#)) can also be used in combination with an adjusted schedule move. For example, a residential displacee may use a schedule move to cover the personal property in the home and use a self move based on actual reasonable moving costs and expenses supported by receipted bills and expense statements to cover the cost of relocating yard improvements, such as a satellite dish, woodpile or lawn ornaments, or large household items, such as a piano or large appliances.

### **8.575 Common Carrier Move Procedures**

Residential and nonresidential displacees may choose a PUC licensed common carrier to move personal property by following the instructions on the applicable RITS move agreement form for the relocation type: Residential (RITS 2263 Form 2971), Non-residential (RITS 2273), Personal Property Only (RITS 2283 Form 2970), or outdoor advertising signs (RITS 2293 Form 2973). This form and the accompanying Instructions for Moving Companies (RITS 2224 Form 734-3625,) must be given to the carrier in advance of the move so the carrier will understand the required procedures to provide a written estimate.

The following are details that the agent must consider and be aware of when advising the displaced person and the common carrier providing the service:

1. The order in which the move is to occur (to minimize down time and facilitate move monitoring).
2. The timing of the move should be specifically addressed (is a weekend or a night move justified? How many days will the move take?)
3. Items requiring special handling, packing, detachment and/or reinstallation need to be identified.
4. An inventory of the items to be moved needs to be developed prior to the move and adjustments, if any, to the inventory need to be made prior to the move.
5. A specific replacement site needs to be identified.
6. Unique circumstances of the move need to be addressed, such as whether convenient loading docks or elevators will be available during the move.

The agent is to monitor the move to the extent necessary to ensure that the items moved are eligible for relocation. On this type of move, the billing from the mover should be only for those items actually moved and should meet the criteria of actual and reasonable.

A review of the estimate and bill may then be sufficient for monitoring and should reveal if any non-eligible items have been included. Questions about specific items should have been resolved with the owner prior to the move. Reasons for significant amounts billed over the estimates must be documented and forwarded with the claim.

### **8.576 Decent, Safe and Sanitary (DSS) Housing**

Before making payment to the displacee, an agent must have inspected the replacement dwelling and determined that it meets local housing and occupancy codes (if more stringent) or the standards for decent, safe, and sanitary (DSS) housing. The inspecting agent must know what codes are in effect and should be able to ascertain whether the dwelling complies with the codes. Additional inspections may be required to properly assess the replacement dwelling.

### **8.577 DSS Requirements for Size and Number of Bedrooms**

Occupancy requirements with respect to number of bedrooms and dwelling size are determined by local housing and occupancy codes.

The agent should check with both the local and state agencies to determine the decent, safe, and sanitary requirements (housing and occupancy codes) for each jurisdiction.

If DSS standards are stricter than applicable minimum housing and occupancy codes, DSS standards shall apply unless waived for good cause by the deputy state right of way manager. (See [Glossary](#) for definition of Decent, Safe and Sanitary Dwelling.)

### **8.578 Replacement Dwelling Inspection Requirements**

The agent should emphasize to displacees that they may buy or rent any dwelling, but, before they can receive replacement housing payments, the replacement dwelling must pass a DSS inspection performed by the agent who completes the Replacement Dwelling Inspection (RITS 2230 Form 734-3622). The agent should advise the displacee that the DSS inspection is for the purpose of this relocation program only. The agent should also advise displacees not to commit themselves to a replacement dwelling before the DSS inspection, unless that commitment is made subject to DSS approval by the inspection agent.

If the dwelling conforms to DSS standards, the completed inspection form must be included with the claim for relocation benefit payment. The agent then notifies the displacees of the inspection results.

If the dwelling does not qualify, the agent will notify the displacees of the deficiencies found as a result of the inspection. The claimant may attempt to have the defects corrected to claim the benefits or may select and qualify another dwelling within the one-year time limit.

### **8.579 Additional Inspections**

Inspection by another agency might be required due to new construction, major renovation and/or new or revised electrical or sewer connections.

If the inspecting agent is uncertain as to compliance, the agent should arrange for an additional inspection by a specialized private contractor. The agent should arrange for such additional



inspections if there are questions regarding the adequacy of the dwelling or any of its components, such as wiring, plumbing, or heating system.

When a code inspection of a dwelling or a component of a dwelling has to be performed by an agency other than ODOT or by a private contractor, the right of way agent will not complete the DSS inspection until:

1. The local agency has performed its final inspection and approved the dwelling, or
2. The private contractor reports that no deficiencies exist or reported deficiencies have been corrected.

## **8.580 Benefits**

### **8.581 Packing**

Packing, crating, unpacking, and uncrating of the personal property.

### **8.582 Utility Reconnection Charges**

Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property are reimbursable expenses except under the Schedule Move Option (see [Section 8.573.](#))

Reconnection fees may be paid separately from the moving expense claim. Reconnection cannot exceed the number of, nor differ in kind from the connections found in the acquired improvement, unless the hook-up is necessary to provide the same level of utility service as found in the displacement building.

Reimbursement of these expenses will be on an actual and reasonable cost basis only, requiring submittal of an invoice or paid receipt with the claim.

Deposits and/or costs incurred in extending services from the right of way to the replacement building are not reimbursable.

If a connection problem arises and it is not clearly eligible, ODOT should be consulted for a decision regarding eligibility for payment in advance of incurring the expense.

### **8.583 Storage of Personal Property**

Displacees required to move permanently or temporarily may be eligible for reimbursement of actual and reasonable expenses for the costs of interim off-premise storage of personal property for a maximum of 12 months if it is determined that storage is necessary in effecting a move of the displacees. ODOT may approve a payment for storage when the process of relocating from the acquired site to the replacement site is delayed for reasons beyond the control of the displaced person. This determination is made by the deputy state right of way manager.

Proper written justification and the length of storage must always be included in the file both in region and in headquarters as a requirement for approving storage costs. As a rule, storage will only be approved when its denial would cause a hardship to the displacee.

Storage may not be longer than 12 months, starting at the date of vacation from the acquired site and ending when the replacement site becomes available. Displacees may be entitled to

storage expenses for a period greater than 12 months in exceptional circumstances or in cases of extreme hardship as justified, documented, and approved upon written application on a Storage Expense Application (RITS 2251 Form 734-3624), with prior approval of the deputy state right of way manager.

Storage may be in a licensed and bonded warehouse, a mini-storage facility, or other rented space. Boarding of animals is not considered to be storage of personal property.

The costs for initial move into storage and the final move out of storage may be eligible for reimbursement, but each move requires an inventory and monitoring by the agent. Displacees who utilize the Fixed Residential Move Cost Schedule (see Section 8.573) are not eligible for reimbursement for the final move out of storage. For monitoring requirements, see [Section 8.553](#).

To request an interim storage benefit, the agent provides a Storage Expense Application (RITS 2251 Form 734-3624) for the displacees to complete and sign. The agent reviews the application to determine whether storage is required by the move. If it is required, the agent submits the application to the relocation reviewer, and notifies the displacees of the decision about eligibility.

#### **8.584 Insurance**

An insurance premium for the replacement value of the property in connection with the move and necessary storage is eligible for reimbursement.

#### **8.586 Replacement Value of Uninsured Property**

The replacement value of property lost, stolen, or damaged in the process of moving (but not through the fault or negligence of displacees, their agents, or employees) where insurance covering such loss, theft, or damage is not reasonably available is eligible for reimbursement.

#### **8.587 Rental Application Fees and Credit Reports**

A displaced tenant is entitled to reasonable reimbursement, as determined by ODOT, for actual expenses not to exceed \$1,000 incurred for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

#### **8.595 Other Moving-Related Expenses**

Other moving related expenses that are not listed as ineligible in [Section 8.554](#), as the deputy state right of way manager determines to be reasonable and necessary are also eligible for reimbursement.

#### **8.600 Replacement Housing Payments**

Replacement housing payments involve a variety of benefits available to assist displacees in obtaining comparable replacement dwellings. Certain owner-occupants may be eligible for a replacement housing payment, which includes a housing price differential payment, which when added to the acquisition payment for the displacement dwelling provides for the purchase of a comparable replacement dwelling. This payment also includes compensation for increased costs

for financing the replacement dwelling and actual closing costs incidental to the purchase of the dwelling.

Other replacement housing payments include a rental assistance payment for eligible displacees electing to rent replacement housing, or a payment to assist eligible displacees in making a down payment on the purchase of a replacement dwelling, plus closing costs incidental to the purchase of the replacement dwelling.

### **8.601 Replacement Housing Price Differential Payments for 90-Day Owner-Occupants**

The replacement housing price differential payment is made to certain displaced owner-occupants to assist them in acquiring a replacement dwelling.

For an owner-occupant who purchases a decent, safe and sanitary replacement dwelling, the amount of the total payment shall not exceed \$41,200, which is the combined sum of:

1. The replacement housing price differential is an amount, if any, by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling. The cost of the replacement shall be the lower of:
  - a. The cost of a comparable replacement dwelling found by the agent, or
  - b. The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.
2. The amount necessary to compensate the displaced person for any increased interest cost and other debt service costs to be incurred in connection with the mortgage on the replacement dwelling. (See [Section 8.613](#) for details.)
3. Reasonable expenses that are incidental to the purchase of the replacement dwelling. (See [Section 8.616](#) for details.)

### **8.602 Eligibility (90-Day Owner-Occupant)**

To be eligible for a replacement housing price differential, a displaced person:

1. Must have owned and occupied the acquired dwelling for at least 90 days immediately prior to the initiation of negotiations; and
2. Purchases and occupies a decent, safe, and sanitary replacement dwelling with 1 year after the later of the following dates (except ODOT may extend such 1-year period for good cause):
  - a. The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or
  - b. The date ODOT's obligations under Section 8.518 Availability of Replacement Dwelling Before Displacement are met.

See also [Section 8.659](#), Time Limitations for Benefit Claims.

### **8.603 Benefit Calculation for 90-Day Owner-Occupants**

The agent in the region researches the local housing market and computes the upper limit of the housing price differential, based on the cost of a comparable replacement dwelling. Selection of comparables and calculation of the payment may not be done by the agent who appraised or will negotiate for the subject property without the approval of the deputy state right of way manager.

A definition of comparable replacement dwelling may be found in the [Glossary](#) of this manual.

To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. See Section 8.609 for more details on determining such a displacement carve-out.

The agent describes in RITS the major characteristics of the subject property and the for-sale offerings found in the market. The agent must view the interior of the displacement dwelling and the interior of the comparables whenever possible. Interior inspection of comparables is especially important if they appear only marginally DSS. The agent attaches photographs to Replacement Housing Worksheet Photo Record pages (Form 734-3601).

The replacement dwelling selected, as the basis of the benefit calculation must be available for purchase on the date the acquisition agent gives the 90-day notice. The agent will need to make a new benefit calculation if the comparable unit is no longer available. The agent should advise the displacee to make the earnest money deposit on any replacement dwelling subject to its inspection and approval by ODOT as decent, safe, and sanitary. The agent must also advise displacees of the possibility of a relocation carve-out.

### **8.604 Insurance Proceeds**

In order to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the replacement housing payment.

### **8.605 Owner Retention of the Displacement Dwelling**

If owners retain ownership of their dwelling and both move it from the displacement site and reoccupy it on the replacement site, the purchase price of the replacement dwelling shall be the sum of:

1. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move.

2. The cost of making the unit a decent, safe and sanitary replacement dwelling.
3. The value of the replacement site as determined by a or b below:
  - a. For residential use, if the displacee owned the displacement site and owns or acquires the replacement site. In determining fair market value of the replacement site, an appraisal report is not necessary. Any reasonable method of arriving at the value may be used,

OR

  - b. The amount of the rental assistance benefit calculation for the site, if the displacement site was rented.
4. The retention value of the dwelling. (The retention value is the salvage value reflected in the acquisition documents.)

### **8.606 Multiple Occupancy of a Dwelling Unit**

If two or more occupants of an acquired dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share of any relocation payment based on the occupants moving together to a comparable replacement dwelling.

Prorations of this nature are based upon the number of occupants of the household, not on the size of the financial contributions made by each to the maintenance of the household.

If the deputy state right of way manager determines that two or more occupants maintained separate households within the same dwelling, such occupants will be treated separately, and benefits computed on a carve-out of each person's living quarters. To be considered a separate household, individuals or families occupying the same residence should have separate rental agreements or pay rent separately and share a minimal amount of common areas (bathrooms, living room, kitchen, etc.).

### **8.607 Mutual Ownership Payments**

When a single-family dwelling is owned by several persons and occupied by only some of the owners, the replacement housing payment will be the lesser of:

1. The difference between the owner-occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling, or
2. The difference between the total acquisition cost of the acquired dwelling and the necessary amount (determined by the agent) to purchase a comparable dwelling.

Partial owner-occupants who cannot afford to purchase comparable DSS replacement housing may be treated as tenants and may be entitled to receive a rent supplement payment if they rent and occupy a comparable DSS replacement dwelling. If the application of this procedure, because of unusual circumstances, creates an undue hardship on occupants with a partial ownership, an explanation of the situation, along with a recommended solution, should be submitted to the deputy state right of way manager.

### **8.608 Owner-Occupant of a Mixed-Use or Multifamily Property**

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its actual cost when computing price differential.

In other words, the owner-occupant of a multiple dwelling unit is entitled to the same benefits as any other owner-occupant. However, the comparable dwelling should have the same number of units as are in the acquired structure. If no similar structures are available, a building with fewer units must be used. The value of the owner's unit, not the value of the entire subject property, is used to determine the replacement housing payment. The replacement housing payment is the difference between the value of the owner's living unit as determined by a carve-out and the value of a comparable living unit in the most comparable property. (See Section 8.609 and 8.610).

The increased interest and closing costs payments for an owner-occupant unit in a multiple dwelling are to be based upon the value this unit contributes to the value of the entire property. For example, if the value of a unit is 30 percent of the entire property, then the payment would be based on 30 percent of the increased interest and closing cost payments.

### **8.609 Displacement Carve-Out**

It may sometimes be difficult to find a comparable replacement dwelling in a housing price differential study because the displacement site is atypical of offerings in the area. However, only that portion of market value which is attributable to a home site and the displacement dwelling need to be considered when computing benefits (see [Section 8.603](#)). It is important that field personnel recognize the need for a carve-out and request an early estimate.

Examples of instances requiring carve-outs are:

1. When a dwelling is located on a tract larger in size than typical for residential use in the area.
2. When an owner occupies one unit of a multiple dwelling. The owner is entitled to benefits based on the carved out value of a replacement unit. (See [Section 8.608](#).)

The contributory value of the carve-out should be based on the appraisal and approved by the region right of way manager/program manager or project manager. If the appraisal is unclear or the use of the breakdown from the appraisal would be inequitable, a written carve-out value should be obtained from the appraisal reviewer. (See <https://www.oregon.gov/ODOT/ROW/Documents/ROW-Manual-A-01.pdf>.)

### **8.610 Replacement Carve-Out**

The carve-out procedure (See <https://www.oregon.gov/ODOT/ROW/Documents/ROW-Manual-A-01.pdf>) is used when displacees purchase a replacement property which contains attributes not intended for their residential use. These could include commercial buildings, rental units, or farmland.

The agent deducts the contributory value of these non-residential attributes from the replacement purchase price for the purpose of benefit computation.

This could make a claimant ineligible for the maximum replacement housing payment, even though the price of the replacement, including the extra attributes, was greater than the minimum purchase price required to claim the maximum benefit.

Displacees who express an interest in acquiring a mixed-use replacement property must be cautioned in advance of the possibility of such a carve-out.

### **8.611 Payment to an Estate (Relocatee Deceased)**

A replacement housing payment is personal to the displaced persons and, upon their death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

1. The amount attributable to the displaced person's occupancy of the replacement housing shall be paid.
2. The full payment shall be disbursed in any case in which a member of a displaced family dies, and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.
3. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

### **8.612 Computing Replacement Housing Payments Resulting from Partial Acquisitions**

In cases where owner-occupants are displaced from their dwelling as a result of a partial acquisition, the agent must determine whether or not to include the value of the remaining property in the price differential computations.

If the remaining property is a buildable home site, the appraisal reviewer will identify it in the appraisal review as an economic remainder. The appraisal reviewer will further state in the review that "the state can offer to purchase the economic remainder." In these instances, ODOT will offer to purchase the economic remainder, unless there are unusual circumstances that would prohibit the state's purchase of the remainder, such as contamination on it. Regardless of whether or not the property owner chooses to sell the economic remainder to ODOT, its value shall be added to the just compensation estimated for the taking and damages when determining the price differential payment.

Should ODOT not offer to purchase the economic remainder, the value of the remaining property shall not be added to the just compensation when determining the price differential payment.

If the appraisal reviewer identifies the remaining property as uneconomic, then the value of the remaining property shall be added to the just compensation only if the property owner chooses to sell the remainder to ODOT. If the property owner chooses to keep the remainder, then only the just compensation for the taking and damages shall be used when computing the replacement housing payment.

## **8.613 Increased Mortgage Interest Payment**

### **Benefit Description for Traditional Mortgages**

For traditional mortgages, the payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.

In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to initiation of negotiations.

### **Benefit Description for Reverse Mortgages**

The payment for replacing a reverse mortgage shall be the difference between the existing reverse mortgage balance and the minimum dollar amount necessary to purchase a replacement reverse mortgage which will provide the same or similar terms as that for the reverse mortgage on the displacement dwelling.

Factors are considered to estimate an amount, after paying off the existing balance, sufficient to purchase a replacement reverse mortgage that provides a tenure or term payment, line of credit, or lump-sum disbursement.

In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on reverse mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.

## **8.614 Increased Mortgage Interest Eligibility**

### **Eligibility for Traditional Mortgages**

A displaced 90-day owner-occupant is eligible for this payment under the following conditions:

1. The acquired dwelling must have been encumbered with a bona fide traditional mortgage financing instrument(s) for not less than 180 days before initiation of negotiations.
2. The replacement dwelling when acquired by the displacee must be burdened with a bona fide traditional mortgage financing instrument. with a higher rate of interest than that which existed on the displacement dwelling.
3. The interest rate on the replacement dwelling must be adjusted if it exceeds prevailing rates for the area in which it is located, unless justification exists for the excessive rate.
4. The principal amount of either financing instrument may exceed the other without voiding eligibility.

### **Eligibility for Reverse Mortgages**

A displaced 90-day owner-occupant is eligible for this payment under the following conditions:

1. The acquired dwelling must have been encumbered with a bona fide reverse mortgage financing instrument(s) for not less than 180 days before initiation of negotiations.



2. The replacement dwelling when acquired by the displacee must be burdened with a bona fide reverse mortgage financing instrument.
3. The interest rate on the new reverse mortgage used in determining the amount of the eligibility shall not exceed the prevailing rate for reverse mortgages currently charged by mortgage lending institutions for owners with similar amounts of equity in their units in the area in which the replacement dwelling is located.
4. The Agency must know the value of the acquired dwelling, existing balance of displacement reverse mortgage, remaining equity, and price of the selected comparable or actual replacement dwelling, to compute the estimated reverse mortgage supplement payment for a replacement reverse mortgage.
5. In cases where there is a tenure or term payment additional information such as the age of the youngest borrower, amounts of the tenure payment, amount and remaining term of term payment and the current interest rate, is needed to calculate the payment and will require the assistance of a reverse mortgage broker.

See also [Section 8.659](#), Time Limitations for Benefit Claims.

## **8.615 Computation of the Increased Mortgage Interest Costs Payment**

### **Traditional Mortgages**

Set forth below are the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the down payment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the buy down.

The remaining principal balance, the remaining term, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage must be known to compute the interest differential costs.

If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

The following apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling:

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly.

2. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
4. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
  - a. They are not paid as incidental expenses.
  - b. They do not exceed rates normal to similar real estate transactions in the area.
  - c. ODOT determines them to be necessary.
  - d. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.
5. The agent calculates the benefit amount, based on the documentation supplied by the claimants, then sends the completed forms and documents to the relocation reviewer for review and payment. The agent should discuss any unusual mortgage situations (e.g., balloon payments or adjustable interest rates) with the relocation reviewer for direction in calculating the benefit.

As soon as the facts relative to the person's current mortgage(s) are known, the agent shall advise the displaced person of the approximate amount of this payment and the conditions that must be met to receive the payment. The displacee is also to be advised of the interest rate and points used to calculate the payment. This can be done by using Increased Interest Worksheet or the RITS calculator.

Payment shall be made available at or near the time of closing in order to reduce the new mortgage as intended. This payment is contingent upon a mortgage being placed on the replacement dwelling.

The increased interest payment is calculated In RITS using the Increased Interest Calculator. This is a two-step process:

1. The estimated interest based on market rates is calculated when the Terms of State's Offer Letter is generated.
2. Recalculated with the actual interest rate when a replacement property is purchased. The Sample below is for background information; RITS will do the actual computation.

### **Sample Computation**

#### **Old Mortgage**

Remaining Principle Balance:	\$50,000.00
Monthly Payment (principal & interest only)	\$458.22

Interest rate	7%
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### **New Mortgage**

Interest rate	10%
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of \$458.22 @ 10% = \$42,010.18.

Remaining Principal Balance	\$50,000.00
Minus Annual Monthly Payment (principal and interest)	\$42,010.18
Increased mortgage interest costs	\$7,989.82
3 points on \$42,010.18	\$1,260.31
Total buy down necessary to maintain payments at \$458.22/month	\$9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage (\$42,010.18), the buy down shall be prorated accordingly. If the actual mortgage obtained in our example were \$35,000, the buy down would be \$7,706.57 (\$35,000 divided by \$42,010.18 = 0.8331 and \$9,250.13 X 0.8331 = \$7,706.57).

The mortgage rate to be used to compute the increased interest costs payment when the property is secured with an adjustable-rate mortgage is the interest rate that is current on the property as of the date of acquisition.

In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to initiation of negotiations or the balance on the date of acquisition, whichever is less.

If the interest differential payment on a replacement dwelling result in the total housing price differential payment exceeding the \$41,200, then the replacement housing falls into the category of Housing of Last Resort. In such cases, the agent should explore alternatives to the housing price differential super payment. Housing of Last Resort procedures are discussed further in [Section 8.641](#).

### **Reverse Mortgages**

The following applies to the computation of the mortgage interest differential payments for reverse mortgages, which payment shall be contingent upon a new reverse mortgage being purchased for the replacement dwelling.

1. The payment shall be based on the difference between the reverse mortgage balance and the minimum amount needed to qualify for a reverse mortgage with the similar terms as the reverse mortgage on the displacement dwelling; however, in the event the displaced person obtains a reverse mortgage with a smaller principal balance than the reverse mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. The reverse mortgage balance shall be that balance which existed 180 days prior to the initiation of negotiations or the reverse mortgage balance on the date of acquisition, whichever is less.
2. The interest rate on the new reverse mortgage used in determining the amount of the eligibility shall not exceed the prevailing rate for reverse mortgages currently charged by mortgage lending institutions for owners with similar amounts of equity in their units in the area in which the replacement dwelling is located.
3. Purchaser's points and loan origination, but not seller's points, shall be paid to the extent:
  - a. They are not paid as incidental expenses;
  - b. They do not exceed rates normal to similar real estate transactions in the area;
  - c. The agency determines them to be necessary; and
  - d. The computation of such points and fees shall be based on the reverse mortgage balance on the displacement dwelling plus any amount necessary to purchase the new reverse mortgage.
4. The displaced person or their representative shall be advised of the approximate amount of this eligibility and the conditions that must be met to receive the reimbursement as soon as the facts relative to the person's current reverse mortgage are known; the payment shall be made available at or near the time of closing on the replacement dwelling in order to purchase the new reverse mortgage as intended.

### **Sample Computations**

Below are four scenarios for relocation payment eligibilities. As you will note, the eligibility is the same in each case; however, benefit amounts will vary depending on the individual's circumstance and existing reverse mortgage terms. There are other options; however, they do not place the person into a replacement reverse mortgage.

**Situation 1** - Owner has sufficient remaining equity to obtain a replacement reverse mortgage for purchase.

**Situation 2** - Owner's existing reverse mortgage has a tenure disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

**Situation 3** - Owner's existing reverse mortgage has a term disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

**Situation 4** - Owner's existing reverse mortgage is a line of credit and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

The displaced homeowner may be eligible for the following relocation payments:

1. A price differential payment in accordance with Section 8.601.

The owner would be eligible for a price differential payment (the difference between the comparable replacement dwelling and the acquisition cost of the displacement dwelling).

2. The administrative costs and incidental expenses necessary to establish the new reverse mortgage.

Incidental costs incurred with a replacement reverse mortgage are reimbursable and fall into three categories:

- a. Mortgage insurance premium (MIP)
  - b. Loan origination fee
  - c. Closing costs.
3. A mortgage interest differential payment (MIDP) if the homeowner incurs a higher interest rate on the new reverse mortgage.

The payment would be based on the difference between the displacement adjustable-rate mortgage (ARM) cap rate at the initiation of negotiations and the available ARM cap rate and those rates would be used as the components to calculate the MIDP in accordance with the sample calculation provided in Section 8.601. ODOT must advise the displaced person of the interest rate used to calculate the payment. Note that most reverse mortgages are monthly adjustable rate mortgages, so any interest differential payment would be minimal.

If the displaced homeowner elects to relocate into rental housing rather than remain a homeowner, then ODOT will calculate relocation assistance payments in accordance with [Section 8.619](#).

For example, ODOT computes a rental assistance payment of \$10,000 for the owners based on a comparable replacement rental dwelling. When the owners settle with ODOT, the owner will pay off the balance of the reverse mortgage and retain any remaining equity in the property. They are eligible for the rental assistance payment when they rent and occupy the DSS replacement dwelling.

NOTE: In all situations, if the displaced homeowner elects to relocate into rental housing rather than remain homeowner, then ODOT will calculate relocation assistance payments in accordance with Section 8.619.

NOTE: If the existing reverse mortgage was a lump-sum or line-of-credit which has been exhausted, then ODOT is not under obligation to replace those amounts, but only to replace the reverse mortgage with a reverse mortgage with terms and equity similar to the displacement reverse mortgage.

Other options (not recommended unless elected by the displaced person, since they do not place the person into the same situation as the displacement reverse mortgage provided):

1. A direct loan as set forth in Section 8.641 under replacement housing of last resort
2. A life estate interest in a comparable replacement dwelling under replacement housing of last resort in Section 8.641.
3. Agency purchases a comparable replacement dwelling and retains ownership and conveys a leasehold interest to the owner for their lifetime
4. Agency offers a comparable replacement rental dwelling to convert the homeowner-occupant to tenant status.

### **8.616      Incidental Expenses Payment**

An eligible displacee is entitled to a payment for those necessary and reasonable costs incurred incident to the purchase of a replacement dwelling and customarily paid by the buyer, including:

1. Legal, closing and related costs including fees for title search, preparation of conveyance contracts, notary services, surveys, preparation of drawings or plats, and charges paid incident to recording.
2. Lenders, FHA or VA application and appraisal fees.
3. Loan origination or services fees, that do not represent prepaid interest, actually paid by the displaced person, but not to exceed an amount which would have been paid if the original mortgage balance was refinanced. These fees shall not exceed the prevailing rate for real estate transactions in the area.
4. Certification of structural soundness and termite inspection. This includes reimbursement for a Professional home inspection.
5. Credit report.
6. Owner's and mortgagee's title policy or abstract of title, e.g. title insurance, not to exceed the costs for a comparable replacement dwelling.
7. Escrow agent's fee.
8. State revenue or documentary stamps.
9. Sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
10. Such other costs as ODOT determines to be incidental to the purchase.

Incidental expenses, which vary with the purchase price and/or the loan, such as title insurance fee, loan origination fee, etc., must be prorated when the displacee purchases a replacement dwelling costing more than the replacement comparable. Unusual or excessively high incidental costs will be paid only when there is no other comparable housing not subject to such costs.

### **8.617      Ineligible Incidental Expenses**

The following items are not considered reimbursable expenses:

1. Fees, costs, or charges, which are part of the debt service or finance charge except in the case of a down payment conversion from a rent supplement.
2. Any items paid in advance by the seller of the real property and prorated between the seller and the buyer at the close of escrow, such as real property taxes, fire insurance, homeowners' association dues and assessment payments.

### **8.618      Eligibility - Incidental Expenses**

Eligibility for the incidental expenses payment is limited to:

1. 90-day tenant-occupants.

2. 90-day owner-occupants who have purchased and actually and lawfully occupied the replacement DSS dwelling. See also [Section 8.659](#), Time Limitations for Benefit Claims.

### **8.619 Rental Assistance Payment**

An eligible displaced person renting a replacement dwelling may receive a rent supplement up to \$9,570 toward the increased rental amount of a DSS replacement unit over a 42-month period, or down payment assistance (see Section 8.629).

The payment under this section shall be disbursed in a lump sum amount, unless the deputy state right of way manager determines, for good cause, that the payment should be made in monthly installments. However, except as limited by [Section 8.611](#), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's replacement housing.

The agent should advise the displacee that the replacement unit must meet DSS requirements before the benefit payment can be made. Any rental agreement should be made subject to the unit's inspection and approval by the inspecting agent.

### **8.620 Eligibility - Rent Supplement**

Those who may be eligible for a rent supplement are displacees who have actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations. This may include:

1. 90-day tenant occupants.
2. 90-day owner-occupants who could be eligible for a replacement housing payment under Section 8.601 but elects to rent a replacement dwelling. Calculation of this benefit for a 90-day owner-occupant will only be done at the displacee's request. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with 8.626, except the limit of \$9,570 does not apply, and is disbursed in accordance with 8.619. The rental assistance payment to 90-day owner- occupants shall not exceed the determined price differential (see Section 8.601). Payments for down payment assistance are not applicable.

See also [Section 8.659](#), Time Limitations for Benefit Claims.

### **8.621 Information Needed for Rent Supplement Determination**

The gross income of a tenant is sometimes used in the calculation of the rental assistance payment. Therefore, it is important to obtain this information accurately. If the department determines the tenant to be a low-income person based on the applicable HUD schedule, then income is a consideration in the calculation of the base monthly rental for the displacement dwelling and may ultimately affect the amount of rental payment due the tenant.

(See [Glossary](#) and [Section 8.626](#) for discussion of base monthly rent.)

HUD low-income limitations can be found at: <https://www.huduser.gov/portal/datasets/ura.html>.

### **8.622 Determination of Average Gross Monthly Household Income**

Household income is defined as the total gross income (before taxes and deductions) received for a 12-month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children under 18, or full-time students who are students for at least 5 months of the year and are under the age of 24. Household income does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program.

Information on the average gross monthly household income should be obtained by the agent at the time of the occupant interview and is only required if the displacee is considered low-income by HUD standards. Income verification information is necessary from all renter occupants and is recorded on RITS 2215 Form 734-2331. All people in the household should be questioned, except for unmarried dependents and full-time students less than 18 years of age.

RITS 2215 Form 734-2331 contains personal data. DO NOT upload to RITS. Fax the completed form to the relocation reviewer. The agent and the Reviewer will keep the original document and the faxed copy until the relocation file is closed, after which the documents will be shredded.

If the household has been steadily employed in the twelve months preceding the occupant interview, use the current income. If the head of the household or other members who earn wages are unemployed at the time of the occupant interview, or if the household income is from seasonal or fluctuating income, the agent conducting the interview should use the average monthly income during the twelve months prior to the occupant interview.

In cases where income information is required, each wage earner or person contributing to household income from any source must certify to the total amount by signing at the bottom of the interview form. If displacees are unwilling to do so the agent may assume that the base rent is within the displacees' financial means. Displacees should be informed of the effect of such a refusal to report and certify to monthly income. This notification must be documented in the file.

In cases where the average gross monthly household income is used in determining the rent supplement, the displacees must provide verification of income, such as a pay receipt or income tax return.

### **8.623 Contract Rent**

Contract rent reported by a renter must be supported by evidence, such as a copy of a rent receipt, a cancelled check, or a written statement from the landlord. This evidence should be attached to the interview form. The interviewing agent must determine and document what amenities are included for rent paid, such as utilities, parking, cable TV, etc., to accurately analyze comparable units.



### **8.624 Economic Rent (Fair Market Rent)**

When an owner-occupant plans to rent a replacement dwelling, it is necessary for the agent to estimate the fair market rent of the displacement dwelling unit, by using Replacement Housing Worksheet (RITS 2201 Form 734-3643). Three comparables are desirable, although only one is required to estimate market rent being paid for comparable dwellings. Adjustments should be made for dissimilarities between the comparables and the subject to reflect the subject's fair market rent. All adjustments should be explained.

An estimate of fair market rent on the displacement unit may also be necessary in the case of a tenant occupant who pays little or no rent. If the contract rent is substantially lower than market rent, the agent should investigate and document the reasons why it is lower, using that information to make a decision (along with the relocation reviewer) as to whether to base the rental assistance payment on the contract rent or on market rent. The agent should be careful to ensure that the use of fair market rent would not result in a hardship to the displacee because of the person's income or other circumstances. All displacees must be offered replacement housing that is within their financial means. (See [Section 8.626](#).)

### **8.625 Average Monthly Utility Costs**

The best approach for determining the average monthly cost of utilities is to contact the utility companies and obtain the average monthly utility cost for the twelve months prior to the occupant interview. In cases where it is not appropriate to contact the utility companies, i.e., when the source of heat is a wood stove, a verification or projection of costs of heat, light, water, and sewer should be obtained from other sources.

### **8.626 Rental Assistance Benefit Calculation**

The agent should examine the market to find at least three DSS comparable replacement dwellings, if available, and compute the payment on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. The agent uses a photo to show the displacement dwelling and the comparable for-rent dwelling units, and then selects from those available in the market. The benefit is calculated on the form. The payment available to the displacee shall be the amount of any non-refundable deposit requirement from the selected replacement dwelling comparable, plus 42 times the amount obtained by subtracting the base monthly rental of the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling, or
2. The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary dwelling actually occupied by the displaced person.

The base rent of the displacement dwelling which is used in calculating the amount of benefits as described above is the lesser of:

1. The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement. For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances. All displacees must be offered a comparable replacement dwelling housing (see Section 8.641), or
2. Thirty (30) percent of the person's average gross household income, if the amount is classified as low income by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on the criteria in #1 for persons with income exceeding the survey's low income limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents.
3. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise. HUD low income limitations can be found at: <https://www.huduser.gov/portal/datasets/ura.html>, or
4. The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

Pictures of the subject and comparables must be attached to the photo record on the Replacement Housing Worksheet, Form 734-3601 to accompany the calculation sheet.

### **8.627 Conversion of Benefit**

Displaced owner-occupants or tenant-occupants who initially rent a replacement dwelling and receive a rental assistance payment are eligible to receive replacement housing payments in the form of a housing price differential or down payment benefit, if they meet the eligibility criteria for those benefits, including purchase and occupancy within the prescribed one year period. See [Sections 8.602](#) and [Section 8.620](#) for eligibility requirements and [Section 8.659](#) for time requirements. Any portion of a rental assistance payment that has already been disbursed shall be deducted from the benefits calculated for this conversion.

### **8.628 Less Than 90-Day Occupants**

Occupants of 90 days or less are entitled to relocation advisory services and a payment for moving costs and related expenses. They are not eligible for rental assistance payments. However, if a comparable rental replacement is not available at a rate within their financial means, the relocation agent must provide a comparable rental replacement by utilizing the provisions of last resort housing (see [Section 8.641](#)).

### **8.629 Down Payment Benefit**

An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment, including reimbursement for incidental expenses, in the amount the person would receive under [Section 8.626](#) of this manual if the person rented a comparable replacement dwelling, not to exceed the amount of the rent supplement entitlement.

The agent shall advise the displacee that the replacement dwelling must meet the DSS requirements before benefit payment can be made. Any earnest money agreement should be made subject to inspection and approval by the relocation reviewer.

### **8.630 Eligibility - Down Payment**

Eligibility for a down payment benefit is limited to displaced 90-day tenant-occupants. Displacees must purchase and lawfully occupy the dwelling for which the benefit is claimed.

Eligibility for down payment benefit does not extend to the 90-day owner-occupant. See also [Section 8.659](#), Time Limitations for Benefit Claims.

### **8.631 Benefit Calculation for Use in Down Payment**

An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive as a rental assistance payment calculated under [Section 8.626](#) if the person rented a comparable replacement dwelling.

### **8.632 Mobile Home Displacements**

Mobile homes, with the exception of travel trailers, are generally considered real property by ODOT. As such, offers to purchase are made and occupants displaced are eligible for relocation benefits.

However, when the land beneath the mobile home is not owned by the owner of the mobile home, for example, in a mobile home park, and the mobile homeowner pays a licensing fee and personal property taxes, that mobile home may be treated as personal property and moved under any of the actual cost moving benefits. One of the tests involving such determination whether the mobile home is personal or real property is the intent regarding attachment to the site. Most mobile homes are bought and sold in place. Few mobile homes are sold for removal. If the intent was for the mobile home to be moved, that mobile home may be considered personal property.

In some cases, displacees may live in campers, vacation trailers, or mobile homes that have not lost their identity as personal property and therefore will not be acquired for a project. The mobile dwelling itself, together with its contents, may be moved under any of the actual cost moving benefits. However, if the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described in [Section 8.634](#), the owner is not eligible for payment for moving the mobile home.

Generally, persons displaced from mobile homes are subject to the same eligibility standards and may claim the same relocation benefits as displacees from conventional housing.

### **8.633 Mobile Homes - Actual Cost Moving Expenses**

The following applies to payments for actual moving expenses:

1. A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired, anchoring of the unit, and utility hook-up charges.
2. If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and it has been determined that it would be practical to relocate it, the reasonable cost of such repairs and/or modifications is reimbursable.
3. A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park, or it has been determined that payment of the fee is necessary to effect relocation.

### **8.634 Replacement Housing Payments for 90-Day Mobile Homeowner- Occupants**

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$41,200, if:

1. The person both owned the displacement mobile home and occupied it on the displacement site for at least 90 days immediately prior to the initiation of negotiations.
2. The person meets the other basic eligibility requirements of 8.602.
3. The mobile home and/or mobile home site is acquired, or the mobile home is not acquired but the owner is displaced from the mobile home because it is determined that the mobile home:
  - a. Is not and cannot economically be made decent, safe, and sanitary.
  - b. Cannot be relocated without substantial damage or unreasonable cost, or
  - c. Cannot be relocated because there is no available comparable replacement site, or
  - d. Cannot be relocated because it does not meet mobile home park entrance requirements.

If a mobile home is not actually acquired, but it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the replacement housing payment shall include the salvage value or trade-in value of the mobile home, whichever is higher.

### **8.635 Rental Assistance Payments for 90-Day Mobile Home Occupants**

A displaced tenant or owner-occupant of a mobile home is eligible for a rental assistance payment or a down payment benefit, not to exceed \$9,570 if:

1. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations.
2. The person meets the other basic eligibility requirements in [Section 8.620](#) for a rental assistance payment or [Section 8.630](#) for a down payment benefit.

3. The mobile home and/or mobile home site is acquired, or the mobile home is not acquired but the owner or tenant is displaced from the mobile home because it is determined that the mobile home:
  - a. Is not and cannot economically be made decent, safe, and sanitary.
  - b. Cannot be relocated without substantial damage or unreasonable cost, or
  - c. Cannot be relocated because there is no available comparable replacement site, or
  - d. Cannot be relocated because it does not meet mobile home park entrance requirements.

### **8.636 Mobile Home Replacement Housing Payment Based on Dwelling and Site**

Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site.

Additionally, a person may elect to purchase a replacement mobile home and rent a replacement site or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable procedures. However, the total replacement housing payment shall not exceed the maximum payment (either \$41,200 or \$9,570) permitted under the section that governs the computation for the dwelling.

### **8.637 Cost of Comparable Replacement Dwelling – Mobile Homes**

If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

If it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, for purposes of computing the replacement housing payment, the cost of a comparable replacement dwelling is the sum of:

1. The value of the mobile home.
2. The cost of any necessary repairs or modifications.
3. The estimated cost of moving the mobile home to a replacement site.

### **8.638 Initiation of Negotiations – Mobile Homes**

If the mobile home is not actually acquired, but the occupants are considered displaced, the initiation of negotiations applies only to acquiring the land, or, if the land is not acquired, the written notification that they are displaced persons.

### **8.639 Mobile Home Moved as Personal Property**

If the owners are reimbursed for the cost of moving the mobile home, they are not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. They may, however, be eligible for assistance in purchasing or renting a replacement site.

### **8.640 Partial Acquisition of Mobile Home Park**

The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance.

### **8.641 Last Resort Housing**

#### **8.642 Determination to Provide Replacement Housing of Last Resort**

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in [Section 8.601](#) and [Section 8.619](#), as appropriate, additional or alternative assistance shall be provided under the provisions of this section. Any decision to provide last resort housing assistance must be adequately justified in writing and submitted to the deputy state right of way manager for approval either:

1. On a case-by-case basis, for good cause, this means that appropriate consideration has been given to:
  - a. The availability of comparable replacement housing in the program or project area.
  - b. The resources available to provide comparable replacement housing.
  - c. The individual circumstances of the displaced person, or
2. By a determination that:
  - a. There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area. therefore, last resort housing assistance is necessary for the area as a whole.
  - b. A program or project cannot be advanced to completion in a timely manner without last resort housing assistance.
  - c. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable housing to become available?)

The amount of justification needed to support the housing of last resort payment would vary with the size of the payment and the complexity of the relocation problem. If the last resort

payment is a super payment, then the relocation agent should provide a written explanation for the higher rent supplement or housing price differential payment and what alternatives were considered.

For example, the gross family income of the renter occupants may be extremely low, or the subject may have an extremely low rent because it is non-DSS. In cases like these, the housing of last resort super payment may be the only alternative.

The agent should send a memo with the benefit determination stating that due to the low income of the tenants, the only way that the tenants could afford DSS housing would be with assistance from the housing of last resort super payment. Another possible alternative that should be explored is to rehabilitate or add on to a non-DSS replacement dwelling. If the cost of making a non-DSS dwelling habitable is less than the super payment resulting from a DSS displacement dwelling, then this would be preferred to a super payment.

### **8.643 Basic Rights of Persons to be Displaced**

Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or [Section 8.641](#) of this manual.

No displaced person shall be required to accept a dwelling provided by ODOT under these procedures (unless the Department and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

### **8.644 Methods of Providing Comparable Replacement Housing**

Implementation shall be for a reasonable cost, on a case-by-case basis, unless an exception to case-by- case analysis is justified for an entire project.

The methods of providing replacement Housing of Last Resort include, but are not limited to:

1. A replacement housing payment in excess of the limits set forth in [Section 8.601](#) and [Section 8.619](#). A rental assistance subsidy under this section shall be paid in a lump sum. In unusual circumstances, the deputy state right of way manager may authorize this subsidy to be paid in installments.
2. Rehabilitation of and/or additions to an existing replacement dwelling.
3. The construction of a new replacement dwelling.
4. The provision of a direct loan, which requires regular amortization or deferred payment. The deputy state right of way manager shall determine whether the loan would be unsecured or secured by the real property and whether the loan may bear interest or be interest-free.
5. The relocation and, if necessary, rehabilitation of a dwelling.
6. The purchase of land and/or a replacement dwelling by ODOT and subsequent sale or lease to, or exchange with a displaced person.



7. The removal of barriers to the handicapped.
8. The change in status of the displaced person with their concurrence from tenant to homeowner when it is more cost effective to do so, i.e., in cases where a down payment may be less expensive than a last resort rental assistance payment.
9. Under special circumstances consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing, based on space and physical characteristics different from those in the displacement dwelling.

For example, an upgraded, but smaller replacement unit might suffice if it is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing.

However, under no circumstances shall the displaced person be required to move into a dwelling that is not functionally equivalent in accordance with the definition of a comparable replacement dwelling, found in the [Glossary](#).

The variation from the usual methods of obtaining comparability should never result in a lowering of housing standards for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling, but they may never be inferior.

One example might be using a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example would be the use of a superior, but smaller decent, safe, and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants, when no other comparable dwellings are available in the area.

Assistance shall be provided to a displaced person who is not eligible to receive a replacement housing payment under [Section 8.601](#) and [Section 8.619](#) because of failure to meet the length of occupancy requirement when comparable replacement housing is not available at rental rates within the person's financial means (see [Section 8.626](#)).

## **8.650 Claims**

### **8.651 Relocation Benefit Payment Procedure**

After a relocation claim is completed by the displacee, reviewed by the agent, and any comments necessary to support approval are added, the agent signs the bottom of the form and uploads the claim to RITS for review and approval. Documentation to support the payment must be attached.

Once it is determined that the claim meets all the standards and documentation required by state and federal regulations, the approved claim is forwarded for processing and payment.

### **8.652 Relocation Payment Approval Process**

Each relocation type has a unique relocation claim form: Residential (RITS form 2264), Non-residential (RITS form 2274), Personal Property Only (RITS form 2284) and outdoor



advertising signs (RITS form 2294). These forms must include supporting comments and documentation. The claim is uploaded to RITS by the relocation agent and automatically routed to the region ROW project manager and relocation reviewer for review and approval. If approved by the relocation reviewer, the claim is routed to the relocation payment specialist for payment approval and processing.

### **8.653 Documentation**

Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as a bill or invoice, certified prices, appraisals, or other evidence of such expenses. A displaced person, or person required to move temporarily, must be provided the reasonable assistance necessary to complete and file any required claim for payment.

### **8.654 Expeditious Claim Processing**

All displacees shall be given assistance in securing documentation needed to support their claims for payment and in the preparation of relocation forms. Required inspections of dwellings and properties and payment of claims will be made promptly.

### **8.655 Expeditious Payments**

ODOT shall review claims in an expeditious manner. The displacee making the claim shall be promptly notified as to any additional documentation required to support the claim. Payment for a claim shall be made as soon as possible following receipt of sufficient documentation to support the claim.

### **8.656 Advance Payments**

Displacees demonstrating the need for an advance relocation payment in order to avoid or reduce a hardship shall be issued such a payment, subject to the safeguards to ensure the objective of the payment is accomplished.

In order to facilitate a displacee's relocation, the relocation reviewer will make advance payments of housing benefits into escrow.

In order to apply for advance payment, the agent should assist the displacee in filling out the appropriate claim forms with the estimated cost shown as the amount claimed and an Assignment of Relocation Benefit (RITS 2255 Form 734-3816) to the selected escrow agent. The claim will be processed and forwarded as usual with the appropriate supporting documentation. Advance payments will usually not be paid directly to the displacee but will be sent to the escrow company with appropriate escrow instructions.

Advance partial payments for moving expenses may be made when it is necessary to assist the displacees in moving. All requests for advance payments shall be reviewed by the relocation reviewer. The agent must use judgment in determining the prudence of making a partial payment for moving in order to ensure that the payment will be applied toward the move. If warranted, the agent can recommend that the payment be made to a third party such as a new landlord or utility company for deposits rather than directly to the displacees. The Assignment

of Relocation Benefit Form (RITS 2255 Form 734-3816) may be modified to initiate the request for advance payment.

### **8.657 Assignment of Relocation Benefits**

Except when circumstances require otherwise, assignments of relocation benefits must be made on the Assignment of Relocation Benefit form (RITS 2255 Form 734-3816).

The agent should explain to the displacee that they do not have to assign their benefits, that the assignment process is a service provided by ODOT for the displacee's convenience to help them relocate.

Assignments of replacement housing payments cannot be used for any purpose other than to provide replacement housing. Assignments of moving expense payments are not restricted.

### **8.658 Deductions from Relocation Payments**

An agent shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. ODOT shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

### **8.659 Time Limitations for Benefit Claims**

Except as provided in [Section 8.523](#) and [Section 8.524](#), all claims for relocation benefit payments must be submitted by the claimant within 18 months of:

1. The date of displacement (for tenants).
2. The date of displacement, or the date of the final payment for acquisition of the real property (for owners), whichever is later.

The time period shall be waived if the deputy state right of way manager determines there is good cause to do so.

A displaced tenant-occupant must purchase or rent, and occupy a decent, safe, and sanitary dwelling within 12 months after displacement. An owner-occupant must purchase or rent and occupy such a dwelling within 12 months after the date a comparable replacement dwelling is made available or after the date of payment for the realty, whichever is later. The deposit into court is considered payment in the case of condemnation.

### **8.660 Notice of Denial of Claim**

If the relocation reviewer, or the region right of way manager/program manager, when permitted, disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, the claimant shall be promptly notified in writing of the denial of approval of that claim, the basis for that determination, and the procedures for appealing that determination.

The agent shall provide the displacee with the Appeal of Relocation Assistance (RITS 2270 Form 734-3623) in such cases where the displacee may be dissatisfied with the relocation benefits offered.

### **8.661 Claiming a Replacement Housing Price Differential Payment**

The agent provides the displacee with the appropriate form (RITS Form 2264), on which the maximum benefit is stated. The claimant must return the completed form with proof of ownership, such as a copy of the executed deed or contract of sale.

### **8.662 Claiming an Increased Interest Payment**

To claim an interest differential payment, the agent should provide displacees with the appropriate form (RITS 2264 Form 734-5021) if they are also claiming a housing price differential payment. The claimant must supply documentation of financing instruments on the displacement and replacement dwellings, as well as a statement in writing from the lender indicating:

1. Payoff amount applied to the principal.
2. Payoff amount applied to interest.
3. Legal remaining term and interest rate of the financing instrument at the time of payoff.

Reimbursement of interest differential payments should only be made based on certified final closing statements and financing instruments, deeds, or real estate contracts signed by all necessary parties.

### **8.663 Claiming Incidental Expense Payments**

The eligible displacee may claim reimbursement of incidental costs by submitting the appropriate form (RITS Form 2264), with a certified copy of the closing statement. For down payment recipients, incidental costs are included within the rent supplement benefit.

### **8.664 Claiming a Rental Assistance Payment**

The agent fills in the maximum rent supplement amount on the residential relocation assistance claim form and gives that form to the displacees. The agent must advise the displacees that the maximum benefit can only be claimed if their rent and average monthly utilities payments are equal to or more than the average monthly utilities and rent of the comparable relocation which was the basis of the benefit calculation.

The claimants must complete the form and return it with proof of their right to occupy the replacement dwelling. Acceptable evidence would be a copy of the signed rental agreement, a rental receipt, a cancelled rent check, or a signed statement from the landlord. The agent must certify that the replacement unit has passed the DSS inspection by completing the form.

### **8.665 Claiming a Down Payment Benefit**

The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses. The down payment and incidental expenses claimed must be shown in the closing statement.

In all cases, the reimbursement for the total of the down payment and incidental costs may not exceed the amount computed as a rent supplement for that displacee.

For example, if a displacee is eligible for a \$4,000 rent supplement benefit, puts \$4,000 down on a DSS replacement house, and the incidental costs are an additional \$1,000, he or she is eligible for reimbursement of only \$4,000.

As proof of ownership, the claimant must furnish a copy of the deed or a copy of the real estate contract properly executed along with a completed, certified, signed closing statement to confirm the down payment amount and those incidental costs usually paid by the purchaser.

The agent should explain the closing cost payment so that the displacee understands ODOT cannot participate in the prepaid taxes and costs representing prepaid insurance deposits required in real estate loan transactions.

## **8.670 Appeals**

### **8.671 Right of Appeal**

All displacees have the right of appeal as to their eligibility for, or the amount of, payment for any relocation benefit. The right of appeal shall be described in information distributed at public meetings and to individual displacees as part of the information delivered at the initiation of negotiations.

### **8.672 Denials**

If the relocation reviewer, or the region right of way manager, when permitted, disallows all or any part of a payment claimed, or refuses to consider a claim because of untimely filing or on other grounds, the claimant shall be promptly notified in writing of the denial, the basis for that determination, and the procedures for appealing the determination.

### **8.673 Appeals**

The agent shall provide the displacee with an Appeal of Relocation Assistance (RITS 2270 Form 734-3623).

The relocation appeal process is an administrative rule subject to the Administrative Procedures Act 734-001-0025:

1. Within 60 days of a final determination granting or denying eligibility for a relocation payment, or of an amount of payment under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) and any regulations adopted thereunder, any person dissatisfied with such determination may file a request for appeal upon forms provided by ODOT.
2. The relocation appeal process and hearing concerning the determination of eligibility or amount of payment shall be conducted as a contested case pursuant to the Oregon Administrative Procedures Act, [ORS 183.310 through 183.550](#), and
3. An optional reconsideration conference may be offered.

Within 60 days of a final determination granting or denying eligibility for a relocation payment or of an amount of payment under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 (Public Law 91-646) and any regulations adopted

thereunder, a person dissatisfied with such final determination may petition for a reconsideration conference upon forms provided by ODOT.

A reconsideration conference is an optional process, which must be agreed to by both the claimant and ODOT, that occurs prior to the formal appeal process identified in (1) and (2) and is an opportunity for a claimant to provide additional relevant information that was not considered by the department or to correct factual errors and for the department to reconsider the claim with the new or corrected information.

The time period to file a request for an appeal pursuant to subsection (1) shall be stayed from the date of request for a reconsideration conference until ODOT either issues a decision to decline the request for a reconsideration conference, or until ODOT issues a determination after the reconsideration conference.

ODOT will arrange for the reconsideration conference within 60 days of receipt of the claimant's request for the conference, or as soon thereafter as all parties can be assembled.

ODOT's final determination resulting from the reconsideration conference will be issued in writing within 60 days of the conference. If the full relief requested by claimant is not granted, ODOT shall inform the claimant that the determination is ODOT's final decision, and that the claimant may seek judicial review by filing an appeal pursuant to subsection (1) above.

## **8.700 Non-Residential Relocations**

### **8.701 Policies**

### **8.703 Provision of Advisory Services**

Relocation advisory services shall be offered and promptly provided to all eligible persons, and, when determined necessary, to persons adjacent to the project area.

### **8.704 Offer of Benefits**

All eligible displacees shall be informed of their relocation benefits and the requirements to obtain them. This shall be done both verbally and in writing. The most current benefits will be offered to displacees.

### **8.705 Reminder of Benefits**

Displacees who are potentially eligible for relocation benefits but have not fulfilled the requirements for payment shall be sent timely written notifications of the possible loss of benefits and their expiration dates. The agent is responsible for reminding displacees of these time limitations and assisting them in filing timely claims.

### **8.706 90-Day Provisional Notice to Vacate**

A 90-day Notice will be given to all eligible persons lawfully occupying property within a project area who are required to relocate or have personal property to be moved.

### **8.707 30-Day Notice to Vacate**

All occupants required to relocate will be given a 30-day Notice to Vacate. This notice will not be given prior to payment for the real property. At least one comparable replacement housing unit must be available within the financial means of the displacees at the time the notice is delivered to residential occupants.

### **8.709 Protective Renting**

In order to preclude the rental of the unit to a subsequent tenant who might be eligible for relocation benefits, ODOT may rent the property being acquired.

### **8.715 No Duplication of Payments**

No person shall receive any payment under relocation benefits if that person receives a payment under federal, state, or local law, or from insurance proceeds, which is determined by the right of way agent to have the same purpose and effect as such payment under this part.

ODOT is prohibited from making payment to a person under these regulations that would duplicate another payment the person receives under federal, state, or local law.

The right of way agent is not required to conduct an exhaustive search for such other payments; the agent is only required to avoid creating duplication based on their knowledge at the time a payment under these regulations is computed.

### **8.720 Persons Required to Move Temporarily**

1. Appropriate notices must be provided in accordance with Section 8.730, and appropriate advisory services must be provided in accordance with Sections 8.703, and 8.760.
2. If a person's business will be shut down due to a project which either requires the occupant to vacate the property or which denies physical access to the property, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be permanently displaced at ODOT's option.
3. A person's temporary move from their dwelling or business for the project may not exceed 12 months. ODOT must contact any person who has temporarily moved from their dwelling or business when that temporary move has lasted for a period beyond 12 months because that person is considered permanently displaced and eligible as a displaced person. ODOT shall offer such eligible persons all required relocation assistance benefits and services for permanently displaced persons. ODOT may not deduct any temporary relocation assistance benefits previously provided when determining permanent relocation benefits eligibility; and
4. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 8.117 is not eligible for temporary relocation assistance unless such denial of benefits would create an extremely unusual hardship to a designated family member in accordance with 8.117.

## **8.727 Transfer of Ownership**

Upon request and in accordance with applicable law, the displacee shall transfer to ODOT ownership of any personal property that has not been moved, sold, or traded in, pursuant to Chapter 9.135, Taking Possession.

## **8.730 Notices and Forms**

### **8.731 General Information Notice**

After project authorization the region right of way staff must deliver a general information notice, acquisition and relocation flyers, and a copy of the right of way map, marked “Preliminary” showing the parcel(s) to be purchased to property owners, contract purchasers, permanent or temporary displacees, or other persons determined to be directly affected by the acquisition.

The general information notice form is available in RITS (Document ID 2005). The project manager updates RITS with the GIN date and other details and uploads the completed form to RITS. In order to avoid duplication of effort, this is generally done by the project manager at the initiation of the appraisal phase. If the occupant will be displaced, it must be sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery.

### **8.732 Notice of Intent to Acquire**

In rare instances, the right of way administration may establish a permanent or temporary displacee’s eligibility for relocation benefits prior to initiation of negotiations for the parcel. At such times, the relocatee is given a notice of intent to acquire, qualifying that person for relocation benefits.

As a rule, this practice is discouraged, because serious problems could result if the acquisition process is delayed or if the project is cancelled. The preferred procedure, where the displacee may suffer a hardship, is to obtain an appraisal and initiate negotiations as soon as possible.

However, in those few cases where the agent determines that a notice of intent to acquire is necessary, approval for the notice must be obtained from the deputy state right of way manager. Conditions for approval of a notice of intent include, but may not be limited to the following:

1. The project, including the subject file, has already been approved for acquisition.
2. The displaced person can show a real need for the letter of intent to acquire.
3. It is not possible to initiate negotiations in time.
4. Negotiations will be initiated in a reasonable and timely manner.

### **8.733 The Offer-Benefit Letter**

Eligibility for relocation assistance shall begin on the date of the initiation of negotiations for acquiring the occupied property or the receipt of notice of intent to acquire the property.

The agent may either meet in person with the owners or affected tenants to deliver their offer benefit letters or send the letter and flyers by United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. (see [Section 6.460](#) for a discussion on initiation of negotiations by mail or delivery service). The letter to tenants must be delivered as soon as possible after initiation of negotiations. The agent must follow up by attempting to make a personal contact with any displacees as soon as possible after initiation of negotiations.

The agent must be certain that the date on the offer benefit letter to the owner is the date of initiation of negotiations. The letter to the tenant should be dated the date of delivery.

The offer benefit package should be assembled in the following combinations by type of displacee:

**Non-residential Owner-Occupant**

1. Offer Benefit Letter and Summary Statement
2. Benefit Summary, Non-residential (RITS 2211N Form 734-1717)

**Non-residential Tenant-Occupant**

1. Offer Benefit Letter with 90-day Notice
2. Benefit Summary, Non-residential (RITS 2211N Form 734-1717)

In certain situations when the standard letter is not appropriate, the agent may prepare an individualized offer benefit letter with the approval of the region right of way manager/program manager.

**8.734 90-Day Notice to Vacate**

Lawful occupants shall not be required to move unless they have received at least 90 days advance written notice of the earliest date by which they may be required to move.

Notices to vacate are not required when the property being acquired is vacant and unused or if the occupant's move of their own volition prior to the time the notice would have been given. Notices are required for any acquisition from which personal property must be relocated, or if the occupants of the larger parcel must make alterations on the remainder, such as constructing fencing or implementing costs to cure.

If the agent determines that the notice is not necessary, the offer benefit forms should be modified to delete the notice language. If the agent determines that the notice is necessary, the following 90-day notice must be included in the offer benefit letter delivered to owners on the date of initiation of negotiations:

**NOTICE TO VACATE:**

“The state will not require you to vacate the property being acquired earlier than 90 days following the date of this letter or within 30 days after payment (less deposits), whichever is later. You will be given the specific date to vacate the area acquired when payment is made to you.”



The agent includes the following 90-day notice to tenants in the offer benefit letter when appropriate:

**NOTICE TO VACATE:**

“The state will not require you to vacate the property being acquired earlier than 90 days from the date of this letter or within 30 days after final payment to the property owner, whichever is later.

You will be notified at least 30 days before you must vacate.”

In unusual circumstances, where there is an urgent need to protect their health and safety, occupants may be required to vacate the property on less than 90 days advance written notice, if the deputy state right of way manager determines that a 90-day notice is impractical. Such cases would be when continued occupancy would constitute a substantial danger to the health or safety of the occupants. A copy of this determination must be documented in the file.

### **8.735 30-Day Notice to Vacate**

The 30-day notice to vacate to owners will be included in the closing letter accompanying final payment sent by the central office or the letter notifying the owner of the date of deposit into court.

The agent must deliver a written 30-day notice of final payment for the property to tenants (RITS 2062 ODOT Form 734-3972,) as soon as the region receives notice of payment. This notice must contain the specific date by which the tenant must vacate the property.

### **8.736 Relocation Report of Personal Interview**

An entry into the RITS diary of contacts is to be made each time an agent makes a personal contact with landowners, displacees, or their representatives. All relevant discussions regarding the acquisition or relocation transaction should be recorded. The time spent in relocation discussions should be charged to the relocation activity code. Relocation interviews conducted subsequent to submission of a final report packet or recommendation for condemnation must also be documented and uploaded to RITS for subsequent review by the relocation reviewer.

### **8.737 Certification of Legal Residency Form**

1. Relocation payments and relocation advisory services, pursuant to state and federal law, may not be provided to an alien unless the alien is lawfully present in the United States, except in cases of exceptional or extreme hardship. Displacees will be asked to sign a certification of legal residency in the United States.
2. This certification shall be obtained by having the displaced person complete and sign the certification of legal residency in the United States (RITS 2216 Form 734-2521,). This should be done at initiation of negotiations or, for a tenant, as soon as possible after initiation of negotiations. The completed form shall be uploaded to RITS prior to relocation assistance or the payment of relocation claims. (See [Section 8.117.](#))

## **8.740 Procedures**

## **8.741 Planning**

## **8.744 Relocation Responsibilities at Initiation of Negotiations**

The agent must carry out several relocation responsibilities at initiation of negotiations, including:

1. Delivering to the owner and any tenant occupants to be displaced as a result of the acquisition, the appropriate Terms of State's Offer Letter, the flyers "Moving Because of Highway or Public Projects?" (RITS 2205/2206 Form 734-3772/3772S), "Acquiring Land for Highways & Public Projects" (RITS 2009/2010 Form 734-3773/3773S), and FHWA's relocation booklet, "Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program".
2. Providing detailed information regarding all available benefits, including time limitations for claims and other restrictions.
3. Entering eligibility listing information and generating offer-benefit letters through the Right of Way Information Tracking System (RITS).

## **8.746 Non-Residential Interview Instructions**

The agent completes the Non-residential Interview (RITS 2221 Form 734-2613) during the Non-residential Interview and provides the necessary advisory assistance required to determine the relocation needs and preferences of each Business, Farm or Non-Profit Organization (NPO) to be displaced.

This shall include a personal interview with each business, farm, and NPO. At a minimum, interviews with displaced business owners and operators should include the following items:

1. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
2. Determination of the need for outside specialists that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
3. For businesses, an identification and resolution of personalty and/or realty issues. Every effort must be made to identify and resolve personalty and/or realty issues prior to, or at the time of, the appraisal of the property.
4. An estimate of the time required for the business to vacate the site.
5. An estimate of the anticipated difficulty in locating a replacement property.
6. An identification of any advance relocation payments required for the move, and ODOT's legal capacity to provide them.

### **8.750 Move Agreement Review and Approval**

After completing the benefit determination, the agent creates the move agreement in RITS and initiates the move agreement workflow.

After preliminary review by the project manager, RITS sends the determination to the relocation reviewer.

The relocation reviewer examines all aspects of the determination and either approves the move agreement in RITS or, if there are questions about the determination, the relocation reviewer may do a field examination or request additional information from the region.

RITS incorporates an approved determination into the offer benefit letter.

### **8.751 Move Specifications**

Move specifications are instructions as to how the move is to be performed. They are contained in a detailed, written agreement between the displacee and the right of way unit on what is to be moved, how it is to be moved, and where it will be moved. Further, it becomes the basis for preparation of the estimates because it informs the estimator of what must be done to accomplish the move and must be reviewed by the relocation reviewer prior to commencement of the move.

The following are some of the details that must be included in the specifications:

1. The order in which the move is to occur (to minimize down time and facilitate move monitoring).
2. The timing of the move should be specifically addressed (Is a weekend or a night move justified? How many days will the move take? etc.)
3. Items requiring special handling, packing, detachment and/or reinstallation need to be identified.
4. An inventory of the items to be moved needs to be developed prior to the move and adjustments, if any, to the inventory need to be made prior to the move.
5. A specific replacement site needs to be identified.
6. Unique circumstances of the move need to be addressed, such as whether convenient loading docks or elevators will be available during the move.

The move specifications should be developed in collaboration with the displacee. In specialized or complex moves, the specifications may require the assistance of a consultant who has expertise in the type of property or business being moved. The specifications should be developed and have the concurrence of the region project manager and the HQ relocation reviewer before move estimates are secured or an actual cost move is started.

### **8.752 Notification and Inspection**

The displaced person must provide the agent reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved.

However, the relocation reviewer may waive this notice requirement after documenting the file accordingly.

The displaced person must permit the agent to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

The agent shall inform the displaced person, in writing, of the above requirements of this section, as indicated on the various moving claim forms, as soon as possible after initiation of negotiations. This provides notification to the displaced person of their responsibilities in completing the optional move types.

### **8.753 Move Monitoring and Monitoring Report**

Moves are monitored to ensure that the inventory the estimates were based on is moved to the specified location, and that the charges are actual and reasonable. All moves require monitoring, but it is the self- move based upon estimates or actual which requires the most extensive monitoring. The amount of monitoring required on a move is determined by the region right of way manager/program manager, the agent, and the move monitor, if a third person is chosen to carry out this activity. Some moves may require only one visit, while others may require the full-time presence of a monitor.

The agent should prepare a signed monitoring report and submit it to the relocation reviewer. This is a written report stating, at a minimum, the date(s) the monitoring was done, the monitor's observations whether or not the move was done according to the move specifications described in [Section 8.751](#), and actions taken or recommended to resolve any inconsistencies between the planned move as estimated and the actual move. Deviations from the planned move may require an adjustment in the payment.

### **8.754 Ineligible Moving and Related Expenses**

The following is a nonexclusive list of payments a displaced person is not entitled to:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this does not preclude the computation under [Section 8.605](#), or
2. Interest on a loan to cover moving expenses, or
3. Loss of goodwill, or
4. Loss of profits, or
5. Loss of trained employees, or
6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in [Section 8.797](#) regarding reestablishment expenses, or
7. Personal injury, or
8. Any legal fee or other cost for preparing a claim for relocation payment or for representing the claimant before ODOT, or

9. Expenses for searching for a temporary or replacement dwelling which include costs for mileage, meals, lodging, time and professional real estate broker or attorney fees, or
10. Physical changes to the real property at the temporary or replacement location of a business or farm operation except as provided in [Section 8.782](#) regarding utility reconnection and personal property adaptation and in [Section 8.797](#), regarding reestablishment expenses, or
11. Costs for storage of personal property on real property already owned or leased by the displaced person or person to be moved temporarily, or
12. Refundable security and utility deposits, and

### **8.755 Determining Displacement as a Result of a Partial Acquisition**

Many partial acquisitions leave residential or business improvements on the remainder. Sometimes region personnel face the problem of determining whether these occupants will be displaced from that remainder. One example of when relocation may occur in this circumstance is when the impact of the acquisition will diminish the earning potential of a business or farm to such an extent that it would not be a viable economic unit.

In the case of partial acquisitions where it is not obvious that the occupants would be displaced from the remainder, such as where there may be a loss of parking, the region right of way manager /program manager or project manager in the region shall make a preliminary determination of who is eligible for displacement as a direct result of the acquisition. Where there is no indication of displacement in the appraisal report, then determination of displacement should be supplemented by statements of justification and documentation why the occupants are eligible for displacement.

This preliminary determination of displacement shall be submitted to the relocation reviewer and approved by the deputy state right of way manager prior to relocation assistance or benefits being offered to the occupant(s) in question.

On such properties, where the occupants are determined to be eligible for displacement from the remainder, all claims for relocation benefit payments must be submitted by the claimant within 18 months of:

1. For tenants, the date of displacement from the acquisition area, or, if no displacement from the acquisition area, the date ODOT takes physical possession of the property.
2. For owners, the date of displacement from the acquisition area, or, if no displacement from the acquisition area, the date of the final payment for acquisition of the real property or deposit into court in the case of condemnations, whichever is later.

### **8.757 Determining the Number of Businesses**

In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors must be considered, including whether:

1. The same premises and equipment are shared.
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.

3. The entities are held out to the public, and to those customarily dealing with them, as one business.
4. The same person or closely related persons own, control, or manage the affairs of the entities.

## **8.760 Advisory Services**

### **8.761 Eligibility - Advisory Assistance**

All displacees from public projects are eligible for advisory assistance. In addition, those who occupy property adjacent to real property being acquired may be eligible for advisory assistance if the region right of way manager/program manager and the deputy state right of way manager determine that there may be substantial economic injury because of their proximity.

### **8.762 Advisory Assistance**

ODOT shall carry out a relocation assistance advisory program which satisfies the requirement of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*, as amended), and Executive Order 11063 (3 CFR, 1959-1963 Comp., p 652). The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to provide relocation assistance.

The agent shall assist non-residential displacees by:

1. Minimizing hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.
2. Supplying persons to be displaced with appropriate information concerning disaster loans, programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

Relocation activities shall be coordinated with project work and other displacement causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and that duplication of functions is minimized.

Any person, who occupies property acquired by ODOT, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by ODOT.

The agent shall assist non-residential displacees in the following manner:

Determine, for non-residential (businesses, farm and NPOs) displacements, the relocation needs and preferences of each business (farm and NPO) to be displaced or, when determined to be necessary by ODOT, temporarily displaced, and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each

business. At a minimum, interviews with displaced business owners and operators should include the following items:

1. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
2. Determination of the need for outside specialists in accordance with Section 8.787 that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
3. For businesses, an identification and resolution of personalty and/or realty issues. Every effort must be made to identify and resolve personalty and/or realty issues prior to, or at the time of, the appraisal of the property.
4. An estimate of the time required for the business to vacate the site.
5. An estimate of the anticipated difficulty in locating a replacement property.
6. An identification of any advance relocation payments required for the move, and ODOT's legal capacity to provide them.
7. Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location.

### **8.763 No Waiver of Relocation Assistance/Benefits**

ODOT may not propose or suggest that a displaced person waive their rights or entitlements to relocation assistance and benefits as provided in the Uniform Act and detailed in this chapter. After having been fully advised in writing by the department of all eligible payments and benefits to which they are entitled, a displaced person may, by written statement, refuse some or all of those benefits on their own initiative.

### **8.764 Applicability**

These requirements apply to the relocation of any permanently or temporarily displaced person as defined in the glossary. Any person who qualifies as a displaced person must be fully informed of their rights and entitlements to relocation assistance and payments provided by the Uniform Act and these procedures.

### **8.770 Move Options**

#### **8.771 Non-Residential Move Options**

Any business, farm operation or NPO which qualifies as a displaced person (see [Glossary](#)) is entitled to payment for such actual moving and related expenses as ODOT determines to be reasonable and necessary. Eligible expenses for moves from a business, farm, or nonprofit organization include those expenses described in 8.781 through 8.796.

## **8.772      Transportation of Personal Property**

Transportation costs for a distance beyond 50 miles are not eligible for reimbursement, unless ODOT determines that relocation beyond 50 miles is justified.

The move can be accomplished by hiring a common carrier, or displacees may move themselves and be paid based on move estimates, or, in special circumstances, based on actual receipted expenses incurred by the displacee.

Personal property as determined by an inventory from a business, farm, or nonprofit organization may be moved by one or a combination of the following methods.

## **8.775      Common Carrier Move Procedures**

Nonresidential displacees may choose a PUC licensed common carrier to move personal property, based on the lower of two bids or estimates prepared by a commercial mover, by following the instructions on the applicable RITS move agreement form for the relocation type (Non- residential RITS 2273). This form and the accompanying Instructions for Moving Companies (RITS 2224 Form 734-3625) must be given to the carrier in advance of the move so the carrier will understand the required procedures to provide a written estimate.

At ODOT's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

The following are details that the agent must consider and be aware of when advising the displaced person and the common carrier providing the service:

1. The order in which the move is to occur (to minimize down time and facilitate move monitoring).
2. The timing of the move should be specifically addressed (is a weekend or a night move justified? How many days will the move take?)
3. Items requiring special handling, packing, detachment and/or reinstallation need to be identified.
4. An inventory of the items to be moved needs to be developed prior to the move and adjustments, if any, to the inventory need to be made prior to the move.
5. A specific replacement site needs to be identified.
6. Unique circumstances of the move need to be addressed, such as whether convenient loading docks or elevators will be available during the move.

The agent is to monitor the move to the extent necessary to ensure that the items moved are eligible for relocation. On this type of move, the billing from the mover should be only for those items actually moved and should meet the criteria of actual and reasonable.

A review of the estimate and bill may then be sufficient for monitoring and should reveal if any non-eligible items have been included. Questions about specific items should be resolved with the owner prior to the move. Reasons for significant amounts billed over the estimates must be documented in a Move Monitoring Report and forwarded with the claim.



## **8.776 Self-Move Based on Estimates or Move Cost Finding**

Displacees may choose to move all or any part of their personal property and claim payment on the basis of a signed self-move agreement for the portion they move. The agreement must be made prior to the move, contain the specifications of the planned move (see [Section 8.751](#)), and be based on one or a combination of the following:

### **Move Based on Estimates**

The lower of two bids or estimates prepared by a commercial mover or qualified ODOT staff person is used to determine the cost of moving the personal property.

In advance of the move the agent obtains the estimate(s) by providing a Move Estimate Request (RITS 2240 Form 734-3762) to the estimators. Displacees must submit an inventory of items to be moved on which the estimates are to be based. The agent is to provide the estimators with further instructions, in writing, regarding the move. The agent should request the estimators to prepare the estimates as though they would be required to do the work. The agent should also request a commercial estimator to bill the region right of way office for the cost to prepare the estimate.

In the event there is a wide disparity between the two estimates they should be closely scrutinized to be sure they are based on the same set of circumstances. Should there be no apparent technical error, omission, etc. causing the disparity a third estimate may be obtained to assist in arriving at a reasonable moving payment.

At ODOT's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

### **Move Cost Finding**

A move cost finding prepared by a qualified ODOT staff person can be used to estimate the cost of moving the personal property. The move cost finding is developed by estimating and determining the cost of a small uncomplicated nonresidential personal property move of \$5,000 or less, with the written consent of the displacee. This estimate may include only the cost of moving personal property which does not require disconnect and reconnect and/or specialty moving services necessary for activities including crating, lifting, transportation, and setting of the item in place. Where direct comparisons can be made to prior moves (goods and costs) this will be sufficient for the move cost finding. Should there be no information of this nature a complete move cost finding based upon rates charged by commercial moving firms and dealing with items such as time, wages, number of people, and vehicle costs must be submitted.

Qualified ODOT personnel are those who have specific knowledge of rates charged by commercial moving firms, plus familiarity with equipment and trade skills required for the move. When two or more estimates are being prepared, only one of these move estimates may be prepared by a staff estimator.

The agent must advise the displacees that once they have moved under this method of reimbursement, they cannot later claim a larger payment based on actual cost. However, a new moving agreement may be made prior to the move to reflect changes in the move plans.

The estimates developed for a self-move based on estimates for a business, farm, or NPO must be approved by the right of way project manager or the region right of way manager/program manager prior to development of an agreed upon moving amount. The agreed upon moving amount shall not exceed the move cost finding or be greater than the lower of two commercial estimates.

The agent is to see that the move is sufficiently monitored to ensure the inventory the estimates are based upon is actually moved to the specified location. If the inventory has changed significantly by the move date, the agent must obtain new estimates.

Claims for payment under the self-move based on estimates method are to be submitted on the applicable RITS claim form for the relocation type (Non-residential 2274). The agent or a designee must inspect the subject property and complete the inspection report before the claim may be processed.

### **Minimum Relocation Payment**

Moves costing less than \$300 may be paid as a minimum payment of \$300. The region right of way manager/program manager or relocation reviewer approves the use of the minimum relocation payment upon request by the right of way project manager.

Generally, the region ROW project manager uses their judgment regarding whether or not the move will likely cost more than \$300, depending on the items to be moved and the complexity of the move. For instance, a 10 x 10 storage unit filled with miscellaneous household items could probably be moved in a couple of hours for less than \$300. Therefore, it would be appropriate to apply the minimum relocation payment in this situation. However, it may be more appropriate to get estimates or do a move cost finding if the same 10 x 10 storage unit is filled with items that require special handling (fragile hand-blown art glass, for example).

Only one minimum relocation payment per household or business will be allowed.

### **8.777 Self-Move Based on Actual Costs**

With prior approval from the deputy state right of way manager, displacees may move themselves and be reimbursed for their actual reasonable expenses. Generally, this is allowed only when the agent cannot obtain acceptable moving estimates, or in cases in which there are specialized move requirements. The agent must advise the displacee in advance of the move that move monitoring for actual cost self-moves will be extensive, and that this move option is only available under special circumstances.

Businesses, farms and NPOs may claim reimbursement for actual costs of a self-move. This kind of move requires careful monitoring by the agent to be certain that claims are valid. The monitor must confirm that hours claimed for each employee are reasonable, the move was conducted in a workman-like manner, and that no ineligible expenses are included.

Use the Non-residential Relocation Claim Form (RITS form 2274). The agent must inspect the subject property and complete the inspection report before a self-move actual cost claim may be processed.

Eligible expenses may include truck or cargo trailer rental, special moving equipment rental, and wages for hired movers. All expenses must be supported by paid invoices, prior written

agreement on move specifications or other documentation. No payment may be made for the time of the displacee or the displacee's family. If the displacee's own equipment is used, payment may be made for gasoline, oil, depreciation, or other expense incurred by the use of the equipment during the move, provided such expense is actual, reasonable, necessary, documented, and approved by the deputy state right of way manager.

## **8.780 Benefits**

## **8.781 Packing**

Packing, crating, unpacking, and uncrating of the personal property.

## **8.782 Utility Reconnection and Personal Property Adaptation**

Business, farm, and NPO displacees may claim reimbursement for the cost of disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described in [Section 8.793](#).

This includes connection to nearby utilities.

It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. Expenses for correcting faulty existing equipment or bringing non-code items up to code are not eligible for reimbursement, unless grandfathered at the displacement site.

Reimbursement for such modifications shall be limited to actual, reasonable and necessary expenses and will not be allowed if a more suitable replacement property was available where such modifications were not required.

Modifications to personal property mandated by federal, state, or local law, code or ordinances which are necessary to reassemble or reinstall the personal property or adapt it to the replacement structure, the replacement site, or the utilities at the replacement site are eligible for reimbursement as a moving expense. These modifications must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner. Finally, the expenditures for authorized modifications must be reasonable and necessary.

Reconnection fees may be paid as a separate moving expense claim. Reconnections cannot exceed the number of nor differ in kind from the connections found in the acquired improvement unless the hook-up is necessary to provide the same level of utility service as found in the displacement building.

Reimbursement of these expenses will be on an actual and reasonable cost basis only, requiring submittal of a paid receipt and RITS claim form Non-residential (2274). If a connection problem arises and it is not clearly eligible, ODOT should be contacted for a decision regarding eligibility for payment in advance of incurring the expense.

### **8.783 Storage of Personal Property**

Displacees not claiming a fixed payment (in-lieu payment) that are required to move permanently or temporarily may be eligible for reimbursement of actual and reasonable expenses for the costs of interim off-premise storage of personal property for a maximum of 12 months, if it is determined that storage is necessary in effecting a move of the displacee. ODOT may approve a payment for storage when the process of relocating from the acquired site to the replacement site is delayed for reasons beyond the control of the displaced person. Eligibility and approval are determined by the relocation reviewer and deputy state right of way manager. Approval will only be given after receipt of proper justification and a suggested period of storage is given. As a rule, storage will only be approved when its denial would cause a hardship to the displacee.

Storage may not be longer than 12 months, starting at the date of vacation from the acquired site and ending when the replacement site becomes available. Displacees may be eligible for storage expenses for a period greater than 12 months in exceptional circumstances or in cases of extreme hardship as justified, documented, and approved upon written application of the Storage Expense Application (RITS 2251 Form 734-3624) with prior approval of the deputy state right of way manager.

Storage may be in a licensed and bonded warehouse, a mini-storage facility, or other rented space.

The costs for initial move into storage and the final move out of storage are eligible for reimbursement, but each move requires an inventory and monitoring by the agent. For monitoring requirements, see [Section 8.753](#).

To request an interim storage benefit, the agent provides (RITS 2251 Form 734-3624), for the displacees to complete and sign. The agent reviews the application to determine whether storage is required by the move. If it is required, the agent submits the application to the relocation reviewer, and notifies the displacees of the decision about eligibility.

### **8.784 Insurance**

An insurance premium for the replacement value of the personal property in connection with the move and necessary storage is eligible for reimbursement.

### **8.785 License Fees**

Any actual, reasonable, or necessary costs of a license, permit, or certification fees required of the displaced person at the replacement location are eligible for reimbursement under moving expenses. These apply to the business, for example, a business license required by the county. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

These do not include system development charges or one-time assessments that any business would have to pay for occupancy of a property.

### **8.786 Replacement Value of Uninsured Property**

The replacement value of property lost, stolen, or damaged in the process of moving (but not through the fault or negligence of displacees, their agents, or employees) where insurance covering such loss, theft, or damage is not reasonably available is eligible for reimbursement.

### **8.787 Professional Move Services**

Professional costs necessary for planning the move of the personal property, moving the property, and installing the relocated property at the replacement location are eligible for reimbursement. Prior approval of the deputy state right of way manager is required.

1. Claims for professional services must be considered reasonable and necessary and must be preapproved by the deputy state right of way manager in order to claim reimbursement. The region right of way staff should ask the displaced business to provide a minimum of two scope of work estimates from specialists prior to hiring the specialist to provide professional services including acting as a move planner. The scope of work estimates will be reviewed by the deputy state right of way manager to determine which costs are reasonable and necessary that may be considered reimbursable to the displaced business.
2. Only work performed in relation to relocating the personal property will be eligible for reimbursement. The following is a list of those items that may be considered eligible:
  - a. Preparation of floor plan layout/configuration and flow of business operation as it relates to the personal property at the displacement site.
  - b. Planning of which personal property items will be moved, replaced, abandoned, discarded, or not moved.
  - c. Depending on the complexity of the move, the preparation or analysis of process systems that relate to the personal property (e.g., a dust collection system for a woodworking company).
  - d. Researching code requirements for installation of personal property currently grandfathered at the displacement site that may require code modifications at the replacement site.

### **8.788 Relettering of Signs**

Actual and reasonable costs for relettering signs, excluding major modifications, are eligible for reimbursement as long as this does not constitute a double payment. ODOT will determine when these costs are actual, reasonable, and necessary.

### **8.789 Overprinting or Replacing Stationery**

Actual and reasonable costs of overprinting or replacing stationary, business cards, invoices, or other printed materials on hand at the time of displacement or temporary move, and making reasonable and necessary updates to other media that are made obsolete as a result of the move are eligible for reimbursement. This may include changes to the content of other media that

need correcting due to the permanent or temporary displacement, such as DVD's and CD's. This may also include modifications to websites that would modify and edit contact and new location information made necessary because of the move.

If materials are to be replaced, the agent must verify the quantity of supplies which are to be replaced and must document the file.

Reimbursement for replacement supplies may not include a premium paid for smaller than normal orders. Instead, the amount reimbursed will be that portion of the bill for a normal order corresponding to the quantity of supplies being replaced.

### **8.790 Low Value/High Bulk Items**

When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value as determined by agency, the allowable moving cost payment shall not exceed the lesser of:

1. The amount which would be received if the property were sold at the site, or
2. The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel minerals, metals and other similar items of personal property as determined, on a case-by-case basis, by the deputy state right of way manager.

### **8.791 Loss of Tangible Personal Property**

A non-residential displacee is eligible for a payment for the actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. This payment only applies when equipment is not being moved to the replacement site and therefore it becomes an actual loss of tangible personal property.

The payment shall be based on:

1. If the item is currently in use, the lesser of:
  - a. The estimated cost to move the item up to 50 miles and reinstall.
  - b. The fair market value in place, as is for continued use, less the proceeds from its sale. To be eligible for payment, the claimant must make a good faith effort to sell the personal property unless ODOT determines such effort is not necessary.
2. If the item is not currently in use, the estimated cost of moving the item 50 miles, as is.

When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price, or

Loss of tangible personal property or purchase of substitute claim benefits are made on the Non-residential Relocation Claim form (RITS form 2274).

### **8.792 Sales Expenses on Items not to be Relocated**

The reasonable cost incurred in attempting to sell an item that is not to be relocated is eligible for reimbursement. The displacee must provide documentation of the costs.

### **8.793 Purchase of Substitute Personal Property**

If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the payment will consist of the lesser of:

1. The cost of the substitute item, including installation costs at a replacement site, minus any proceeds from the sale or trade-in of the replaced item, or
2. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At ODOT's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate (Non-residential Relocation Move Agreement [RITS form 2273]).

### **8.794 Search for a Replacement Site**

A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$5,000, as the relocation reviewer determines to be reasonable, which are incurred in searching for a replacement location, including:

1. Transportation costs. Public carriers based on actual receipts; private vehicle mileage shall be the same as the prevailing federal IRS rate.
2. Meals and lodging away from home, supported by receipts.
3. The owner's or employee's time spent searching for a replacement location based on actual and reasonable salaries or earnings.
4. Fees paid to real estate agents or brokers who assist in the search, exclusive of any fee or commission related to the purchased of a site.
5. Owner's or agent's time spent in obtaining permits and attending hearings.
6. Expenses negotiating the purchase or lease of replacement site, including actual, reasonable, and necessary attorney's fees.

Search expense claims must be supported with a mileage log and summary of daily charges, with receipts and documentation for meals, lodging, and related eligible expenses.

Displacees may claim a one-time payment of \$1,000 for search expenses with no documentation as an alternative payment option.

Site search costs are to be claimed on RITS Form 2274.

### **8.795 Other Moving-Related Expenses**

Other moving-related expenses that are not listed as ineligible in [Section 8.754](#) are also eligible for reimbursement as determined to be reasonable and necessary. This decision will be made on a case-by- case basis by the deputy state right of way manager.

### **8.796 Related Non-Residential Eligible Moving Expenses**

The following items shall be eligible for reimbursement if ODOT determines they are actual, reasonable and necessary expenses:

1. Connection to available utilities from the replacement site's property line to improvements at the replacement site.
2. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing or feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). A reasonable pre-approved hourly rate may be established at the discretion of the relocation reviewer. Conceptual building or site layouts intended for construction/ reconstruction at the replacement property are not considered eligible expenses under this section.
3. Impact fees and one-time assessments for anticipated heavy utility usage, as determined necessary by the relocation reviewer. As a rule, this would include impact fees for electric, gas, water, or sewer.

### **8.797 Reestablishment Expense – Non-Residential Moves**

In addition to the payments for actual reasonable moving and related expenses, a small business, farm, or NPO may be eligible to receive a payment, not to exceed \$33,200, for expenses actually incurred in relocating and reestablishing such small business, farm or NPO at a replacement site. All relocation claims for non-residential moves may be made on the Non-Residential Relocation Claim Form (RITS form 2274).

#### **1. Eligible Expenses**

Reestablishment expenses must be reasonable and necessary, as determined by the deputy state right of way manager. They may include, but are not limited, to the following:

- a. Reasonable and necessary repairs or improvements to the replacement real property as required by law, code, or ordinance.
- b. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business, such as partitions or walls.
- c. Construction and installation costs for exterior signing to advertise the business.
- d. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting. This is what is reasonable to bring up to what the displacee had before or what is appropriate for the business.
- e. Licenses, fees and permits when not paid as part of moving expenses.
- f. Advertisement of replacement location. This would include new location ads in the newspaper and mailings sent out.
- g. Estimated increased costs of operation during the first two (2) years at the replacement site for such items as:



- i) Lease or rental charges.
- ii) Personal or real property taxes.
- iii) Insurance premiums.
- iv) Utility charges, excluding impact fees.
- h. Other items that ODOT considers essential to the reestablishment of the business.

A change in the nature or type of business conducted at the replacement site does not affect eligibility for those actual, reasonable and necessary reestablishment expenses incurred by the small business operator.

## 2. Claiming Reestablishment Expenses

All claims shall be supported by actual receipts. Estimates are to be supported in writing. In all cases claims shall be verified by the agent. Estimated increased costs of operation shall be supported by the best available information. For example, a claim for increased operating expenses should be documented by the most current tax statements from the acquired site and the new site. Increased insurance premiums should be documented by statements from the insurance company, signed by the insurance agent.

## 3. Ineligible Expenses

The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

- a. Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.
- b. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
- c. Interest on money borrowed to make the move or purchase the replacement property.
- d. Payment to a part-time business in the home which does not contribute materially to the household income.
- e. Construction costs for a new building at the business replacement site, or costs to construct, reconstruct or rehabilitate an existing building.

## **8.800 Fixed Payment for Moving Expenses (In-Lieu) Benefit Description**

A displaced business may be eligible to choose a fixed payment in lieu of the payments for both actual moving and related expenses, as well as actual reasonable reestablishment expenses provided by [Section 8.771](#) through [Section 8.797](#). Such fixed payment, except for payment to an NPO, shall equal the average annual net earnings of the business, as computed in Sections 8.803, 8.804, and 8.805, but not less than \$1,000 nor more than \$53,200.

Those who choose the fixed payment are not eligible for any other relocation payment.

### **8.801 Eligibility - Fixed Payment**

The displaced business is eligible for the payment if ODOT determines that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move, and the business vacates or relocates from its displacement site.
2. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless ODOT determines that it will not suffer a substantial loss of its existing patronage.
3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by ODOT, and which are under the same ownership and engaged in the same or similar business activities.
4. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.
5. The business is not operated at the displacement site solely for the purpose of renting such site to others.
6. The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement. (See [Glossary](#) for definition of contribute materially.)

There is no requirement that a displaced business must be discontinued to receive this payment. The fixed payment is an alternative to the payments for moving a business.

### **8.802 Determining the Number of Businesses**

In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors must be considered, including whether:

1. The same premises and equipment are shared.
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.
3. The entities are held out to the public, and to those customarily dealing with them, as one business, and
4. The same person or closely related persons own, control, or manage the affairs of the entities.

### **8.803 Farm Operations**

A displaced farm operation, as defined in the glossary, may choose a fixed payment in lieu of the payments for both actual moving as well as related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed, but not less than \$1,000 nor more than \$53,200.

In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if ODOT determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land, or
2. The partial acquisition caused a substantial change in the nature of the farm operation.

### **8.804 Nonprofit Organizations (NPOs)**

A displaced NPO may choose a fixed payment of \$1,000 to \$53,200, in lieu of the payments for both actual moving as well as related expenses and actual reasonable reestablishment expenses, if ODOT determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). An NPO is assumed to meet this test, unless ODOT demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used is the average of two (2) years' annual gross revenues, less administrative expenses.

Gross revenues may include membership, class fees, cash donations, and tithes, receipts from sales and other forms of fund collection that enables the NPO to operate.

Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items, as well as fund raising expenses. Operating expenses for carrying out the purposes of the NPO are not included in administrative expenses.

The monetary receipts and expenses amounts must be verified with certified financial statements or financial documents required by public agencies.

An NPO must have tax-exempt status under the Internal Revenue Code and be appropriately incorporated under the laws of Oregon as an NPO (see [Glossary](#)).

### **8.805 Benefit Calculation for Fixed Payment**

The average annual net earnings of a business or farm operation are calculated as one-half of its net earnings before federal, state, and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced.

Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents.

Net earnings are the same as reported to the IRS, before state and federal taxes, and after deduction of all allowed business expenses, including depreciation.

When a business suffers a net loss for any of the years under consideration in the computation of average annual net earnings, the actual net loss figure should be considered as zero for the negative year.

Average annual net earnings may be based upon a different period of time when the deputy state right of way manager determines it to be more equitable. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the taxable years prior to displacement projected to an annual amount. As an example, a business which operated nine months in the tax year prior to displacement and had a net income of \$6,200 would be projected to have an annual income of \$8,267 and would be entitled to a fixed payment of that amount.

To be eligible for a payment, a business or farm operation must make its state income tax returns and its financial and accounting records available for audit for confidential use to determine the payment authorized. ([ORS 35.515.](#))

The minimum payment will not be less than \$1,000.

### **8.806 Requesting and Claiming a Fixed Payment**

The agent prepares three copies of the application part of a Fixed Payment Application and Claim (RITS 2252 Form 734-3603). Two copies are given to the business, farm or NPO at the start of negotiations and a copy is retained in the region files.

The displacee completes the first part of the form and returns it to the agent. The agent submits the completed form, along with recommendations and supporting documentation, to the deputy state right of way manager for approval of the applicant's eligibility.

If the displacee is eligible for the fixed payment, the agent presents the Non-Residential Claim Form (RITS form 2274) to the displacee, who completes the claim form for payment. To support the amount being claimed, the displaced person must include proof of net earnings through state income tax returns.

Income tax returns contain personal data. Do not upload personal data to RITS. Fax documents containing personal information to the relocation reviewer. The agent and the reviewer will keep the original document and the faxed copy until the relocation file is closed, after which the documents will be shredded.

### **8.807 Outdoor Advertising Signs**

Compensation must be offered to an OAS owner if a comparable location for an OAS impacted by a total or partial loss cannot be achieved (OAR 734-064-0020). The process for handling compensation following partial or total loss of an OAS can be found in section 6.650 of the manual. If a relocation site has been determined, reimbursement of the relocation expenses will be made to the OAS owner, according to process and procedures set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies act of 1970 adopted by ORS 35.

An OAS owner will be made eligible for relocation at the time an OAS Impact Notice form is sent via United States Postal Service certified mail with return receipt or other delivery service that provides a receipt for proof of delivery. ([Section 6.650](#)). From this point the Relocation Assistance Agent should provide advisory services to the OAS owner. It is important that the Relocation Assistance Agent, Right of Way Project Manager, and the ODOT Sign Program are in communication throughout the relocation process.

### **8.808 Status as Realty**

Except for outdoor advertising signs, signs located within an area of acquisition are considered to be real property and are to be acquired under acquisition procedures (see [Section 6.650](#)). Outdoor advertising signs, however, are considered to be personal property and are moved under relocation procedures.

An outdoor advertising sign that is not generating compensation will be processed within the personal property procedures for relocation.

## **8.809 Relocation of Outdoor Advertising Signs**

The relocation benefits available to outdoor advertising sign owners are similar to those available to other displaced businesses. An outdoor advertising sign must be included as inventory for moving, and the move of a sign must be monitored just as any other move.

All benefits related to relocation of outdoor advertising signs may be claimed using RITS Form 2294. Relocation benefits for signs include the following:

1. Actual reasonable moving expenses as described in [Section 8.770](#) and [Section 8.780](#). Eligible reimbursable expenses may include costs for the installation of a new base including electrical wiring necessary to operate the sign.
2. Sign move expenses, based on estimates.
3. Direct loss of tangible personal property: Outdoor advertising sign owners may be reimbursed for actual direct losses when they are to relocate signs but do not do so. The amount of the loss is the lesser of:
  - a. The depreciated reproduction cost of the sign as determined by qualified right of way staff or independent sign appraisers, less the proceeds from its sale, or
  - b. The estimated cost of moving the sign, but with no allowance for storage.
4. Expenses in searching for a replacement sign site. (See [Section 8.791](#).)

An outdoor advertising sign owner is not eligible for the fixed payment in lieu of moving expenses and is not eligible for the reestablishment expense benefit.

Payment for a sign move or loss of tangible personal property (sign) claim will not be made until a release of the leasehold interest in that property necessary for ODOT purposes has been executed.

### **Modification**

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 (OAR 734-064-0040). For any modification proposal, the ODOT Sign Program should be consulted to ensure compliance with regulations.

## **8.850 Claims**

### **8.851 Relocation Benefit Payment Procedure**

After a relocation claim is completed by the displacee, reviewed by the agent, and any comments necessary to support approval are added, the agent signs the bottom of the form and uploads the claim to RITS for review and approval. Documentation to support the payment must be attached.

Once it is determined that the claim meets all the standards and documentation required by state and federal regulations, the approved claim is forwarded for processing and payment.

### **8.852 Relocation Payment Approval Process**

Each relocation type has a unique relocation claim form: Non-Residential (RITS form 2274) and Outdoor Advertising Signs (RITS form 2294). These forms must include supporting comments and documentation. The claim is uploaded to RITS by the relocation agent and automatically routed to the region ROW project manager and relocation reviewer for review and approval. If approved by the relocation reviewer, the claim is routed to the relocation payment specialist for payment approval and processing.

### **8.853 Documentation**

Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as a bill or invoice, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided the reasonable assistance necessary to complete and file any required claim for payment.

### **8.854 Expeditious Claim Processing**

All displacees shall be given assistance in securing documentation needed to support their claims for payment and in the preparation of relocation forms. Required inspections of dwellings and properties and payment of claims will be made promptly.

### **8.855 Expeditious Payments**

ODOT shall review claims in an expeditious manner. The displacee making the claim shall be promptly notified as to any additional documentation required to support the claim. Payment for a claim shall be made as soon as possible following receipt of sufficient documentation to support the claim.

### **8.856 Advance Payments**

Displacees demonstrating the need for an advance relocation payment in order to avoid or reduce a hardship shall be issued such a payment, subject to the safeguards to ensure the objective of the payment is accomplished.

Advance partial payments for moving expenses may be made when it is necessary to assist the displacees in moving. All requests for advance payments shall be reviewed by the relocation reviewer. The agent must use judgment in determining the prudence of making a partial payment for moving in order to ensure that the payment will be applied toward the move. If warranted, the agent can recommend that the payment be made to a third party such as a new landlord or utility company for deposits rather than directly to the displacees. The Assignment of Relocation Benefit Form (RITS 2255 Form 734-3816) may be modified to initiate the request for advance payment.

### **8.857 Assignment of Relocation Benefits**

Except when circumstances require otherwise, assignments of relocation benefits must be made on the Assignment of Relocation Benefit form (RITS 2255 Form 734-3816).

The agent should explain to the displacee that they do not have to assign their benefits, that the assignment process is a service provided by ODOT for the displacee's convenience to help them relocate.

### **8.858 Deductions from Relocation Payments**

An agent shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. ODOT shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

### **8.859 Time Limitations for Benefit Claims**

Except as provided in [Section 8.523](#) and [Section 8.524](#), all claims for relocation benefit payments must be submitted by the claimant within 18 months of:

1. The date of displacement (for tenants).
2. The date of displacement, or the date of the final payment for acquisition of the real property (for owners), whichever is later.

The time period shall be waived if the deputy state right of way manager determines there is good cause to do so.

A displaced tenant-occupant must purchase or rent, and occupy a decent, safe, and sanitary dwelling within 12 months after displacement. An owner-occupant must purchase or rent and occupy such a dwelling within 12 months after the date a comparable replacement dwelling is made available or after the date of payment for the realty, whichever is later. The deposit into court is considered payment in the case of condemnation.

### **8.860 Notice of Denial of Claim**

If the relocation reviewer, or the region right of way manager/program manager, when permitted, disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, the claimant shall be promptly notified in writing of the denial of approval of that claim, the basis for that determination, and the procedures for appealing that determination.

The agent shall provide the displacee with an Appeal of Relocation Assistance (RITS 2270 Form 734-3623) in such cases where the displacee may be dissatisfied with the relocation benefits offered.

### **8.870 Appeals**

#### **8.871 Right of Appeal**

All displacees have the right of appeal as to their eligibility for, or the amount of, payment for any relocation benefit. The right of appeal shall be described in information distributed at public meetings and to individual displacees as part of the information delivered at the initiation of negotiations.



### **8.872 Denials**

If the relocation reviewer, or the region right of way manager, when permitted, disallows all or any part of a payment claimed, or refuses to consider a claim because of untimely filing or on other grounds, the claimant shall be promptly notified in writing of the denial, the basis for the denial, and the procedures for appealing the determination.

### **8.873 Appeals**

The agent shall provide the displacee with an Appeal of Relocation Assistance (RITS 2270 Form 734-3623).

The relocation appeal process is an administrative rule subject to the Administrative Procedures Act 734-001-0025:

1. Within 60 days of a final determination granting or denying eligibility for a relocation payment, or of an amount of payment under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) and any regulations adopted thereunder, any person dissatisfied with such determination may file a request for appeal upon forms provided by ODOT.
2. The relocation appeal process and hearing concerning the determination of eligibility or amount of payment shall be conducted as a contested case pursuant to the Oregon Administrative Procedures Act, [ORS 183.310 through 183.550](#).
3. An optional reconsideration conference may be offered.

Within 60 days of a final determination granting or denying eligibility for a relocation payment or of an amount of payment under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 (Public Law 91-646) and any regulations adopted thereunder, a person dissatisfied with such final determination may petition for a reconsideration conference upon forms provided by ODOT.

A reconsideration conference is an optional process, which must be agreed to by both the claimant and ODOT, that occurs prior to the formal appeal process identified in (1) and (2) and is an opportunity for a claimant to provide additional relevant information that was not considered by the department or to correct factual errors and for the department to reconsider the claim with the new or corrected information.

The time period to file a request for an appeal pursuant to subsection (1) shall be stayed from the date of request for a reconsideration conference until ODOT either issues a decision to decline the request for a reconsideration conference, or until ODOT issues a determination after the reconsideration conference.

ODOT will arrange for the reconsideration conference within 60 days of receipt of the claimant's request for the Conference, or as soon thereafter as all parties can be assembled.

ODOT's final determination resulting from the reconsideration conference will be issued in writing within 60 days of the conference. If the full relief requested by claimant is not granted, ODOT shall inform the claimant that the determination is ODOT's final decision, and that the claimant may seek judicial review by filing an appeal pursuant to subsection (1) above.



## Chapter 9 – Property Management

### ODOT PROPERTY MANAGEMENT

#### 9.100 Introduction

The OTC requires properties acquired by the ODOT for right of way, or other related purposes be managed in a manner that will maximize any long-range public benefit. To achieve this goal, the Technical Services Branch's Right of Way Section maintains an inventory of real property acquired, and an accounting of related costs and expenses in the management and disposition of those properties. The right of way section's property management unit is responsible for the methods used in managing property data and certain excess properties.

The right of way section's property management activities are divided into two parts: project related activities and non-project related activities.

Project related activities are the responsibility of, and conducted under, the supervision of the region right of way manager/program managers with some support provided by the property management unit.

Non-project related activities are the responsibility of, and conducted under, the supervision of the right of way section programs manager, who is located at headquarters (HQ) in Salem.

#### 9.105 Authority Over ODOT Real Property

ODOT Policy ROW 10 (3/22/11) states in general that authority over ODOT real property is divided between:

1. Support Services Branch (SSB), facilities management.
2. ODOT regions.
3. Technical Services Branch (TSB), Right of Way Section.

Operating property is the responsibility of support services and ODOT regions.

Excess right of way property - the responsibility is support services, ODOT regions and technical services.

1. ODOT Region has authority to proceed with the use of an excess parcel, when that use is the one for which the property was acquired and is for transportation system improvement.
2. Support services branch's facilities management section has authority to proceed with the use of an excess parcel when that use is the one for which the property was acquired and is for construction of an ODOT-owned facility.
3. Technical services' right of way section has all other authority over excess property. This authority extends to the temporary use of excess property prior to its use in a transportation system improvement or its development as an ODOT facility. It also includes authority over the permanent use of excess property by ODOT, when that use is one different than the use for which the parcel was originally acquired.

Surplus real property - authority over surplus real property is split between the ODOT Regions and technical services' right of way section.

1. ODOT Region has the authority to designate surplus real property from excess property.
2. Technical Services' right of way section has all other authority over surplus real property.

### **9.110 ODOT Property Management Policies**

1. Properties shall be managed in a manner consistent with sound business practices. When leasing or renting excess property or selling surplus property, an evaluation of return shall be made to ensure a return of fair market value and produce income-exceeding expenses, where possible.
2. Improvements shall be removed from needed right of way by demolition as soon as it is practical and when there is no reasonable probability of their disposal through public sale or salvage. Also, improvements should be removed when it is in the public's interest to protect health, safety, esthetics, neighborhood character, or the environment.
3. The property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized uses of airspace and other leases or ROW use agreements for real property acquired with federal funds or incorporated into a program or project that received federal funds.
4. The right of way section shall attempt to dispose of property deemed surplus to the needs of ODOT as quickly as possible, in a manner that will provide the maximum benefit to the highway trust fund and the State of Oregon.

### **9.115 Definitions**

The following definitions are used only for the administration of the right of way property management function and may be applicable only to carrying out the responsibilities of this section of ODOT's right of way manual.

#### **Active Acquisition Project**

An authorized acquisition highway project that requires the acquisition of property and construction has not been completed.

#### **Agenda Letter**

The instrument used to set a minimum acceptable value of a surplus property, based upon an approved valuation usually completed through an appraisal and a review process. Also establishes the approved terms and conditions for sale of the property.

#### **Air Space**

That space located above, at, or below the highway's established grade line and lying within the approved operating right of way boundaries.

## **Auction**

A public sales process ensuring that the greatest degree of objective opportunity for bidders to purchase an improvement, or parcel of ODOT real property. ODOT may use one of two types of auctions:

1. A public oral auction or
2. A sealed bid auction.

The choice of the type of auction is at the discretion of the agent handling the sales proceedings.

The auction type is chosen based upon which process produces the greatest net return to the highway trust fund.

## **Excess Property**

Property that has never been used, or is no longer being used, to carry out the mission of ODOT. Excess property includes, but is not limited to, remnant of real property purchased and located outside of the developed right of way limits of a project, uneconomic remainders, potential material sources, depleted quarries, abandoned stockpile sites, and closed and inactive maintenance stations.

## **Fair Market Value**

ODOT is required by state constitution (as interpreted by the Oregon Attorney General), to receive fair market value for any real property disposed of, sold, rented, leased, or exchanged that is an asset of the highway trust fund. fair market value is defined (for purposes of this chapter) to be that value the property would most likely sell, rent, or lease for, if exposed to the open market for a reasonable length of time and sold, rented, or leased to a knowledgeable person, fully aware of what is being leased, rented, or purchased.

## **Fixtures**

Personal property that is more or less permanently attached to real property and is legally treated as real property while it is so attached.

## **Grants of Access**

A process (and also a named document) that is required to create a new road approach where access control exists.

## **Indentures of Access Rights**

Required when an applicant wishes to move an existing access reservation more than 10 feet from the location listed in the deed. It also is required to increase the deeded width of an existing approach up to a specified maximum measurement or to remove use restrictions other than farm use.

## **Jurisdictional Exchange**

ODOT may exchange real property in a manner that will serve the interests of the state and most adequately conserve highway funds ([ORS 366.395\(2\)](#).) The region manager has delegated

authority to recommend that Department-owned real property assets be included in a jurisdictional exchange (transfer) with a local public agency (typically cities and counties) in exchange for goods and services (e.g. assuming maintenance responsibility of roadways) by the local jurisdictions. In this process, the state right of way manager has delegated authority to convey Department-owned real property interests. ODOT financial services section completes the jurisdictional trade model, which presents a comparison of the contributions and cost assumptions of each party to an exchange of highway assets.

### **Land Use Permit**

Document employed to allow use of state-owned land by a private party when it is in the best interest of the Department. An example may be when the property is not feasible to rent, but there are still benefits to the state, such as decreased maintenance cost.

### **Non-operating Property**

Property that was purchased for the purpose of supporting ODOT operations and functions but is no longer needed. This would include but is not limited to stockpile sites, quarry sites, and maintenance sites.

### **Non-operating Right of Way**

Property that was purchased as highway right of way that is now either excess to the needs of ODOT or has been declared surplus to ODOT's needs.

### **Non-Project Related Property Management**

Property management activity not associated with an active acquisition project. This includes, but may not be limited to tasks such as: managing rentals, property leases, land use permits, sale of surplus real property, etc. Activities in this category are the responsibility of and supervised by the right of way programs manager.

### **Operating Right of Way**

Property utilized for the construction and implementation of the highway infrastructure. This type of property designation generally includes all properties located within the bounds of the highway right of way (property lines) that is being used to support transportation uses.

### **Operating ODOT Property**

This designation of property is property that was purchased for and is being used for the support of ODOT operations and its functions. This would include, but is not limited to stockpile sites, quarry sites, and maintenance sites.

### **Outdoor Advertising Sign**

A sign designed, intended, or used to advertise, inform, or attract the attention of the public. A sign includes any message, display, etc., designed to attract or inform the public. It does not have to be a commercial advertisement. No signs are allowed in the state highway right-of-way. The law requires permits on two types of signs: (1) those posted for compensation, and (2) those

that are not at the location of some sort of business or activity open to the public, regardless of the copy on the sign. (See [Chapter 13](#).)

### **Personal Property**

Items that are movable, not permanently affixed to, and not part of the real estate.

### **Project Related Property Management**

Property management activity associated with an active acquisition project. This includes, but may not be limited to tasks such as: entering into and managing short term rentals, sale of improvements/fixtures, taking possession of acquired property, trades of project surplus property for necessary rights of way, preparation of improvement inventory, etc. Activities in this category are the responsibility of the region right of way manager/program manager and are conducted under his/her supervision.

### **Real Property**

Includes the interest, benefits, and rights inherent in the ownership of physical real estate and includes the bundle of rights that defines the ownership of real estate.

### **Rental/Lease**

A process which allows the temporary use of ODOT non-operating property for which some consideration is received, or paid by ODOT. Consideration is typically periodic monetary payments but can be an in-kind exchange of value. Rentals are typically a month-to-month tenancy at will (which can be ended by either party at any time). Leases are longer term uses of property that rise to the level of a property right (leasehold interest) and impose stricter obligations on both tenant and landlord.

### **Right of Way Use Agreement**

Real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic. These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for federal funding.

### **Salvage Value**

The probable sale price of an item offered for sale on the condition that it would be removed from the property at the buyer's expense. A reasonable period of time needs to be allowed to find a buyer with knowledge of the uses and purposes for which it is adaptable and capable of being used. This value may include the separate use of serviceable components and/or scrap when there is no reasonable prospect of sale, except on that basis.

### **Street Vacation**

A process by a governmental entity (most commonly a municipal corporation such as a city), that has jurisdiction over a road to determine whether or not that road is needed for public use. If a determination is made that it is no longer needed for public use, the property may be vacated or abandoned to the abutting property owners. Generally, the vacated street will be divided in half. The owners of those halves then receive whatever right(s) the governmental entity had in the vacated street.

### **Surplus Real Property**

Real property no longer needed for highway purposes and that has been approved for disposal.

### **Trade Fixture**

Fixtures owned and more or less permanently attached by a tenant to a rented space of a building for use in conducting a business. (See [Section 5.395](#).)

## **PROJECT-RELATED PROPERTY MANAGEMENT**

### **9.120 Project-Related Property Management**

Generally, project-related property management consists of those activities that surround the management of real properties purchased as part of an active acquisition project. This may include real properties purchased for roadway improvements, properties purchased as uneconomic to property owners, and those acquired as a result of negotiations and/or settlement of condemnation proceedings. Federal funding may be utilized for securing the property, maintaining the property and disposition of the property (see Section 6.536). Examples of these types of activities include clearing trees, demolition, utility service and termination costs, and other forms of clearing and securing the property. Charges should be included on the right of way estimate (see Section 2.520), which is approved by FHWA and applied to the right of way phase.

### **Roles and Responsibilities**

#### **9.125 Region Right of Way Manager/ Program Manager**

Program managers are responsible to ensure that the regional project related property management program is administered in accordance with the policies and procedures set forth in this chapter. They can approve short term rent back agreements, sales of improvements and fixtures, and project related trades on active right of way acquisition projects.

#### **9.130 Region Senior Right of Way Agent/Region Right of Way Agent**

These agents are responsible for performance of project related property management activities in the region and operate under the direction of the region right of way manager/program manager.

## **REGION PROPERTY MANAGEMENT ACTIVITIES**

### **9.135 Taking Possession**

The agent will work with the property owner to obtain possession of a property. After the property is in ODOT's possession, the region right of way manager/program manager is to track possession dates using copies of letters of acceptance, a notice of deposit and vacation notice letters to property owners from the TSB acquisition unit.

### **9.140 Vandalism of Improvements**

Properties acquired must be secured after ODOT takes possession in order to protect the properties from vandalism.

### **9.145 Removal of Hazards and Attractive Nuisances**

The agent is to identify and remove hazards or attractive nuisances that may be present upon taking possession of properties. These hazards include any item or condition that may exist which could be dangerous to the general public.

### **9.150 Disposal of Improvements to Clear the Right of Way**

The agent should sell, or contract to demolish or remove improvements as required to meet project needs.

### **9.155 Salvage Value**

As a part of the acquisition of property, if a property owner negotiates to retain certain improvements as part of the agreement to sell, the agent must request an estimate of the improvements salvage value.

### **9.160 Monitoring of Removal Work of Sold Improvements**

In order to monitor progress being made to remove improvements, the agent must periodically inspect the job site. If it becomes apparent the work will not be completed within the allotted time, the agent must assess the merits of providing an extension or notify the purchaser that the deposit will be forfeited and ODOT will reclaim title to improvements or equipment and dispose of them at ODOT's expense. If the agent agrees to an extension, it must be in writing and include the length of the extension.

### **9.165 Conclusion of Improvement Removal Work**

When the improvements have been satisfactorily removed, the agent completes the Disposition of Improvements and Site Clearance Form (734-3655). This form provides documentation to the file that the work has been completed and provides a means to release the contract payment and all or a portion of the deposit. The agent forwards the form to the contracting coordinator, who processes payment.

### **9.170 Prevailing Wage Applied to Removal of Improvements**

The Property Management Unit operates in compliance with the Davis-Bacon Act. The Davis-Bacon Act, enacted in 1931, requires contractors and subcontractors on federally funded or assisted construction projects exceeding \$2,000 to pay laborers and mechanics no less than the prevailing wage and fringe benefits for similar work in the geographic area.

## **SALE OF PROPERTY BY AUCTION**

### **9.175 Advertising for Auction of Improvements/Fixtures/Personal Property**

Acquired fixtures, personal property, etc. must first be offered for sale to other state agencies prior to being disposed of by ODOT. Region will provide the information to either Department of Administrative Services (DAS) for notice distribution or directly to other state agencies as specified by the fixtures and equipment appraisal or other lists prepared by the region.

The agent must adequately advertise the planned sale, improvements and other pertinent information in a newspaper, (online?), and/or place sale signs on the property.

### **9.180 Sale of Improvements at the Auction**

The region right of way office determines what improvements (buildings) are to be sold. An auction date is set with the terms, amount of deposit, and conditions of the sale advertised to attract potential buyers.

### **9.190 Conducting an Auction**

A public auction shall be conducted when (1) selling to private persons surplus properties valued over \$5,000, or (2) when selling improvements for removal. There are two types of auctions: (1) public oral and (2) sealed bid. The agent is responsible for conducting the auction and may require the assistance of one or more region office staff members.

### **9.195 Public Auction**

The auction is held by the property management agent and is conducted using either verbal or sealed bids.

### **9.210 Sale of Equipment or Other Small Improvements**

The agent determines what small equipment or improvements are to be sold and determines a value for each and then offers them for sale to the public.

## **REGION MANAGEMENT OF ACQUIRED PROPERTY**

### **9.215 Renting/Leasing of Property**

When it is determined that it is feasible or desirable to rent a property, either because the property is surplus to the needs of a project, or the construction schedule is far enough in the future; a month-to-month rental agreement may be used.



## **9.220 Liability Insurance Rental/Lease Requirements**

Tenants will provide insurance to indemnify ODOT. The following clause is required and should be included in the insurance binder when ODOT leases or rents property and permits it to be subleased:

“It is understood and agreed that the following are included as additional named insured under this policy:

The State of Oregon, The Department of Transportation and its Divisions, Officers, and Employees, Except as to Claims Against Lessee For Injury or Death to, or Damage to the Property of, any of Said Additional Named Insured.”

If claims are made against ODOT, the region right of way office is to work with the right of way programs manager to report the details in writing to legal counsel.

## **9.225 Advertising Signs on Department Property**

Based upon OTC policy adopted May 25, 1976, outdoor advertising signs are not permitted on highway rights of way. ODOT properties will not be rented or leased when the only intended use by the renter is for the installation and maintenance of an outdoor advertising sign.

## **9.230 Preventing Fires on Vacant Properties**

In order to minimize the danger of fire in ODOT rental properties the agent is required to:

1. Visually inspect each improved property prior to renting to identify fire hazards.
2. Ensure functioning smoke/fire detectors are installed in all residential units. These devices must be inspected annually by the agent or a designee. The file should indicate the annual inspection date.

If necessary, the agent may elect to request an inspection of the property by the local fire department.

## **9.235 Rent Back to Current Occupants**

The agent will work with the region right of way manager/program manager to determine whether the occupants will be allowed to remain past the normal vacation date (as determined by the 90-30 day notices). The occupant is required to sign ODOT's rental agreement.

If a former owner or tenant is permitted to occupy the real property after acquisition by the Department, and it is for a short term or a period subject to termination by ODOT on short notice, the rent shall be equal to fair market value of similar rentals, unless continued occupancy is specifically spelled out as part of a settlement. Rent shall not exceed the fair market rent for such occupancy.

If an occupant was previously paying rent as a tenant to the former property owner, the owner can continue to collect the rent until ODOT takes physical possession. At that point, subsequent rent should be collected by ODOT per a new agreement.

## **9.240 Maintenance or Improvement of Short-Term Rental Properties**

The region right of way manager/program manager is responsible for keeping rental properties decent, safe, and sanitary, including ensuring all improvements are equipped with an approved fire/smoke alarm device and, if required, a carbon monoxide alarm device.

## **9.245 Establishing Fair Market Rental Rates**

To enable property management to keep rental rates in line with the present real estate market, the designated region PM agent must evaluate each rental at least once a year. A written rent study or rent justification must be prepared that indicates the condition and factors influencing the conclusion of economic rent (fair market value). The agent must determine whether the property is to be rented throughout the new tax year.

As new properties are acquired or existing ones become vacant throughout the year, a similar rental evaluation must be prepared.

In establishing monthly rental values on a commercial, industrial, or multiple-residential property, or for a lease exceeding one year, the services of a staff appraiser may be utilized unless a fee appraisal has been authorized by the region right of way manager/program manager. The agent should conduct a preliminary reading for content and accuracy and then forward copies of the rent study to the region right of way manager/program manager. A copy of the reviewed study must be sent to right of way HQ for approval.

## **9.250 Securing Tenants**

Once property is available to rent and a rental rate has been established, the agent should actively undertake efforts to obtain tenants. The agent should post the property with a “for rent” sign and place an advertisement in the classified section of a local newspaper, and/or with appropriate web sites, inviting interested parties to apply to rent the property.

Potential tenants may be asked to fill out a rental application. The agent should make the forms available to interested persons and inform applicants that the information will be verified and that a credit check will be made through a credit bureau.

## **NON-PROJECT RELATED PROPERTY MANAGEMENT**

Non-project related property management is the responsibility of the Technical Services Branch (TSB) right of way section property management unit. This unit is managed by the right of way programs manager of the TSB right of way section. As part of the right of way section, the property management unit performs activities that are typically non-project related. Those activities include, but are not limited to, the processing of right of way use agreements (with district consultation), leasing, renting, and the sale of real property that has been declared surplus to the needs of the Department. Typically, properties deemed surplus to ODOT needs consists of land situated outside of the operating right of way, such as unused maintenance sites, disposal sites and/or land purchased as excess property as part of the acquisition of land for a highway project.

The property management unit is part of the TSB right of way section right of way programs unit. The state right of way manager appoints the right of way programs manager, who is

responsible for day- to-day supervision of the activities of the property management unit. The right of way programs manager administers and implements procedures for complying with ODOT and right of way section policies, FHWA regulations, and applicable state statutes and administrative rules.

### **9.265 Senior Property Agent/Property Agent**

These agents are responsible for performance of non-project related property management activities statewide and operate under direction of the right of way programs manager.

### **9.275 PM Accounting Technician**

The purpose of this position is to provide a variety of complex and technical support services for the right of way programs manager. Responsibilities include overseeing all phases of record management, including controlling the maintenance, accuracy and credibility of the property management accounts receivable system.

### **9.280 Assistant Property Agent**

The assistant property agent participates as a member of the property management agent group in sales planning and strategy. They may prepare and send out surplus disposal review requests and research inquiries from both public and private parties interested in purchasing surplus properties or renting excess properties. The position requires a thorough understanding of the technical aspects of the surplus process and will work closely with the property agents in all aspects of sales, leases, rentals, and land use permits.

## **PROPERTY MANAGEMENT ACTIVITIES**

### **9.285 Securing Tenants**

Once property is available to rent and a rental rate has been established, the agent should actively undertake efforts to obtain tenants. This may include posting the property with a “for rent” sign and placing an advertisement in the classified section of a local newspaper and/or appropriate web sites inviting interested parties to apply to rent the property.

Potential tenants may be asked to fill out a rental application. The agent should make the forms available to interested persons and inform applicants that the information will be verified, and a credit check will be made through a credit bureau.

### **9.290 Establishing Rental Rates**

The state constitution requires that all property that is a highway trust fund asset be rented, leased, sold, or exchanged at its fair market value.

To keep rental rates in line with the real estate market, rental agreements must be evaluated at least once a year. Periodically, the PM accounting technician will provide the property agents a list of the agreements that need review. If required, the assigned right of way agent will see to the preparation of a rent study or rent justification memo. If an adjustment of rent is required, the PM accounting technician shall notify by letter each tenant whose rent is being adjusted and update accounts in right of way accounts receivable system for each account being adjusted.

The right of way programs manager has the discretion to forward the rent study to the appraisal review unit if deemed appropriate and/or necessary.

### **9.295 Rental/Lease of Property (Non-Project Related)**

Often it is in the best interests of ODOT to rent or lease non-operating property. Once use restrictions and conditions of use have been obtained from district or region managers, the agent will move forward with the process of securing tenants and managing the rent payments and property.

## **NON-PROJECT RELATED PROPERTY MANAGEMENT**

### **9.300 Demolition Contracting Procedure**

As part of the property management process, the agent will sell, contract to demolish, or remove improvements as required. Agents need to be familiar with architectural & engineering contracting procedures particularly when hiring demolition work or buying goods and services.

### **9.305 Prevailing Wage (Davis-Bacon) - Applied to Removal of Improvements**

In general, property management activities on property that is outside of an active project do not require adherence to prevailing wage requirements (Davis-Bacon and related acts).

However, there may be special circumstances when prevailing wage applies on non-project related on property management. (See [Section 9.145.](#))

### **9.308 Civil Rights Clause in Property Management Agreements**

The 1964 Civil Rights Act ended segregation in public places and banned employment discrimination on the basis of race, color, religion, sex or national origin, and is considered one of the crowning legislative achievements of the civil rights movement.

When federal funds have been used in the acquisition of property, all property management agreements, including rental, lease or contracts of sale (see [Section 9.535](#) of this Chapter) affecting that property must include a non-discriminatory clause similar to that stated below.

If the Department's property management agreement permits subleasing by a tenant, the below provision or provision similar in language, must be included in such agreement to prohibit any discrimination by the tenant.

“The lessee, for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the lease that:

1. No person, on the grounds of race, color, sex or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, and
2. That the lessee shall use the premises in compliance with all other requirements imposed pursuant to Title 15, Code of Federal Regulations, Commerce and Foreign Trade, Subtitle A, Office of the Secretary of Commerce, Part 8 (15 C.F.R., Part 8) and as said Regulations may be amended.

3. That in the event of breach of any of the above non-discrimination covenants, the Department shall have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon and hold the same as if said lease had never been made or issued.”

## AGREEMENTS

### Right of Way Use Agreements

Non-highway alternative uses of ODOT property within the ROW limits of a highway or transportation facility may be permitted if the use is found to be in the public’s best interest, consistent with the continued operation, maintenance, and safety of the facility, and will not impair the highway or interfere with the free and safe flow of traffic. A right of way use agreement may be executed with public entities or private parties for a time-limited occupancy or use. Right of way use agreements must contain provisions to address the following:

1. Ensure the safety and integrity of the federal-assisted facility.
2. Define the term of the agreement.
3. Identify the design and location of the non-highway use.
4. Establish terms for revocation of the right of way use agreement and remove of improvements at no cost to FHWA.
5. Provide for adequate insurance to hold ODOT and FHWA harmless.
6. Require compliance with nondiscrimination requirements.
7. Require ODOT approval, and FHWA approval if the agreement affects an interstate highway, for any significant revision in the design, construction or operation of the non-highway use.
8. Grant access to the non-highway use by ODOT and FHWA for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

FHWA must approve right of way use agreements that affect right of way for interstate highways.

An individual, company, organization, or public agency desiring to use real property interests shall submit a written request to ODOT, together with an application supporting the proposal. If FHWA is required, ODOT will forward the request, application, the proposed right of way use agreement, and ODOT’s recommendation with any necessary supplemental information, to FHWA. The submission must include the following:

1. Identification of the party responsible for developing and operating the proposed use.
2. A general statement of the proposed use.
3. A description of why the proposed use would be in the public interest.
4. Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic.
5. The proposed design for the use of the space, including any facilities to be constructed.
6. Maps, plans, or sketches to adequately demonstrate the relationship of the proposed

project to the highway facility.

7. Provision for vertical and horizontal access for maintenance purposes.
8. A description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance.
9. An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed, if required by FHWA or ODOT. Maps and plans may not be required if the available real property interest will be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at ODOT's discretion.

### **Rental Agreements**

The agreement format used to rent property varies with the type of property being rented, the length of term, and special conditions. The senior property agent may recommend a specific agreement type for use to the right of way program manager.

#### **9.310 Residential Rental Agreement**

A residential rental agreement form is used when renting improved residential properties and can be modified for use on short-term commercial, industrial or agricultural uses.

#### **9.315 Land Rental Agreement**

Short-term rental of ODOT property may be conducted using a land rental agreement. This type of agreement may be used for both project related and non-project-related properties.

### **Lease Agreements**

The lease agreement format used to lease property varies with the type of property being rented, use of the property, the length of term, and special conditions. The senior property agent may recommend a specific agreement type for use to the right of way programs manager.

#### **9.325 Leases**

Leases are used for long-term occupancies of commercial, industrial, agricultural, and residential property generally located on non-operating right of way. They may also be used for short-term occupancies requiring special terms and conditions.

After following the leasing procedures, the agent prepares a transmittal letter to the state right of way manager requesting approval of the lease agreement. Upon approval of the agreement by the state right of way manager, the agent gives lessee possession of the property.

#### **9.330 Wireless Communications Agreements**

ODOT has established guidelines for the placement of wireless facilities on both interstate and non-interstate right of way and excess property. Wireless facilities are not permitted on interstate highways. The purpose of these guidelines is to establish criteria for siting future

wireless communications facilities in order to lessen the impacts on the adjacent community and highway facilities. The guidelines include considerations for preserving the operational safety, as well as the functional and aesthetic qualities of the highway. Selected sites shall not adversely impact the safety or operations of ODOT workers.

To apply for a permit for wireless facilities, this process will be followed:

1. Applicant shall submit a proposal to the district office, including a photographic visual simulation to demonstrate the visual effects of the proposed facility.
2. District offices shall review proposed facilities for consideration of placement approval, site compatibility, and landscaping.
3. District offices will process requests for exceptions to this policy and send them to right of way section for review and approval.
4. Final approval of exceptions will be obtained from a Wireless Communications Placement Committee.
5. Right of way section's property management unit will determine fair market value and obtain all signatures on a lease or rental agreement before siting can occur.
6. Permit is issued by the district office.

Wireless communication leases are lease agreements specifically designed for leasing ODOT-owned property for the placement of communication equipment and facilities. ODOT has worked with the Oregon Department of Justice to craft an acceptable communication lease form for use by the property management crew that includes specific language unique to these types of leases.

### **9.340 Lease Process**

#### **Material Site Leases and Purchase Agreements for Material Extraction**

As part of project or non-project related events, ODOT may need to acquire sites or enter into lease agreements with private landowners for the use of their property. In these cases, ODOT would be the lessee. Use for such property may include the development of a stockpile site, storage site, or the extraction of rock material (quarry) after receiving approval from the region right of way manager/program manager.

### **9.345 Land Use Permit**

The land use permit can be employed to allow use of ODOT-owned land by a private party when it is in the best interest of the Department, it is not feasible to rent the property to achieve a proper return, and there are still benefits to ODOT (such as receiving decreased maintenance costs).

#### **ELEMENTS OF A LEASE**

#### **Project and Non-Project Related**

### **9.350 Security Deposits**

ODOT complies with ORS Chapter 90, which defines landlord obligations regarding security deposits.

### **9.355      Liability Insurance Clause**

Tenants will provide insurance to indemnify ODOT. If claims are made against ODOT, the right of way programs manager is to report the details in writing to legal counsel.

### **9.355      Advertising Signs on ODOT Property**

Per commission policy adopted May 25, 1976, outdoor advertising signs are not permitted on ODOT- owned property. ODOT properties will not be rented when the intended use by the renter is for the installation and maintenance of an advertising sign. However, signs advertising the activity being conducted on the property are allowed. (See [Section 13.](#))

### **9.365      Employee Occupied Housing**

Every state agency that provides housing for its employees must collect a rental value for such housing based on its fair market rental rate. The property management unit is responsible for determining the proper rental rate for employee housing provided by ODOT. The unit is also responsible for providing annual reviews to determine whether adjustments to the rent are warranted.

The Department of Administrative Services, working through the ODOT facilities management section, provides the property management unit the necessary forms, assumptions, and a list of state employee occupied dwellings needing rental evaluations. The right of way programs manager distributes the requests to the responsible region right of way manager/program manager for assignment to staff appraisers. Completed evaluations are returned to the property management unit, which returns the rental information to the facilities management section.

## **MANAGEMENT OF ODOT OWNED PROPERTY**

### **9.375      Maintenance or Improvement of Rental Properties (Non-Project Related)**

The agent is responsible for keeping rental properties in a safe and secure condition. All improvements must be maintained in a habitable condition, suitable for occupancy, and in accordance with state and local ordinances.

The Landlord Tenant Act specifies that any work for essential services be completed within 7 days and 30 days for all other non-essential work. Essential service includes heat, hot and cold running water, electricity, gas, sewer, and garbage services.

### **9.380      Tenant Repairs**

Standard maintenance practices preclude a tenant from performing repairs on ODOT-owned property. However, there are some situations where it would be practical for a tenant to perform minor repairs due to distance or cost. The agent would work with the tenant in these instances.



**9.385 Tenant Rental Statement and Payment**

Each month the property management unit prepares and mails rental statements to tenants showing the amount of rent due for the next rent period and any outstanding arrearage. It is a tenant's obligation to tender payment according to the terms of the rental agreement.

**9.390 Delinquent Rentals**

The agent is responsible for debt collection and must regularly review the current rental information to determine whether a rental account is overdue. Past due land sale contract payments are monitored by the PM accounting technician. The agent or technician will work with the tenant to bring the account current.

If the tenant pays the amount owing by the deadline, the rental agreement remains in effect.

If the tenant does not meet the deadline, the agent must take steps to terminate the rental and remove the tenant from the property, including, if necessary, using legal eviction proceedings.

**9.395 Partial Payment Agreement**

During the period between the delivery of the delinquent letter and the vacation of the premises by the tenant, it may be judicious to accept a partial payment of the outstanding rent. Acceptance of partial payment after the deadline stated in the letter will nullify eviction proceedings in progress, unless ODOT retains a right to continue with the proceedings without having to provide the tenant with further notice.

**9.400 Rent Terminations**

Upon 30 days written notice to vacate, either party can terminate month-to-month rental agreements. If a tenant is delinquent in paying rent, the agent will pursue collection and possible eviction.

**9.405 Collection of Rent on Vacated Properties**

The region (if it is a project-related property) and/or right of way programs manager and the agent must discuss any delinquent accounts to determine what action should be taken to collect past due rent once the tenants have vacated.

**9.410 Forcible Entry and Wrongful Detainer (FED)**

Forcible Entry and Wrongful Detainer (FED) is a procedure by which a landlord, for specified reasons, can evict a tenant through a reasonably prompt court process. Once it has been determined that a tenant must be evicted, the agent should seek counsel from the State Attorney General's office.

## **PROPERTY DISPOSAL PROCEDURES FOR PROPERTY NOT PART OF A PROJECT**

### **9.415 Surplus Real Property Disposal**

Surplus property is property owned by ODOT, which has been formally declared surplus to the needs of ODOT. This property can be sold to state or other public agencies, or to private parties. Surplus property is usually sold on a cash basis, except that land sales contracts may be available on certain properties with the approval of the right of way programs manager. It is also possible to exchange surplus property for needed rights of way, if the properties are similar and in reasonable proximity. Before any surplus parcel can be disposed of it must be appraised for fair market value.

By law, ODOT must give public agencies and non-profit housing authorities the next opportunity, after other state agencies, to purchase surplus property directly from ODOT. The agency must pay fair market value as set by ODOT through the appraisal and review process.

Property with an appraised value greater than \$5,000 must be sold at public auction unless approved otherwise by the state right of way manager. Property with an appraised value of \$5,000 or less may be sold directly at public auction or by any other means deemed to be in the best interests of ODOT.

### **9.420 Declaring Real Property Surplus to Needs of ODOT**

ODOT-owned real property cannot be sold until it has been declared surplus. Requests to sell ODOT property can originate from individuals, businesses, public agencies or from within ODOT. Before steps can be taken to sell the property, the property must first be determined surplus to the needs of ODOT.

#### **Surplus Process**

ODOT's Management Policies and Procedures Manual contain detailed procedures for declaring property surplus under HWY ROW 10-01 entitled, "Criteria for Processing Requests to Declare Real Property Surplus to Needs of ODOT."

There are currently four (4) phases in the surplus process. The phases are described in detail as follows:

#### **9.425 Phase I**

The property management unit may receive requests from interested parties. These requests may originate from private parties, companies, governmental agencies, non-profit organizations, or from within ODOT. Upon receipt of the request, the agent reviews the property file to determine the parcel status. If the parcel has been declared surplus during the last three (3) years, the agent may proceed with sale of the property without seeking further approval. If the parcel has not been declared surplus, the agent must seek approval for sale from the region manager.

The agent then proceeds with an inspection of the property, feasibility determinations on various items, EA set up and requests to region personnel for recommendations.

## **9.430 Phase II**

### **Letter to Region Manager**

When written recommendations have been received, or if 30 days has lapsed with no response, the agent assumes no objections to disposal of the parcel and forwards all information to the region manager, who makes a decision to either retain or dispose of the property.

## **9.435 Phase III**

### **Hazmat Phase 1 -Environmental Assessment**

If the agent has reason to suspect contamination on a site, the region Hazmat coordinator should be contacted for an environmental assessment.

### **Conformance of Surplus Property to Local Planning Requirements**

The agent must determine whether the surplus property conforms to the local planning requirements for land divisions. The agent forwards a Statement of Conformance with Local Requirements for Sale of State-Owned Land (RITS 6428 Form 734-2167) to the city or county planning body having jurisdiction over the property. The public agency either signifies the surplus property meets the local requirements and approves the sale parcel as a legally created unit of land, or it states whether a variance, a partition or other action is required prior to selling the property. If the sale parcel is approved as a legally created unit of land, the agent continues with the surplus process. If the property does not meet the local agency's standards, the agent and the property manager discuss whether to proceed with the surplus process.

### **Contracting Surveys and Descriptions**

[ORS 92](#) indicates that a survey may be required by a local jurisdiction to describe, monument, and create a map for partitioning. There may be exceptions if ODOT purchased a legally created lot and is selling it without retaining any portion for ODOT use, and/or when remnant parcels are assembled to adjacent property via lot line adjustment. The agent may determine appropriate action by the statement of conformance received from the local planning agency. The agent submits the survey and description to the right of way engineering unit for review.

### **Request for In House Description**

The agent requests that a description be prepared on the surplus property from right of way engineering unit. This description will be used in the deed and as the basis for the appraisal.

### **Right of Repurchase**

If the parcel was purchased via condemnation after October 1973 (i.e. a complaint was filed in court) the parcel is subject to the Right of Repurchase statute (ORS 35.385). If ten years has lapsed and the parcel has not been used, the parcel must be offered to the grantor at the original purchase price plus 7% simple interest per year of state ownership. If the parcel was purchased as right of way and all or any part was used for the project, the parcel is not subject to the right of repurchase, and processing for sale may continue.

### **DAS Clearinghouse and Futile Act Determination**

The Property Management Unit is in compliance with the Department of Administrative Services (DAS) Clearinghouse and Futile Act process (OAR 125-045-0200-0270. 125-045-0221 provides specific information about the process.) Although ODOT is exempt from notifying DAS for property acquisition (OAR 125-045-0211), notification to DAS of the intent to sell the surplus property is required.

The Futile Act allows for the avoidance of notice of the surplus property to DAS and other agencies in certain circumstances. The Property Management agent evaluates whether it would be a futile act to provide the clearinghouse notice for the subject property, most frequently for a lessee, adjacent property owner interest or characteristics that render the property undevelopable. A futile act determination, if approved by the Enterprise Asset Management Division of the Department of Administrative Services (DAS), removes the clearinghouse process from the surplus process.

The clearinghouse process provides notice about the proposed sale to state agencies, political subdivisions of the state, Indian Tribes and non-profit organizations (with conditions).

All interested parties can submit and offer/interest within the clearinghouse process. Recipients of the notice are provided 30 days to express interest in purchasing. The region agent will review the offers in the clearinghouse order. All proposals received during this time will be considered but are not guaranteed acceptance. The region agent may then choose any offer, based on ODOT's needs.

### **Memo to Utility Permits**

Technical services access and utility permit section to determine status of any utility permits affecting the property to be sold.

### **Letter to Federal Highway Administration (FHWA)**

If a surplus parcel was acquired with federal funds for the interstate highway system or involves a change to the access control or operating right of way limits of the NHS, federal approval is required for sale of the parcel. Include a project environmental classification form (project prospectus – part 3) with the letter to FHWA. (Request one from the environmental unit if not obtained in phase I.)

## **9.440 Phase IV**

### **Value Determination of the Land - Appraisals Requested & Received**

The value of the land to be marketed and sold must be determined by an appraisal. An appraisal can be prepared by either a staff appraiser, an appraiser from the region office or a consultant. The agent should first consider having a staff appraiser perform the work. In the event a staff appraiser is not available, a region appraiser should be considered. A contract appraiser should be used only if a region appraiser is not available.

The agent will request the appraisal from the region right of way unit as per the following procedures:

## Property Management Appraisal Process

1. Property management sets up the surplus property file in RITS.
2. The agent makes a request for appraisal services to the region right of way manager/program manager in the region in which the surplus property is located. The request will be in the form of a memo and will include a target completion date for the appraisal, as well as all pertinent information and maps necessary for the region right of way manager/program manager to evaluate the request. Completion times will be reasonable. Shortened time periods for rush situations will be the exception only as needed.
3. The region right of way manager/program manager will respond to the agent within three days notifying them whether or not the office will do the appraisal. If the completion date requested by property management cannot be made, a new date will be agreed upon between property management and the region. In all cases, an accepted written appraisal request will be based upon a completion date agreed to by both property management and the region.
4. If the region declines the appraisal or cannot agree to a completion date, property management has the options of trying the other four region offices or contracting for a fee appraisal.
5. Once an agreement has been reached and the appraisal will be done internally, property management will provide the EA for time and costs.
6. Property management will provide an appraisal specification sheet along with each file to be appraised.
7. The statement of conformance will be completed and included with each specification sheet, unless property management does not obtain a statement of conformance.
8. RITS will be updated to reflect the appraisal assignment to the region right of way agent.
9. Midway through the appraisal assignment time period, property management will contact the region right of way manager/program manager and inquire whether the agreed upon completion date will be met. (Region right of way should not wait for this property management contact if it knows earlier that the completion date will not be met.) If at the time of this inquiry the region right of way manager/program manager indicates that completion date cannot be met, there are three options:
  - a. Property management and region negotiate a new completion date.
  - b. Property management withdraws the appraisal request and contacts the other regions to see if the work can be done within the desired timeline, or
  - c. Property management contracts for a fee appraisal.
10. Completed appraisals are sent to the property agent who requested the appraisal. For appraisals valued at \$20,000 or more the agent will send the completed appraisal to appraisal review. The right of way programs manager may review appraisals under \$20,000. Appraisal review should do their review the same as any other appraisal, utilizing RITS. The reviewer will also be instructed to let property management know when the

review is completed and provide a copy electronically. The right of way file and signed appraisal review are to be sent to property management as well.

### **Agenda Letter**

The agenda letter is the instrument used to set a minimum acceptable value of a surplus property based upon an appraisal review. The agenda letter also establishes the terms and conditions for sale of the property. The state right of way manager has the authority to approve or further delegate approval of the agenda letter. The right of way programs manager may approve the agenda letter when the value is at or above the reviewed amount. The state right of way manager must approve agenda letters requesting the sale of properties for less than the reviewed amount or if it has complex issues.

### **Public Notice of Properties Valued at More than \$100,000**

ORS 270.105 dictates that for properties valued at \$100,000 and above, the state agency (ODOT) will invite public comment on the sale of the property. Recommended notification procedure is to place an ad in the public notice section of the local newspaper and any appropriate web sites. The ad should be published at least once, approximately one week prior to the advertisement of sale.

### **Advertisement of Sale**

OAR 734-035-0090 (Publication of Notice of Sale) will be followed when property management is advertising property for sale.

### **Exception to Publication of Notice of Sale**

ODOT may sell or dispose of real property or an interest therein direct to a private party without publication of a notice of sale when the property, because of its size, shape, location, utility, condition of title, or restriction imposed upon the property by ODOT, has minimal value and is useful only to adjacent owners or when, because of local land use ordinances, the property may not be disposed of to anyone other than adjacent property owners.

## **PROPERTY SALES**

Property approved for surplus disposal may be sold by direct sale or auction. Surplus property is property owned by ODOT, which has been formally declared surplus to the needs of ODOT. This property can be sold to state, other public agencies, or to private parties. Surplus property is usually sold on a cash basis, upon approval; a land sales contract may be available.

### **9.445 Direct Sale**

Surplus properties that cannot be independently developed have only one adjacent buyer or have a value of less than \$5,000.00 may be sold by direct sale. By law, ODOT must give public agencies the first opportunity, after other state agencies, to purchase surplus property directly from ODOT. The agency must pay the fair market value as set by appraisal review and agenda letter.

### **9.450 Auctions**

It is at the discretion of the agent to choose either an oral auction or sealed bid auction to accomplish a public sale.

## **METHODS OF REAL ESTATE SALE**

### **9.455 Exchanges**

With the approval of the region right of way manager/program manager, it is also possible to exchange surplus property for needed right of way if properties are similar and in reasonable proximity. ODOT may enter into an agreement with other public agencies or private parties to exchange property for other property of equal value as determined by appraisal(s).

### **9.460 Jurisdictional Exchange**

The region manager has authority to declare a parcel of ODOT property surplus to the needs of ODOT and exchange that property to local public agencies (cities and counties) for goods and services that can be utilized by the region for operational purposes ([ORS 366.395](#)). (See [Section 9.650](#) for additional discussion.)

### **9.465 Contracts**

Upon approval of the right of way programs manager, a land sales contract can be used as a method of financing for the sale.

### **9.470 Cash**

A cash payment at time of closing is the preferred method of selling property.

### **9.475 Intergovernmental Agreement (IGA)**

An agreement between ODOT and another governmental agency may be used in both project-related and non-project related transactions and may include transfer of ODOT-owned real property, as well as other goods and services.

## **Terms and Conditions of Surplus Property Sales**

There are several terms and conditions that must be addressed in a surplus property sale. The agent will manage the following:

1. Collect a deposit from the highest bidder of the property.
2. Pay any applicable property taxes. Most of ODOT's properties that are sold are not on the tax rolls at the time of the sale. However, ODOT pays taxes on land sale contracts and leases ODOT-owned properties are tax exempt unless they produce revenue. Properties under land use permits remain tax exempt.
3. Manage any deed restrictions, including mineral & geothermal, access completely restricted, access control, signs, junk, garbage, and noise and air. Other clauses such as As-Is and utility language may also be required.

### **9.535 Civil Right Assurances on Land Sales Contracts**

Use of a land sales contract to secure a sale of property is not common and is permitted only with the approval of the state right of way manager. When a land sales contract is employed in the sale of an ODOT-owned property, the civil rights clause must be included in the contracts language to ensure that no discrimination will take place on the property that may deny anyone of the benefits found through the use of the land.

### **9.540 Septic Approval**

For a surplus parcel being sold that does not have public sewer nearby for development purposes, the use of a septic tank may be required. A permit is usually needed.

The property agent must determine whether the site justifies applying for a septic inspection to determine if a permit could be received.

### **9.542 Water Well Testing**

If the parcel being sold contains a domestic water well, it is ODOT's responsibility to have the well tested. The agent should request a well report that includes water quality and quantity levels.

### **9.545 Disclosure of Appraisal on Surplus Property**

Disclosure of appraisals is at the discretion of the right of way programs manager. Appraisals of property being sold at public auction shall not be disclosed prior to the sale. However, appraisals of properties being sold by direct sale may be disclosed with manager approval.

### **9.550 Sales of ODOT-Owned Property to State Employees**

The sale of ODOT-owned properties to state employees shall be conducted in a manner which ensures that employees have not used their official positions or office to obtain undue financial gain. The agent conducting an oral auction or sealed bid auction will not be allowed to participate as a bidder or purchaser.

Direct sales and sales to state employees after an auction in which no bids were received will require the approval of the state right of way manager. There will be no direct sales to employees of the right of way section.

## **CONDUCTING AN AUCTION**

### **Non-Project Related**

The right of way section is required to conduct public auctions when:

1. Selling to private persons surplus properties valued over \$5,000, or
2. When selling improvements for removal. There are two types of auctions: oral and sealed bid (see [Section 9.190](#)). The agent is responsible for conducting the auction with the assistance of one or more region office staff members.



**9.555 Preliminary Auction**

After receiving approval to conduct an auction, and after it has been properly advertised, the agent is ready to hold the auction in accordance with the terms stated in the advertisement.

**9.560 Oral Auction**

An oral auction is held in person, although individuals that are unable to attend may submit a sealed bid with a deposit. The bids must meet an established minimum price.

**9.565 Sealed Bids**

The property management unit may choose to conduct a sealed bid auction. This method is particularly useful on properties in remote areas of the state. Sealed bids are accepted on the sales agreement/ bid form and will include a deposit established by the property agent.

For sealed bid auctions, the state right of way manager signs an agenda letter that sets a minimum acceptable value based upon an appraisal review. The agent establishes the terms and conditions for the sale. Sealed bid auctions are advertised in the same manner as oral auctions (see [Section 9.560](#)). The minimum acceptable bid is stated in the advertisement along with the conditions of sale, a deadline for accepting sealed bids, and a bid opening date.

**PROPERTY MANAGEMENT ACCOUNTING****9.580 Revenue and Non-Revenue Producing Properties - Tax Report**

The property management unit prepares a tax report of revenue producing properties on an annual basis. The unit pays all of the yearly property taxes when received and is subsequently reimbursed by the tenants of the revenue producing properties.

**9.590 Property Management Accounting**

The PM unit is responsible to create and mail monthly statements for lease, rental, land sale contracts, permits and agreements.

**9.595 GASB Report - Yearly Asset Disposition Report**

The property management unit creates a yearly report for ODOT's financial services branch, identifying ODOT properties that have been conveyed and should be removed from ODOT's Fixed Asset System (FAS).

**9.610 Penalties, Late Charges, and Other Fees**

ODOT reserves the option to assess penalties and late charges on rentals, leases, land use permits, and land sales contracts. These can include but are not limited to late fees, assignment fees, recording fees, and administrative and research charges.

**9.615 Second Party Checks and Cash**

ODOT does not accept second party checks or cash.

## **9.620 Purchase of Services & Materials**

The agent may need to purchase services such as carpenter, handyman, plumber, electrician, etc. and materials in order to keep properties in a habitable or secure condition suitable for occupancy or in accordance with state and local ordinances. It is advisable that the agent consults with the right of way programs manager on how to proceed.

## **9.625 Expenditure Account (EA) Numbers**

Property management expenditure account (EA) numbers consist of an “R” placed before the file number, followed by a three-digit sub-job number, three-digit activity code number, and a three-digit object code. Specific subjobs connect property management expenses and revenues to federal-aid or non-federal-aid participation budgets and specific activity codes track types of expenses related to property management duties. Therefore, accurate charging to the proper EA, subjob and activity is crucial.

### **Subjobs**

1. 002 denotes property management activity with federal-aid participation.
2. 003 denotes property management activity involving no federal-aid participation.

### **Activity Codes**

1. L30 Real Property Management. Used for activities performed by the right of way section property management unit other than the disposal of surplus property. This code includes mowing, maintenance of all types, securing tenants, collecting rents, tenant services, inspections, evicting, billing and account maintenance. Monitor continued need for real property and prepares and updates inventories of excess property. This code is also used with processing of abandonments, relinquishments, and retentions.
2. L31 Surplus Property Management. Activities performed under the right of way property management unit in the sale or disposal of real property. This code includes costs of surveying, appraising, advertising, auctions, closing and all support activities.
3. L11 Approach Permits and Access Management. This code is for all section activities in the management of access that does not involve a specific active project. Included in this are property management's work in grants and indentures of access. This includes meetings with property owners, developers, local officials and other ODOT staff regarding specific access inquiries and applications; research on rights of access as a part of the permit application process; execution of local government agreements; and implementation of reviews of access denials.
4. 032. Used for ALL section work, both HQ and regional. This includes program administration, appraisal, meetings, inspections, etc.
5. J30. Used to take possession of real property after acquisition; prepares inventories; manage temporary rent-backs; sell, remove or demolish improvements; remediate onsite hazardous material issues; all support work performed under this program.

## ACCESS MANAGEMENT

### 9.640 Grants of Access

A grant of access is required to create a new access where no right of access exists between the highway and a portion of, or all of a property abutting the highway. If an access is to be granted, the property owner must submit an application and purchase the right of access. Access rights are property rights that ODOT acquired. ODOT must receive fair market value when disposing of surplus property, including the right of access. The purchase price of access rights is the difference in fair market value of the property before and after the access has been granted.

The property management unit's function in the grant of access process begins after the property owner has submitted an application and it has been approved by the technical services manager (TSM). If the grant has been approved, the TSM forwards the application to the TSB property management unit ([OAR 734-Div. 51](#)).

1. The property management representative and the district manager (DM) may meet with the property owner to discuss the appraisal process and related fees.
2. If the property owner wants to proceed, the DM will notify the property management unit to proceed with the appraisal.
3. After the property management unit completes the appraisal of the grant, it is forwarded to the appraisal review unit. After the appraisal is reviewed the property management unit notifies the property owner of the fair market value. If the property owner decides to proceed, the PM unit prepares the transaction, accepts payment from the property owner for the grant and related costs, and completes the closing process.

### 9.645 Indenture of Access

An indenture of access is required when an applicant desires to exchange one access right for another, located more than 10 feet from the location listed on the deed. It is also required to modify the deeded width. The applicant must meet conditions specified in OAR 734 Division 51. Removal of a farm use restriction requires a grant of access (See 9.640).

## JURISDICTIONAL EXCHANGE

### 9.650 Jurisdictional Exchange

ODOT may exchange real property in a manner that will best serve the interests of the state and most adequately conserve highway funds ([ORS 366.395 \(2\)](#)).

The region manager has delegated authority to recommend that ODOT-owned real property assets be included in a jurisdictional exchange (transfer) with local public agencies (cities and counties) in exchange for goods and services such as highway maintenance.

The state right of way manager has delegated authority to convey ODOT-owned real property interests. ODOT financial services section completes the jurisdictional trade model, which presents a comparison of the contributions and cost assumptions of each party to an exchange of highway assets.

The jurisdictional exchange model compares the contributions, (goods and services) offered by the local public agency to the costs associated with managing and holding the property to be traded, along with the costs associated with the trade in an effort to identify the benefits derived from the exchange of highway assets. Elements, such as reversionary rights or maintenance responsibilities, are included in the trade agreement may be incorporated into the trade model so an appropriate balance between the value of the property traded and the cost of goods and services received can be achieved.

Once a decision by region has been made to use a surplus property as part of a jurisdictional trade, the property management unit will remove this parcel(s) from the inventory of potential sale properties and document the status on the inventory database and right of way file. At that time, the property management unit will have no involvement with the property. Region will assume all responsibility, unless so negotiated differently and shown in the agreement, for all costs related to with the maintenance of the property and costs associated with the proposed trade, including but not limited to the cost of appraisals, surveys, site contamination clean up and any other related property issues.

If the proposed exchange agreement does not materialize as expected, the property may, at the approval of the region manager, may be returned to the property management unit for sale. The property management unit will then reacquire all management responsibilities for the property from the region manager. (Consult with financial services section for detailed jurisdictional exchange process information.)

## Chapter 10 – Local Public Agency Program Oversight

### 10.100 Introduction

The Federal Highway Administration (FHWA) through its Stewardship Agreement has designated ODOT with implementing Oregon's federal aid highway program. FHWA also gives ODOT the responsibility of authorizing and overseeing county and city federal aid road projects. This chapter outlines ODOT's policies and procedures for oversight of the right of way acquisition and relocation responsibilities necessary for certification of Local Public Agency (LPA) projects in the Statewide Transportation Improvement Program (STIP) when any project funds for preliminary engineering, environmental, right of way or construction include federal funds. Additionally, ODOT has oversight and authorization responsibilities when an LPA uses state monies.

Right of way consultants utilized by LPAs must be authorized by the state right of way section prior to commencement of right of way activities for projects with federal funding participation. Any funds expended for work completed prior to authorization are not eligible for federal reimbursement.

Qualifications for LPA staff and right of way consultants can be found in [Section 10.600](#).

The right of way section's LPA Program is charged with and committed to assisting counties, cities and other local public agencies with property acquisitions, relocations and condemnation as necessary.

Assistance from ODOT can include providing resources in the form of staffing all or certain processes in the Acquisition of property rights and relocation responsibilities for an LPA. At a minimum, ODOT will provide oversight of the right of way acquisition and relocation for LPA projects any time there is federal funding in any phase of the project: including but not limited to preliminary engineering, right of way, construction, and utilities. If there is uncertainty whether an LPA project will include federal or state funds, the assumption should be made that federal and/or state funds will be used on the project, and that oversight of the LPA project by the ODOT right of way section will be necessary. The purpose of the program is to ensure such acquisition and relocation responsibilities are made in conformance with all applicable federal and state laws, regulations, policies and procedures.

### 10.120 Policies

All right of way acquired for projects that includes federal or state funding in any phase must be acquired in full compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (Uniform Act) as amended, as well as state law ([ORS 35.510](#)), civil rights laws, and other applicable federal and state regulations. LPAs are not permitted to create a Real Estate Acquisition Management Plan (RAMP) for adopting procedural guidelines on a project-by-project basis.

Upon request, the state right of way section will assist LPAs with all real property acquisition activities to the extent state staff resources allow, and as specified within an Intergovernmental Agreement (IGA) for Right of Way (ROW) Services. The state may also assist the LPA in contracting with a consultant to perform the work. At a minimum, the state must monitor

activities of any consultants that are contracted to perform the work to ensure federal participation in project preliminary engineering, environmental studies, construction, or right of way acquisition.

The above responsibilities are addressed in the Code of Federal Regulations, [23 CFR 710.201\(a\)](#).

In the event funding for an LPA project utilizes only local funds with no oversight provided by the state right of way section, LPAs must still follow all applicable state laws pertaining to right of way acquisition.

## **10.200 Roles and Responsibilities**

### **10.210 ODOT Region Right of Way Manager/Region Program Manager**

The primary role of the ODOT region right of way manager/region program manager (region ROW manager) is as the region's authority in the ODOT oversight of LPA projects. The region ROW manager will give written approval of all project agreements (such as intergovernmental agreement/cooperative improvement agreements and the right of way services agreements) prior to signatures being obtained from signatories at the LPA and ODOT. The region ROW manager will authorize or deny the use of internal LPA staff or consultants for any of the appraisal, appraisal review, or acquisition functions of the right of way process, and is required to co-sign the right of way certification form except as outlined in [Section 10.700](#).

Additionally, the region ROW manager may decide if a compliance audit is necessary and when and what information will need to be provided by the LPA or their consultant prior to certification of the project and/or reimbursement of funds.

### **10.220 ODOT Region Right of Way Staff (Senior Right of Way Agent)**

The primary role of the ODOT senior right of way agent is to act as an advisor to the LPA and consultant project managers during the preliminary engineering and right of way phases of an LPA project.

The senior agent will either draft the IGA and IGA for ROW services agreement or advise ODOT region agreement writers on the details necessary to complete the IGA and IGA for ROW services agreement and will advise the manager regarding the details necessary for the manager's approval of the agreements.

The senior agent will review completed acquisition files and advise the region ROW manager regarding the manager's co-signature of the right of way certification form as identified in [Section 10.500](#).

### **10.230 ODOT Programming Coordinator**

The role of the ODOT programming coordinator on an LPA project is to:

1. Coordinate and send notices of project authorizations and programming requirements to regions.
2. Coordinate project certification procedures and project summary reports.

3. Provide technical information to regions on expenditure account questions.
4. Collect the packet of legal descriptions, sketch maps and estimate, and send to FHWA.
5. Give notices of authority to proceed with right of way work.
6. Coordinate file number assignments with expenditure account numbers and ensure that expenditure account numbers are set up in RITS.
7. Ensure that LPA agreements are funded, deposited, and authorized.

### **10.240 Management and Policy Advisor/State Right of Way Manager**

The role of the management and policy advisor on an LPA project is to review the proposed IGA and IGA for ROW service agreements for applicability and accuracy prior to debriefing the state right of way manager about the appropriateness of signing and executing the agreements.

### **10.300 Procedures on Federal LPA Project**

The right of way acquisition phase on an LPA project must follow the Uniform Act, ODOT right of way manual and other state and federal regulations. The following are ODOT's roles in interacting with the LPA throughout the process, and represents the minimum points of interaction and review:

1. A Right of Way Services Agreement (ROWSA) is required for any project that has right of way acquisitions and/or relocations, uses state or federal funds and is developed and delivered by the state in cooperation with an LPA. The ROWSA outlines each party's duties and responsibilities with respect to the project and attaches the project IGA or Cooperative Improvement Agreement (CIA). The region ROW manager is responsible for determining the region's capacity to act as a resource on behalf of the LPA.

The amount of reimbursement ODOT requires for its oversight and authorization should be congruent with the complexity of the right of way and relocation responsibilities needed to successfully deliver the project following state and federal law. The determination of reimbursement amounts should be done in consultation with the region ROW manager.

2. Region right of way staff sets up the project in RITS based on the roles defined in the ROWSA or project agreement/supplemental project agreement.

Approval to use LPA staff or consultants will be given on a project-by-project basis by the region right of way manager or program manager based on a staffing plan submitted by the LPA. Pursuant to ODOT's Stewardship Agreement with FHWA, authorization to use consultants or LPA staff will be evaluated by the region ROW manager.

#### **Staffing Plan.**

The staffing plan approval will be based on ODOT's and the LPA's exposure to risk and the complexity of the tasks. It should include resumes of who specifically will be performing each task and their education/certification (if applicable), type of experience and years of experience with each type of task. There are four specific task areas:

- a. Appraisal.
- b. Appraisal Review.
- c. Acquisition.
- d. Relocation.

The resume should include whether the assignment will be completed by the LPA or their consultant. If the consultant is on ODOT's approved list, their name and which task they will complete is sufficient. If either the LPA is delivering the tasks or if the LPA is utilizing a consultant that is not on ODOT's approved list, their resume should include which task assignment they will be performing and information about their experience/education, certification (if applicable) and their years of experience. Approval of the staffing plan will be based on the experience and education levels achieved by the proposed consultant or LPA staff candidate. (See [Section 10.600](#) regarding educational and experience requirements for staff and consultants.)

- 3. When ODOT is delivering all or part of the right of way phase for the LPA, region right of way staff coordinates completion of the legal descriptions, sketch maps, and programming estimates to upload into RITS, and works with the programming coordinator to obtain authorization from FHWA in order to begin right of way acquisition and relocation. For oversight only projects, region right of way staff forwards completed legal descriptions, sketch maps and programming estimates to the programming coordinator for submittal to FHWA for authorization.
- 4. Prior to notice of authorization and making an offer, the LPA must pass a resolution of necessity to condemn any right of way needed for the project. In the event the parties seek to have ODOT condemn the necessary right of way on behalf of the LPA, ODOT must receive written permission from the Department of Justice to take on the condemnation work prior to any right of way work being done.
- 5. Region right of way staff, in consultation with region ROW manager, will coordinate with the LPA regarding approval of the staff or consultants responsible for the right of way activities.
- 6. Region right of way staff will oversee right of way activities conducted by LPA staff and consultants as the project progresses and will conclude with a review of the right of way files utilizing the LPA monitoring sheet prior to ROW certification to confirm the acquisitions were done in compliance with the Uniform Act, the ODOT right of way manual, and other applicable rules, laws and regulations. On smaller projects, review of all right of way and relocation files should be comprehensive and complete. On larger projects, at a minimum, a sampling of right of way files should be reviewed with a focus on the more complex files. All files involving relocation displacements of residences or businesses should be reviewed. Monitoring sheets should be uploaded in RITS by the senior agent when completed.

### **Certified Agency Staffing Plan**

Certified Agency shall prepare a project-specific staffing plan and submit it to ODOT for review and approval by the ODOT Right of Way Section. The staffing plan must detail the services to be



performed by qualified individuals. Certified Agency shall submit staffing plan updates to ODOT for approval as needed throughout the project to ensure all project services are performed by qualified individuals.

#### **10.400 Agreements**

By the authority granted by state law, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

By the authority granted by state law, state may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the state. When said money or a letter of credit is deposited, state shall proceed with the project. Money so deposited shall be disbursed for the purpose for which it was deposited pursuant to the agreement.

#### **10.500 Right of Way Certification**

Right of way certification is a requirement on all STIP projects, including LPA STIP projects, with the exception of fund exchange projects as identified in [Section 10.700](#). On both LPA and consultant projects, the region ROW manager is required to co-sign the certification with the LPA project manager. The senior agent must complete adequate monitoring of the project to ensure the project is ready for certification.

Region right of way staff will consult with the region local agency liaison (or other region project leader or consultant utility liaison) and LPA/consultant to complete the ROW certification form. On complex projects, it is recommended that a draft certification be created and reviewed by the region ROW manager prior to obtaining signatures.

All projects likely to result in a certification 2 or 3 need to be reviewed and approved by the region ROW manager well in advance of certification. In addition, all certification 3 projects require that a Public Interest Finding (PIF) be completed in consultation with FHWA well in advance of certification. All projects requiring a certification 2 or 3 must be recertified as soon as the agency has completed all relocation activities, and is in possession of, and has cleared, all right of way necessary for the project.

#### **10.600 Qualifications for Use of LPA Staff and Right of Way Consultants on LPA projects**

LPAs may have staff or consultants authorized by the region ROW manager to undertake some or all of the ROW acquisition responsibilities on a project-by-project basis per [Section 10.120](#). The minimum qualifications for receiving authorization to do appraisal, appraisal review, acquisition and relocation work are outlined below:

##### **10.610 Appraisal and Appraisal Review**

In order to be considered authorized to undertake appraisal and appraisal review work for an LPA project, LPA staff must meet the minimum requirements:

1. Hold a four (4) year college degree.

2. Be an active or previously active licensed and certified real estate appraiser in accordance with the current Oregon appraiser license laws.
3. Have five years or more of appraisal experience in the state of Oregon, with one (1) year or more of eminent domain appraisal experience, including demonstrated and documented understanding of the Uniform Act and 23 CFR 710.

After determining the appraiser candidate has met the minimum requirements, the region ROW manager will make a final evaluation on the appropriateness of utilizing an LPA staff appraiser or review appraiser, based on the experience provided by the candidate and the complexity of the project and files.

LPAs that wish to engage a consultant appraiser or review appraiser for a project should submit the candidate's name to the ODOT senior right of way agent overseeing the project. The ODOT senior right of way agent should confirm the candidate is on ODOT's Qualified Appraiser List (QAL), and in cooperation with the region ROW manager, give written approval to the LPA to utilize the consultant appraiser or review appraiser.

## **10.620 Acquisition**

In order to be considered authorized to undertake acquisition work for an LPA project, LPA staff must meet the minimum requirements:

1. A Bachelor's degree, preferably in law, business administration, forestry, economics, agriculture, engineering or related fields is required.
2. Three (3) years of full-time experience performing ROW agent duties with a public agency or consultant demonstrating a documented understanding of the Uniform Act and 23 CFR 710 such as:
  - a. Eminent domain appraisals determining fair market value.
  - b. Negotiation for acquisition of sites, right of way, or easements.
  - c. Relocation of residential units, businesses, or personal property, or
  - d. Legal work in the field of eminent domain.
3. Two (2) additional years of right of way project management experience which can substitute for a Bachelor's degree, and SR/WA credentials through IRWA which can substitute for one of the three required years of ROW agent experience.

After determining that the acquisition agent candidate has met the minimum requirements, the region ROW manager will make a final evaluation on the appropriateness of utilizing an LPA staff acquisition agent based on the experience provided by the candidate and the complexity of the project.

LPAs that wish to engage a consultant acquisition agent for a project should submit the candidate's name and resume to the ODOT senior right of way agent overseeing the project. The ODOT senior right of way agent will work with the region ROW manager in reviewing the candidate's resume before authorizing the LPA to utilize the consultant acquisition agent.

### **10.630 Relocation**

In order to be considered authorized to undertake relocation work for an LPA project, LPA staff must meet the minimum requirements:

1. A Bachelor's degree, preferably in law, business administration, forestry, economics, agriculture, engineering or related fields is required.
2. Five (5) years of full-time experience performing ROW agent duties with a public agency or consultant demonstrating a documented understanding of the Uniform Act and 23 CFR 710 such as:
  - a. Eminent domain appraisals for estimating market value.
  - b. Negotiation for acquisition of sites, right of way, or easements, or
  - c. Legal work in the field of eminent domain.
3. Three (3) years of full-time experience with a public agency or consultant performing ROW relocation duties for residential units, businesses, and personal property.
4. Two (2) additional years of right of way project management experience which can substitute for a Bachelor's degree, and SR/WA credentials through IRWA, which can substitute for one of the three required years of ROW agent experience.

After determining that the relocation agent candidate has met the minimum requirements, the region ROW manager will make a final evaluation on the appropriateness of utilizing an LPA staff relocation agent based on the experience provided by the candidate and the complexity of the project.

LPAs that wish to engage a consultant relocation agent for a project should submit the candidate's name and resume to the ODOT senior right of way agent overseeing the project. The ODOT senior right of way agent will work with the region ROW manager in reviewing the candidate's resume before authorizing the LPA to utilize the consultant relocation agent.

### **10.700 Fund Exchange Program**

Through the Federal-Aid Project Guidelines and Working Agreement with the Association of Oregon Counties and League of Oregon Cities, ODOT provides federal Surface Transportation Program (STP) funds to cities, counties, and non-transportation management area metropolitan planning organizations. Known as ODOT's fund exchange program, it provides an opportunity for LPAs (local cities and counties) to exchange their federal STP dollars for state highway fund dollars.

The exchange of federal funds for state funds eliminates the need for the LPA to abide by federal project requirements, including those pertaining to right of way acquisition; however, the LPA still must comply with all requirements under state law including ORS 35 which is based on federal requirements under the Uniform Act. Under the fund exchange program, ODOT is not required to monitor right of way files or projects, nor co-certify LPA projects.

If the LPA uses federal funds that are not eligible or exchanged through the fund exchange program for the project, the LPA must follow all federal laws with respect to right of way acquisition, and the monitoring and certification rules in [Section 10.300](#) still apply.

## References

FHWA Resources for LPAs, [https://www.fhwa.dot.gov/real\\_estate/local\\_public\\_agencies/](https://www.fhwa.dot.gov/real_estate/local_public_agencies/)

Local Agency Guidelines (LAG) Manual,  
[https://www.oregon.gov/ODOT/LocalGov/Pages/LAG- Manual.aspx](https://www.oregon.gov/ODOT/LocalGov/Pages/LAG-Manual.aspx)

## **Chapter 11 – Right of Way Utility Relocation**

The utility relocation manual that establishes and implements a uniform standard and process for relocating reimbursable and non-reimbursable utility facilities existing on the public right of way is located at: <http://www.oregon.gov/ODOT/ROW/Pages/Utilities.aspx>.

The process for appraising, acquiring and relocating private utility facilities and features located on privately owned property can be found within their respective chapters of this manual.

## **Chapter 12 – Railroad**

Railroad policy and information has been removed from this manual and can be found at the following link: <https://www.oregon.gov/odot/ROW/Pages/Railroad.aspx>.

## Chapter 13 – Outdoor Advertising Sign Program

### 13.100 Introduction

The outdoor advertising sign program (sign program) under the State of Oregon’s Department of Transportation, regulates signs on private property that are visible to a state highway or the National Highway System (NHS) under the authority of the Oregon Motorist Information Act (OMIA). The OMIA was implemented for three main goals:

1. To promote public safety.
2. To preserve the recreational value of travel on the state’s highways.
3. To preserve the natural beauty along highways and adjacent areas.

The sign program is part of the right of way section and maintains the permitting system for the issuance of outdoor advertising Sign (OAS) Permits. All OAS must have a permit issued through ODOT’s sign program under the following conditions:

1. If they are visible to the NHS or any part of the state highway system.
2. If they are receiving compensation for advertising or are not at a place generally open to the public.
3. Specific state and federal laws provide the authority and direction as to how the program functions, which will be specified in this chapter.

The ODOT sign program is a user-fee funded program that issues outdoor sign permits.

Blue and white highway logo signs denoting essential services (gas/food/lodging) are not regulated by this program. Highway logo signs must be requested through the Oregon Travel Information Council (OTIC) at <http://ortravelexperience.com/> or by phone at 800-574-9397. Only OTIC signs and other official traffic control signs and devices are permitted to be in state highway right of way.

For OAS impacted by a state or local project, please see [Chapter 8](#) for guidance.

### 13.110 Policies

The sign program is tasked with effectively controlling the indiscriminate spread of outdoor advertising visible to state highways and the NHS and operates under the terms of the OMIA and the Federal-State Agreement (MCA 20439) with FHWA.

### 13.120 Roles and Responsibilities

The right of way programs manager oversees the sign program and its staff. The sign program staff administers the sign program.

### 13.200 Regulating Advertising Signs

#### 13.210 Outdoor Advertising Sign Permit

A permit can be issued for any size sign, up to a maximum of 14x48 feet. In order to effectively control outdoor advertising signs along Oregon’s highways, Oregon Revised Statutes (ORS’)

limit the issuance of new OAS permits to legally, pre-existing outdoor advertising signs on roadways that were added to the state or national highway systems after the statute was first implemented. OAS legally placed on bus benches or shelters at official mass transit stops must also be issued an OAS permit.

If a sign must be moved, the owner of a permitted sign may be eligible to receive a relocation credit or may relocate the sign from its established location to a new legal location as defined by federal, state and local regulations. [ORS 377.710 \(25\)](#) defines relocation credit as a credit for future relocation of a permitted outdoor advertising sign issued in lieu of a relocation permit under [ORS 377.767](#). A relocation credit or permit may be used to erect a new sign in another legal location if it meets conditions prescribed in the OMIA. State rules pertaining to sign relocations and permits are also found in [OAR 734.059 through OAR 734.060](#). The sign program maintains a list of relocation credit holders and may furnish it to parties interested in purchasing a relocation credit. Ownership and sale of relocation credits are controlled by companies within the sign industry. The State of Oregon does not receive any information regarding the financial elements of these transactions.

An application for a sign permit may be submitted and issued, once a relocation credit is obtained and a legal location is found. Prior to purchasing a relocation credit, interested parties should contact the sign program to ensure that the relocation credit is still viable, and to determine if there are any restrictions on its use. Preliminary reviews of the viability of a relocation credit and/or proposed locations for an outdoor advertising sign are available from the sign program at no charge.

### **13.220 Signs That Require a Permit**

A sign is defined in statute as “...any sign, display, message, emblem, device, figure, painting, drawing, placard, poster, billboard or other thing that is designed, used or intended for advertising purposes or to inform or attract the attention of the public”. The sign’s message does not have to be a commercial advertisement in order to require a permit.

State law requires OAS permits on two types of signs:

1. Signs that are not at the location of a business or activity open to the public, regardless of the message on it.
2. Signs for which compensation is exchanged either for the message displayed or the right to post a message.

ORS 377.735 exempts certain governmental unit and temporary signs from needing a permit.

Temporary signs and outdoor advertising signs cannot be located in scenic areas designated by a final order from the Highway Commission or scenic byways unless the signs existed prior to the scenic designation.

### **13.230 Signs Posted for Compensation**

Signs that require an OAS permit are those where compensation, such as money or something of value (e.g., forgiveness of debt, exchange of services, etc.), is exchanged for the posting of the sign, or for the message displayed on it. Billboards are good examples, because advertisers pay



the sign owner to have their messages displayed. Lease or rental agreements for the right to place a sign on private property also constitutes compensation.

### **13.240 Signs**

Signs that are not at the location of a business or an activity open to the public require a state sign permit, even if they are not for compensation. This includes signs in fields that are used for crops or grazing, or signs posted in vacant lots. Additionally, OAS permits may only be issued in areas that are zoned either commercial or industrial.

### **13.250 Prohibited Signs & Areas**

The law prohibits signs that have flashing, revolving or rotating lights, imitate a traffic control sign, or block the view of traffic. Signs may not be located on a vehicle or trailer, unless it is regularly used in transportation. No temporary exemptions or sign permits can be issued for prohibited signs. A list of prohibited signs can be found in [ORS 377.720](#). The sign program may be contacted at any time with questions or to provide clarification.

### **13.260 Enforcement**

The sign program is responsible for permitting legal OAS's, in order to effectively control OAS's visible to state highways and the NHS. The sign program may also remove, or bring into compliance any sign that violates Oregon Revised Statutes or Oregon Administrative Rules.

When a sign is in violation, the various actions taken by the sign program include:

1. Sending a courtesy letter informing the owner of the violation(s).
2. Sending a formal notice of violation and order of removal for the sign(s), or
3. An assessment of civil penalties of up to \$1,000.00 per day per violation.

The state works with sign owners to help them understand state laws and bring signs into compliance. Any signs within the highway right of way illegally are declared a public nuisance under statute and removed immediately by ODOT. Any cost of removal or storage is at the sign owner's expense.

### **13.300 Exemptions and Variances for Temporary Signs**

Signs defined as temporary by state statute do not require a permit, even if they are not located at a business or activity that is open to the public. Examples of temporary signs are signs for political campaigns or county fairs. By law, a sign is defined as temporary under the following conditions:

1. If it is posted for no more than 60 days in a calendar year.
2. Is no more than 12 square feet in size.
3. Is not on a permanent base.
4. When no compensation is being exchanged.

Variances: (With an approved sign program temporary variance, signs may either be up to 32 square feet in size or be posted for up to 120 days. An application for a variance must be completed and granted by the sign program prior to posting temporary signs.)

### **13.310 Compensation for full or partial loss of an OAS**

If a highway construction project causes an OAS to be removed from its current location or causes the face of the OAS to be totally or partially blocked, Oregon law (ORS 377.713) requires that the owner be compensated for the total or partial loss if the OAS is unable to find a comparable location. The compensation process to be followed is detailed in section [6.650](#). Additional details regarding relocation of an OAS can be found in section [8.809](#).

## Glossary

**Access:** The right of ingress and egress from a property abutting a highway.

**Access Control:** A limitation of the right and use of access either by law or agreement. The control can be a complete restriction of access or a limitation of access to a specific location.

**Administrative Settlement:** Any settlement made or authorized to be made by the right of way section, which is in excess of the Section's approved estimate of just compensation.

**Agency:** See State Agency.

**Airspace:** That space located above, at, or below the highway's established grade line, lying within the approved right of way limits. In certain situations, airspace may be occupied for non-highway purposes.

**Base Monthly Rent:** The base monthly rent for the displacement dwelling is the lesser of:

1. The average monthly cost for rental and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by ODOT (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent at the displacement dwelling, use the fair market rent unless it would result in a hardship because of the person's income or other circumstances), or
2. One-third of the displaced tenant's average gross monthly income, if the amount is classified as low income by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on the criteria in #1 for people with income exceeding the survey's low-income limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. (HUD Low income limitations can be found at: [https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/low\\_income\\_calculations/index.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm)), or
3. The total of the amounts designated for shelter and utilities if the displaced person is receiving a housing assistance payment from a program that designates the amounts for shelter and utilities.

**Business:** Any lawful activity (except a farm operation) that is conducted:

1. Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property, or
2. Primarily for the sale of services to the public, or
3. Solely for the purpose of these regulations, conducted primarily for outdoor advertising display purposes, when the display must be moved as a result of the project, or
4. By a nonprofit organization that has established its nonprofit status under applicable federal or state law.

**Comparable Replacement Dwelling:** A dwelling which is:

1. Decent, safe, and sanitary as described further in this glossary.

2. Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the right of way agent may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling.
3. Adequate in size to accommodate the occupants.
4. In an area not subject to unreasonable adverse environmental conditions.
5. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment.
6. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See [Section 8.603](#), Benefit Calculation; [Section 8.609](#), Displacement Carve-Out. [Section 8.610](#), Replacement Carve-Out).
7. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.
8. Within the financial means of the displaced person:

A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to initiation of negotiations is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in [Section 8.601](#), all increased mortgage interest costs as described in [Section 8.613](#) and all incidental expenses as described in [Section 8.616](#), plus any additional amount required to be paid under [Section 8.641](#), Last Resort Housing.

A replacement dwelling rented by an eligible displaced person is considered to be within their financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for replacement dwelling do not exceed the person's base monthly rental for the displaced dwelling as described in [Section 8.624](#).

For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the ODOT pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling (see [Section 8.621](#)). Such rental assistance must be paid under [Section 8.641](#), Last Resort Housing.

9. For a person receiving governmental housing assistance before displacement, a dwelling that may reflect similar governmental housing assistance. In such cases, any requirements of the governmental housing assistance program, including fair housing, civil rights, and those relating to the size of the replacement dwelling shall apply. However, nothing in this part prohibits an agency from offering, or precludes a person from accepting, assistance under a Government housing program, even if the person did not receive similar assistance before displacement, subject to the eligibility requirements of the Government housing assistance program. An agency is obligated to inform the person of their options under this part and the implications of accepting a different form of assistance than the assistance that the person may currently be receiving. If a person accepts assistance under a Government housing assistance program, the rules of that program apply, and the rental assistance payment under [Section 8.619](#) would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing and associated utilities after the applicable Government housing assistance has been applied. In determining comparability of housing under this part:
- a) A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit.
  - b) A privately owned unit with a housing project—based rental program subsidy (e.g., tied to the unit or building) may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing unit.
  - c) An offer for tenant-based rental assistance, such as a HUD Section 8 Housing Choice Voucher, may be provided along with an offer of a comparable replacement dwelling to a person receiving a similar subsidy assistance or occupying a privately owned subsidized unit or public housing unit before displacement. The displacing agency must confirm that the owner will accept tenant based rental assistance before offering the unit as comparable replacement housing.

**Condemnation:** A legal process in which private property is acquired by a governmental or quasi- governmental agency for public purposes through the exercise of the power of eminent domain, wherein the property owner is paid just compensation for the property.

**Contribute Materially.** During the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the relocation reviewer determines to be more equitable, a business or farm operation:

1. Had average annual gross receipts of at least \$5,000, or
2. Had average annual net earnings of at least \$1,000, or
3. Contributed at least one-third (1/3) of the owner's or operator's average annual gross income from all sources.
4. If the application of the above criteria creates an inequity or hardship in any given case, the operations manager may approve the use of other criteria as determined appropriate.

**Date of Displacement:** The date of displacement shall be the date a displaced person moves from the acquired property.

**Decent, Safe, and Sanitary Dwelling:** A dwelling which meets the requirements of Items 1-7 below or the most stringent of the local housing code, Federal agency regulations, or ODOT's regulations or written policy. The dwelling shall:

1. Be structurally sound, weather tight, and in good repair.
  - a) Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored.
2. Contain a safe electrical wiring system adequate for lighting and other electrical devices.
3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person.
4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced persons. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by the most stringent of the local housing code, Federal agency regulations or requirements, or ODOT's regulations or written policy. In addition, the Federal funding agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such agencies.
5. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to the appropriate sources of water and to a sewerage drainage system. When required by local code standards for residential occupancy, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewerage drainage system, and adequate space and utility connections for a stove and refrigerator.
6. Contains unobstructed egress to safe, open space at ground level.
7. For a displaced person with a disability, be free of barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

**Displaced Person:**

1. Generally, except as provided in Item #2 below, any person who permanently moves from the real property or moves their personal property from the real property. This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements as described in sections [Section 8.601](#) and [Section 8.620](#).
  - a. As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

- b. As a direct result of a written notice of intent to acquire, or the acquisition, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under [Section 8.162](#), and moving expenses under [Section 8.371 through 8.377](#), [Section 8.571 through 8.575](#), and [Section 8.771 through 8.777](#).
- 2. Persons required to move temporarily. A person who is required to move or moves their personal property from the real property as a direct result of the project but is not required to relocate permanently. Such determination shall be made by ODOT in accordance with any requirement, policy, or guidance established by the Federal agency funding the project. All benefits for persons required to move on a temporary basis are described in [8.120](#), [8.517](#), and [8.720](#).
- 3. Voluntary acquisitions. A tenant who moves as a direct result of a voluntary acquisition as described below:
  - a. ODOT will not use the power of eminent domain to acquire the property, and the following conditions are met:
    - i. No later than the time of the offer ODOT informs the owner of the property or the owner's designated representative in writing of the following:
      - A. ODOT will not acquire the property if negotiations fail to result in an amicable agreement; and
      - B. ODOT's estimate of fair market value for the property to be acquired; and
    - ii. Where ODOT wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly.
    - iii. The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area must be acquired within specific time limits.
  - b. The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

A tenant as described above is eligible for relocation assistance when there is a binding written agreement between ODOT and the owner that obligates ODOT, without further election, to purchase the real property. FHWA and ODOT will identify the types of agreements used in programs or projects which are considered binding, and which would therefore trigger eligibility for tenants as displaced persons. Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this paragraph until all conditions to ODOT's obligation to purchase the real property have been satisfied. Provided that, ODOT may determine that a tenant who moves before there is a binding agreement is eligible for relocation assistance once a binding agreement exists

allowing establishment of eligibility.

4. Persons not displaced. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:
  - a. A person who moves before initiation of negotiations, unless the operations manager determines that the person was displaced as a direct result of the program or project, or
  - b. A person who initially enters into occupancy of the property after the date of its acquisition for the project, or
  - c. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act.
  - d. An owner-occupant who moves as a result of an acquisition of real property if:
    - i. The acquisition is for a direct Federal program or project if a Federal agency will not acquire a property because negotiations fail to result in an agreement, the owner of the property or the owner's designated representative shall be so informed in writing. Owners of such properties are not displaced persons, and as such, are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits.
    - ii. The acquisition is for a program or project receiving Federal financial assistance, and:
      - A. ODOT will not use the power of eminent domain to acquire the property, and the following conditions are met:
        - No later than the time of the offer ODOT informs the owner of the property or the owner's designated representative in writing of the following:
          - ODOT will not acquire the property if negotiations fail to result in an amicable agreement; and
          - ODOT's estimate of fair market value for the property to be acquired; and
        - Where ODOT wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly.
        - The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area must be acquired within specific time limits.



- B. The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

However, the displacement of a tenant as a direct result of any acquisition for a Federal or federally assisted project is subject to this part.

- e. A person whom ODOT determines is not displaced as a direct result of a partial acquisition, or
- f. A person who, after receiving a notice of relocation eligibility (described in [Section 8.133](#)), is notified in writing that she or he will not be displaced for a project. Such notice shall not be issued unless the person has not moved and ODOT agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility, or
- g. An owner-occupant who voluntarily conveys their property after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, ODOT will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part, or
- h. A person who retains the right of use and occupancy of the real property for life following its acquisition by ODOT, or
- i. A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, as provided in [Section 8.526](#).
- j. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance; or
- k. Temporary, daily, or emergency shelter occupants are in most cases not considered displaced persons. However, agencies may determine that a person occupying a shelter is a displaced person due to factors which could include reasonable expectation of a prolonged stay, or other extenuating circumstances. At a minimum, agencies shall provide advisory assistance to all occupants at initiation of negotiations.

**Dwelling:** The place of permanent or customary and usual residence of a person, according to local custom or law including a single-family house, a single-family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home, or any other residential unit.

**Excess Right of Way:** Property acquired for a project which has become unnecessary due to plan changes, or property purchased outside of the right of way limits as part of a settlement or as an uneconomic remnant.

**Farm Operation:** Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily

producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

**Federal Financial Assistance:** A grant, loan, or contribution provided by the United States, except any Federal guarantee insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

**Federal Regulations:** In respect to right of way acquisition and relocation policies, federal regulations usually refers to Title 49, Code of Federal Regulations, Part 24 ([49 CFR 24](#)), and [23 CFR Part 710](#).

**Initiation of Negotiations:** Unless applicable federal program regulations specify a different action to serve this purpose, the delivery of the initial written offer of just compensation by ODOT to the owner or the owner's representative to purchase the real property for the project., However, if ODOT issues a notice of intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.

In the case of permanent relocation of a tenant as a result of a voluntary conveyance of real property by the property owner after being informed that eminent domain will not be used to purchase the property, the tenant is not eligible for relocation assistance under this part, until there is a binding written agreement between ODOT and the owner that obligates ODOT, without further election, to purchase the real property. Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this part unless such agreements satisfy the requirements of the Federal agency providing the Federal financial assistance or until all conditions to ODOT's obligation to purchase the real property have been satisfied.

**Just Compensation:** An amount paid to a property owner for property acquired for public purposes which is not less than the market value of the property acquired, including damages or benefits to the remaining property.

**Legal Settlement:** Any settlement made by the State's Attorney General's office, including stipulated settlements approved by the courts.

**Mobile Home (manufactured home):** The term 'mobile home includes manufactured homes and recreational vehicles used as residences.

**Mortgage:** Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the state in which the real property is located, together with the credit instruments, if any, secured thereby.

**Nonprofit Organization:** An organization that is incorporated under the applicable laws of the State of Oregon as a nonprofit organization and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code [[26 U.S.C. 501](#)].

**Notice of Intent to Acquire:** Establishes eligibility for relocation benefits prior to the initiation of negotiations. (See [Section 8.132](#).)

**Outdoor Advertising Sign:** (a) A sign that is not at the location of a business or an activity open to the public, as defined by ODOT by rule, or (b) A sign for which compensation or

anything of value as defined by ODOT by rule is given or received for the display of the sign or for the right to place the sign on another's property.

**Owner of Displacement Dwelling:** A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

1. Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition, or
2. An interest in a cooperative housing project which includes the right to occupy a dwelling, or
3. A contract to purchase any of the interests or estates described in paragraphs 1 or 2 above, or
4. Any other interest, including a partial interest, which in ODOT's judgment warrants consideration as ownership.

**Owner's or Tenant's Designated Representative:** A representative designated by a property owner or tenant to receive all required notifications and documents from ODOT. The owner or tenant must provide ODOT a written notification which states that they are designating a representative, provide that person's name and contact information and what if any notices or information, the representative is not authorized to receive.

**Person:** Any individual, family, partnership, corporation, or association.

**Programming:** A set of activities required to commit funds and establish authority to proceed with various phases of project development.

**RITS:** Right of Way Information Tracking System, the primary right of way database.

**Salvage Value:** The probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap, when there is no reasonable prospect of sale except on that basis.

**Sign:** Any sign, display, message, emblem, device, figure, painting, drawing, placard, poster, billboard or other object that is designed, used or intended for advertising purposes or to inform or attract the attention of the public. Two other items of note are:

1. The term includes the sign structure, display surface and all other component parts of a sign.
2. When dimensions of a sign are specified, the term includes panels and frames, including both sides of a sign of specified dimensions or area.

**Small Business:** A business having not more than 500 employees working at the site being acquired or displaced by the program or project, where that site is the location of economic activity.

**State Agency:** ODOT or, if otherwise noted, the acquiring agency.

**Surplus Property:** Excess right of way which has been deemed surplus to the needs of ODOT and may be disposed of.

**Temporary, daily, or emergency shelter (shelter):** Any facility, the primary purpose of which is to provide a person with a temporary overnight shelter which does not allow prolonged or guaranteed occupancy. A shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and in most cases does not meet the definition of dwelling as used in this part.

**Tenant:** A person who has the temporary use and occupancy of real property owned by another.

**Throughway:** A highway or street especially designed for through traffic, over, from, or to which owners or occupants of abutting land or other persons have no easement of access, light, air, or view, by reason of the fact that their property abuts upon the throughway or for any other reason. ORS 374.010.

**Uneconomic Remnant:** A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

**Uniform Act:** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894; [42 U.S.C. 4601 et seq.](#)), and amendments thereto.

**Unlawful Occupant:** A person who occupies without property right, title, or payment of rent, or a person legally evicted, with no legal rights to occupy a property under State law. An agency, at its discretion, may consider such person to be in lawful occupancy for the purpose of determining eligibility for assistance under the Uniform Act.

**Utility Costs:** Expenses for electricity, gas, other heating and cooking fuels, water and sewer.

## **Appendix: Stewardship and Oversight Agreement**

Statewide Policy and Planning - ODOT & FHWA Stewardship & Oversight Agreement - All Documents ([sharepoint.com](#))

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