

**ACQUISITION  
CHAPTER 5**

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# ACQUISITION

## 5.100 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 the Oregon Department of Transportation (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. Also, 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.

## 5.120 POLICIES

### 5.125 Just Compensation Current Summary Statement

The Right of Way Section shall determine and offer 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 5.460 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.

### 5.130 Expeditious Acquisition

Every effort will be made to acquire real property expeditiously through negotiation with property owners.

### 5.135 Personal Contacts

Although it may be desirable to contact each property owner in person to initiate negotiations to acquire right of way, there will be situations when ODOT can elect to initiate negotiations by certified mail. (See Sec. 5.470 for a discussion on initiation of negotiations by certified mail.)

### 5.140 Coercion

Right of Way Agents 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 by deferring negotiations, advancing or deferring condemnation or by any other coercive action.

### 5.145 Conflicts of Interest

- a. The appraiser or agent preparing an administrative determination of value of a parcel valued over \$2500 may not be assigned to acquire that property. The appraiser of parcels valued at \$2500 or less may negotiate their purchase after the just compensation has been approved and with the approval of the Region Manager.
- b. Right of Way Agents will not deliver payments on files, which they negotiated.
- c. See also Chapter 2, 2.300, # 5 - Operating Procedures.

### 5.150 Disclosure of Appraisals or Administrative Determination of Value

Oregon Revised Statute 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.

### 5.155 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 the Department, are adversely affected by the acquisition. All buildings, structures, or other improvements normally considered to be real property if owned by a land owner will also be considered real property if owned by a tenant, and an offer to purchase them will be made.

### **5.160 Owner Retention of Improvements**

Property owners shall be permitted the right to repurchase improvements at salvage value, unless the Region Right of Way Manager determines it is not in the public interest to do so.

### **5.165 Excess Property Acquisition**

#### **a. 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.

#### **b. Economic Remnants:**

The Region Manager may recommend the purchase of other excess property remainders to the Right of Way Manager if it appears to be in the best interests of the Department.

### **5.170 Payment Before Possession**

No owner shall be required to surrender possession of real property before the agreed purchase price is paid, or there is deposited in court, for the use of the owner, an amount not less than the approved estimate of just compensation as stated in the Final Offer Letter. Also see Chapter 6, Relocation, regarding notices.

### **5.175 Donations**

The Department may accept donations of needed real property, provided that owners are advised in advance of their right to just compensation. (See Section 5.320)

### **5.180 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.

## **5.200 RESPONSIBILITIES**

### **5.210 RIGHT OF WAY MANAGER**

The Right of Way Manager has delegated authority from the Oregon Transportation Commission (OTC) to accept agreements and other documents relating to property the OTC has authority to acquire. Signature authority is sub-delegated in a variety of instances to the three Right of Way Section Unit Managers and/or the five Region Right of Way Managers. (See 5.591). Acceptance of these documents creates a binding agreement between the grantor and the Department.

### **5.220 RIGHT OF WAY OPERATIONS UNIT MANAGER**

The Operations Unit 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.

### **5.230 REGION RIGHT OF WAY MANAGER**

The Region Right of Way Manager is responsible for carrying out the acquisition process in the Region in conformance with state and federal laws and the Right of Way Section's policies and procedures. The Manager may designate a Right of Way Project Manager to assist in directing the work of Right of Way Agents in the field.

### **5.240 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.

### **5.250 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 the Department.

### 5.260 RIGHT OF WAY CONSULTANTS

On a given project, Right of Way Consultants may be used to perform some or all of the Acquisition 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 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.

### 5.300 PROCEDURES

#### 5.310 METHODS OF ACQUIRING RIGHTS OF WAY

#### 5.315 TEMPORARY 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, surveying, or other similar purposes. The procedures for such entry follow ORS 35.220.

Temporary Rights of Entry can also be project related such as a right of entry to enter onto remainder property to remove improvements. These rights of entry are generally obtained without paying compensation. If compensation is involved, it is determined through the negotiation process or Condemnation.

##### Permit of Entry for Construction

Under exceptional circumstances the Region Right of Way 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; and
3. 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 will normally be considered exceptional circumstances:

- a. The property owner is a governmental agency.
- b. An event of an emergency nature where it is necessary to enter onto private property to protect the highway facility or the private property.
- c. 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.
- d. 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 (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 owner's signature. The Agent distributes copies of a signed permit to the person requesting it, the property owner and the region file, and forwards the original to the Right of Way Headquarters at time of payment.

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.

### 5.320 Donations

Property owners are entitled to just compensation for property to be acquired, and to payment prior to

delivering possession to the State. However, the law also provides that owners may donate the necessary property rights and waive the notice requirements as long as they have been fully informed in writing of their rights and the State's obligation to appraise.

If property owners wish to make a donation, an Acquisition Agent must have the owners sign a letter stating they have been informed of their right to just compensation and that they choose to waive their rights and release the State from its appraisal obligation and donate the required right of way. If owners choose to donate but desire an appraisal for tax purposes, the State will provide one. For donations valued more than \$5000, the State must use a qualified fee appraiser whose business is not solely generated by the Division. For donations valued less than \$5000, the State may use any qualified staff or fee appraiser.

At the time the donation letter 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 letter of understanding summarizing the terms and conditions under which the donation has been made, including any obligations the State is required to perform. The agent sends this letter to the property owner and copies to the region and Headquarters files.

After receipt of the signed letter of donation and executed conveyance document, and after delivery of the letter of understanding to the property owner, the Agent is to complete a Final Report on Real Property Negotiations. (See Sec. 5.590)

On Federal-Aid projects, ODOT may claim credit toward its share of the project costs for the market value of donated real property. The Region is responsible for incorporating the market value of donated property into the final or amended federal-aid project agreement and for specific certifications required by FHWA. (See 12.360 - "Credit for Donated Real Property")

### **5.322 Developer Mitigation Donations**

There are instances in which a developer is required to donate land to ODOT for highway mitigation purposes as part of a permit application. If that occurs the following procedure is to be used.

1. Request for the mitigation donation is originated by ODOT District or the Local Public Agency

(LPA). The request must specify the degree of title that is to be given to the department (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.

2. The Developer prepares the legal description ("Exhibit A") per the requirements identified in Appendix A at the end of this chapter. The developer then provides two copies of the "Exhibit A" and the necessary supporting documentation to the Region Right of Way office. The legal description will be reviewed for sufficiency by the Geometrics Right of Way Engineering Group.
3. The Developer also prepares the exhibit drawing ("Exhibit B") following the requirements identified in Appendix A at the end of this chapter.
4. Both the "Exhibit A" and "Exhibit B" are forwarded when completed by the developer to the Region Right of Way office.
5. The Region Right of Way Manager assigns the file to a Right of Way Agent.
6. The Right of Way Agent forwards the documents (keeping a full copy in Region) to the Right of Way Programming Coordinator.
7. The Programming Coordinator assigns a file number (Project 6007) and sets up the hard file. The file containing the "Exhibit A" description and "Exhibit B" drawing along with required supporting documentation are sent to the Geometrics Right of Way Engineering Group for review.
8. Right of Way Engineering will review the "Exhibit A" description and "Exhibit B" drawing for sufficiency. They will contact the responsible party for any corrections that are required in the description or drawing.
9. Right of Way Engineering will draft the mitigation donation parcel on the most applicable right of way map using the 6007 file number. If no right of way map exists in the area of the mitigation property or the donation parcel is such that drafting on the existing map would not be feasible, Right of Way Engineering may assign a map number to a copy of the "Exhibit B" drawing and file it with the Map and Plans Center.

10. After the description and drawing are approved, Right of Way Engineering will forward the file to the Programming Coordinator. The Programming Coordinator enters and expenditure account in the Right of Way Automated Information Network (RAIN) and a notification that the file has been authorized is sent to the Region R/W Agent and the HQ Condemnation Specialist. The Programming Coordinator then passes the file to the HQ Title/Closing Specialist.
11. The Right of Way Agent will contact District to confirm the mitigation donation is appropriate and there is no hazmat or other physical problems with the site. A developer who is donating right of way may have a development plan showing that they have completed a Level 1 HazMat investigation. Smaller developments may need to have ODOT do a Level 1 HazMat review. The Right of Way Agent may request that the Programming Coordinator assign activity codes 093 and 307 to a particular file for these charges. These costs should be minimal. The developer is expected to pay the costs if more than a simple Level 1 review is needed. If necessary, language may be added to the document to ensure that ODOT does not accept the liability for any hazmat related costs.
12. After the Right of Way Agent submits a document request to HQ, the Title/Closing Specialist prepares the OTR, has the document prepared, and submits them to the Region Right of Way office. Usually, title reports on developer mitigation donations are not obtained. The Agent must relay to the Title/Closing Specialist when requesting the document whether a fee or easement interest is to be conveyed.
13. The Right of Way Agent prepares a Final Report and forwards it together with the executed document (which has been accepted by the Region Right of Way Manager) to the Title/Closing Specialist for processing. The Final Report **MUST** contain language to the effect that "The District Office states that hazmat contamination is not a concern on this property." Otherwise, the appropriate exhibit must be signed and accompany the paperwork.
14. The Title/Closing Specialist will process the file, make entries into RAIN, record the document and send the acceptance letter.
15. District Office issues use/occupancy permits when the mitigation donation process is complete.

### 5.325 Dedication

The State indirectly acquires some rights of way through the dedication process occurring at the city and county level. Under some local zoning requirements property owners must dedicate a portion of their property for road purposes as a consequence of a land use action, such as obtaining a zone change, partitioning their property, or obtaining a building permit. The local agency, by agreement, transfers title to dedicated parcels located adjacent to state highways by deed to "The Public for public road purposes".

### 5.330 Hazardous Materials (HAZMAT)

The acquisition of contaminated properties continues to be a factor on many ODOT construction projects. The following procedures will be followed for the acquisition of contaminated properties.

- a) 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.
- b) 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)):
  1. Avoidance.
  2. Acquisition – care should be used in minimizing the size of the parcel to be acquired.
    - (a) Use the process set forth below.
    - (b) 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.

(c) 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.

(d) The Right of Way Project Manager with the Appraisal Reviewer will agree on one of the following courses of action:

1. If the owner is willing and able to perform, 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.
2. 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.
3. 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 insure wise expenditure of funds.

### 5.345 Condemnation

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 Manager. (See Sec. 5.660 5.665) for instructions on submitting a Recommendation for Condemnation.) For information relating to the condemnation process see Chapter 7, Operations Unit Acquisition Support.

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 4.545; 5.665).

## 5.350 WHEN RIGHT OF WAY IS ACQUIRED

### 5.355 Authorization

The acquisition of a right of way file generally cannot begin until approval to do so is received from the Right of Way Section Programming Coordinator.

### 5.360 Early Acquisition

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 the Department determines that an early acquisition protects the public interest as determined by the OTC, Department Director and/or Right of Way Manager<sup>1</sup>. Early 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 early acquisitions:

- The Department'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;
- The acquisition is consistent with any environmental work or decisions to-date (e.g., a Location EIS) and will 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 or alignment;

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<sup>1</sup> The Right of Way Manager has delegated authority to approve early acquisitions for projects in the approved STIP. The Director would submit a request to the OTC for approval of an early acquisition for a project or program not covered in the current STIP.

- The acquisition is within the Department's legal expenditure authority (for transportation related uses);
- The Department's current or future use of federal funds can be protected if FHWA participation is requested and compliance is consistent with 23CFR 710.501-503.

There are two types of early acquisitions: hardship acquisitions and protective buying.

### 5.365 Hardship Acquisitions

The Department may approve 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; and
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 who forwards the request to the Right of Way Manager for consideration which will result in a well-documented written approval or denial.

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 condition that the department 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 Right of Way Manager shall provide a letter to the owner containing the following, or equivalent, language:

"ODOT will review your request for an early hardship acquisition and advise you in writing whether or not the request is approved. If approved, the Department 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. The Department will not initiate an early condemnation process to conclude the hardship acquisition."

Other than Condemnation, hardship acquisitions are to follow the regular valuation, negotiation and relocation processes identified in Chapters 4, 5 and 6, and should include consideration of the Alternate Dispute Resolution process (8.400) if it is considered feasible.

### 5.370 Protective Buying

The Department must demonstrate that the sale or development of the property is imminent and such sale or development would limit future transportation choices, thus justifying a protective purchase. The following criteria should be considered in decisions about protective buying:

- Unimproved properties should be acquired as "protective buying" parcels in those cases where a showing can be made that the owner has imminent plans to develop the property within certain time frames or that the property will be available for sale.
- Protective buying is not generally applicable to property already improved to its highest and best use because the only additional money the Department would pay in the future is inflation value.
- Improved properties should be acquired as "protective buying" parcels in those cases where a showing can be made that:
  1. The property owner has plans to sell or remove the existing building improvements and replace them with new building improvements of significantly higher value; or
  2. The property owner plans enlargements or renovations that will represent a large increase in the ultimate highway right of way acquisition costs; or
  3. The enlargement or renovations may require additional land that the Department will need for transportation improvement projects within approximately 6 years; or
  4. 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 the avoidance of potential:

- Increased real property values;
- Large damage claims;
- Extraordinary relocation expenses;
- Extraordinary property management expenses.

Protective buying should be an opportunity for the Department to realize a significant financial advantage based on the above criteria. If such a situation develops, the Region Right of Way Manager should contact the Right of Way Manager to determine if protective buying should be undertaken.

### **5.375 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. Each Right of Way Agent must discuss the time requirements for obtaining possession of the right of way with the property owner. If negotiations become stalled, or it is apparent that negotiations will not be successful, the agent must submit a Recommendation for Condemnation.

## **5.380 PREPARATION FOR NEGOTIATIONS**

### **5.385 Background Familiarity**

Promptly after just compensation has been established for a property by the appraisal review, the assigned Right of Way Agent initiates negotiations with the property owner. In preparing for the initiation of negotiation the Agent should become familiar with:

1. The project and how it will affect the subject property, including access control, grade, proximity, and road approach changes, and drainage provisions.
2. The appraisal. The Agent should determine, among other issues, if there are tenant-owned improvements which will require a separate offer; if there are damages to any remaining property, or if the appraisal review recognizes any uneconomic

remnants for which a purchase offer must be made.

3. The title report. The Agent should review the title report, if one is available. If the property has sold on contract the Agent should negotiate with the contract purchasers. If there is no title report in the file the Agent should discuss the need for a title report with the Right of Way Project Manager.
4. The Title Information Sheet.
5. The grantors. The Agent should discover what is known about the property owners from any previous contacts. Several special situations should be handled as described below.
6. The property. Whenever possible the Agent should make a personal inspection of the property prior to the initiation of negotiations.

### **5.390 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 a clue to the owner's location. These measures are essential to the legal requirement to conduct a diligent search.

### **5.395 Owner Represented By A Third Party**

When the Agent is informed that an owner is to be represented by an attorney or other third party, the file must be documented and negotiations continued with the appointed party. If someone represents the owner other than himself or herself, a written statement from the owner must be obtained designating that person as representative.

### **5.400 Ordering Documents**

The Region is responsible for requesting documents needed for each file. Requests are to be made in writing to the Operations Unit Document Specialist, giving an estimate of when the documents are needed. The Region is to submit the Title Information Sheet at the same time as the document request. If the region does not include the Title Information Sheet, it will take longer to prepare documents because the

Right of Way Section Operations Unit will need time to review the file; also, the documents might be based on incomplete title information.

The Region should request new documents whenever a revision to a file results in a changed legal description or change in ownership.

#### **5.405 Acquisition Packet**

The Agent should prepare an acquisition packet for the owners of real property, consisting of:

1. An Offer-Benefit Letter containing the Right of Way Section's recommended compensation. The Offer-Benefit Letter includes the following:
  - a) The Cover Letter. For property owners this is form 734-1712; for property tenants it is form 734-1713.
  - b) Acquisition Summary Statement – form 734-1714. The Summary Statement should clearly identify which improvements are included in the proposed offer and which improvements are separately held.
  - c) Relocation Benefit Summary Statement – forms 734-1715, or 1717 (See 6.325)
2. A copy of the reviewed appraisal or the Administrative Determination of Just Compensation (ORS 35.346);
3. State's Obligation(s) Agreement (Form 734-3931) when appropriate;
4. Grantor's Obligation(s) Agreement (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 pamphlets "Moving Because of the Highway or Public Projects?" (Form 734-3772) and "Acquiring Land for Highways and Public Projects" (Form 734-3773). The agent should be familiar with the pamphlets and able to answer questions regarding their content.

The Right of Way Agent should have the Right of Way Project Manager and/or the Region Manager approve any non-standard attachments to the Acquisition Packet prior to it being given to the property owner(s).

#### **5.408 Tenant-Owned Improvements**

If there are tenant-owned improvements, separate offer-benefit letters to the landowner and the

tenant-owner must be prepared; 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.

#### **5.410 Uneconomic Remnants**

If the acquisition of only a portion of a 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 appraisal review identifies to the agent whether a parcel is an uneconomic remnant and the value to be offered. The Agent should include language similar to the following on the Acquisition Summary Statement:

"(Identify uneconomic remnant) has been determined to be an uneconomic remnant and will be purchased by the State for \$\_\_\_\_\_ should you elect to sell."

#### **5.415 EXHIBIT A. Legal Description**

This exhibit is usually prepared by the Region Right of Way Engineering staff. 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.

#### **5.420 Access Control**

The Project Development Team will determine if any access control for a project is necessary (see 3.610 Access Management Subteam). 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 determine that the addendum language properly identifies the rights being acquired.

Examples of the types of access rights to be acquired include:

**None:** No access control language will be included for the parcel.

**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.

**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.

**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.

**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.

**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.

**Future Frontage Road:** The grantee (State) has a right to construct a future access road, at which time all reservations shall extinguish.

**Joint Access:** Notes that an access point is to be shared by adjoining owners.

**Farm Access:** Notes a reservation is for farm use only.

**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 in one ownership.

**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 in one ownership. 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; and 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 State 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.

### **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.5.425 State's Other Obligations (Form 734-3931)**

This attachment is used to list obligations, which the State will perform as part of the agreement. The agent should hold to a minimum the contractual obligations of the State. These must be in writing so no doubt exists as to the understanding between the contracting parties. All statements should be clear and concise. Where access is not controlled, there must be a clear understanding on the road approach locations and widths. They 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 and estimated cost 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 Sec 5.535)

### **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 re-establish beneath the highway all existing tide boxes and tide gates. Grantor shall there after 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 in kind an entire water system. The Agent must discuss a water supply replacement obligation with the Region Right of Way Manager, who obtains approval from the Operations 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 in one ownership."

### **Highway Abandonment**

Use of this clause must have prior approval of the right of Way Administration Office. "State agrees to abandon the present right of way between (station) and (station) after the new highway is completed and opened to traffic."

## 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 re-establish 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 re-establish 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."

### 5.430 Fencing (Form 734-3934)

This attachment is used to record fencing agreements.

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 property owners choose to restore fencing along the new right of way line, the proceeds from the acquisition usually are sufficient to replace a functional fence.

If the subject property has livestock, which the owner intends on keeping and which would be endangered if a portion of the fencing were removed, then the State needs to require, through a fencing agreement, 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 Chapter 4 - 4.400 ). The Agent needs to include an attachment 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 a property owner obligation.

### 5.435 Grantor's Obligation(s) Agreement (Form 734-3930)

This attachment should be used to clearly and concisely list things which the grantors agree to do as part of the right of way transaction. Completion dates must be included for obligations, which involve clearing the right of way. As an 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.

#### 5.440 Deposit and Delivery (Form 734-3936)

This attachment is used to assure delivery of improvements and fixtures upon possession. Space is left in which to enter items, which will be retained by the grantors.

It also provides a place to set a deposit, which may be withheld in the event the property is rented back to the grantors.

#### 5.445 Repurchase of Improvements By Owner (Form 734-3641)

This attachment must be included whenever buildings or improvements are repurchased by property owners as part of the transaction. (See Sec. 5.560)

**Owners who repurchase their dwelling may be eligible for a replacement housing payment. (See Chapter 6, Relocation).**

#### 5.450 Possession (Form 734-1755)

This attachment grants possession of a property upon acceptance of the document rather than after payment. It may be used only when early possession is in the best interest of the owner, or under other unusual circumstances, and only with prior approval of the Region Right of Way Manager. The file must be clearly documented with the reasons for utilizing this exhibit.

#### 5.455 Other Clauses

Following are a number of 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 Manager.

##### 1. 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."

##### 2. 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.

##### 3. 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.

"The State of Oregon agrees to be responsible for any damage or any third party liability which may arise from it (*list specific activity*) subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution Article XI, Section 7, to the extent of liability arising out of the negligence of the State. The State shall not be required to indemnify or defend (*grantor's name*) for any liability arising out of the wrongful acts of employees or agents of (*grantor's name*).

##### 4. 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."

## 5. 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 Sec. 5.645)

### 5.460 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 generally will initiate negotiations in person unless circumstances exist which warrant presenting the offer by certified mail.

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 appear 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 ripen into 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 5.405. 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 separate offers.

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 Offer-Benefit Letter 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 certified mail. 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. Information to be exchanged and discussed includes:

1. Title Information Sheet (Form 734-3011) should be in the file as it is sent to the owner along with the General Information Notice. If the property owner did not return the form, the Agent must complete it no later than at the initiation of negotiations. The Agent should review the preliminary title report 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 (Form 734-3617) required under relocation procedures.
2. Information pamphlets. The Agent delivers to the grantor a copy of the printed pamphlets "Acquiring Land for Highways and Public Projects"

(Form 734-3773) and "Moving Because of the Highway or Public Project?" (Form 734-3772).

3. 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.
4. The Offer-Benefit Letter. The Agent must be prepared to discuss a variety of issues when presenting the Offer-Benefit Letter. 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. In the event of displacement, the Offer-Benefit Letter 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.

Relocation issues are raised in the Offer-Benefit Letter. The Agent should discuss the benefits listed on the Relocation Benefit Summary (Form 105), answering concerns and questions of the grantors. See Chapter 6, Relocation for relocation responsibilities at the initiation of negotiations.

5. 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 Sec. 5.515)

#### **5.470 INITIATION OF NEGOTIATIONS BY CERTIFIED MAIL**

There are times when it is in the best interest of the State to initiate negotiations by certified mail rather than by personally meeting with the grantor. It could be that the entire project is to be negotiated by mail, or

there might be special circumstances where specific parcels on a project are best conducted by mail. Examples of the latter include out-of-state owners; owners who refuse to meet with an acquisition agent; and minor acquisitions involving no relocation or where the distance to be traveled is unreasonable in relation to the acquisition. In these situations, initiation of negotiations can be conducted by certified mail.

The following items are to be delivered to the owner when certified mail is used:

1. Ownership Information Form with instructions for the owner to complete and return. (If not already in the file.)
2. Preliminary Title Report for owner's review.
3. Information pamphlets.
4. Right of way map showing the property to be acquired.
5. Appropriate Offer-Benefit Letter.
6. Appraisal, administrative determination of just compensation or bases (ORS 35.346).

Cover letter. The Right of Way Agent should prepare a cover letter to the property owner explaining the contents of the offer packet, including a description of the project and the need for the property being acquired. The letter should state the actions required of the property owner to accept the proposal. Also, the letter should indicate that the Agent will follow up the offer with a telephone call in approximately one week, at which time questions can be answered, or at the owner's option an appointment for a personal contact can be made. All requests for personal contact by the property owner must be honored, if at all possible.

#### **5.475 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.

#### **5.480 Acquisition of Tenant-Owned Improvements**

The Right of Way Agent must contact the tenant-owner of any improvements or fixtures to present the appropriately worded Offer-Benefit Letter.

Although separate offers are extended to the landowner and the tenant owner, the Agent should seek during negotiations to arrive at a comprehensive agreement. 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.

#### **5.490 Relocation Contacts**

As soon as feasible after the initiation of negotiations the Agent is to meet with affected tenants of the property being acquired to deliver their Offer-Benefit Letter(s) and Relocation Benefits Summary. (See Chapter 6, Relocation)

#### **5.495 Relocation Eligibility Listing**

After contacting the affected tenants on the property being acquired, the Agent completes the Relocation Eligibility Listing (Form 734-3617) and forwards it to the Relocation Reviewer.

#### **5.500 Report of Personal Interview**

The Right of Way Agent shall maintain a record of negotiations on a Report of Personal Interview (Form 734-3708) for each file assigned. The contact record is to be completed within a reasonable time after each contact with the owner. The report should include but is not limited to date and place of contact, parties of interest contacted, a statement that the information brochures were delivered and explained, offers and counter-offers made, reasons settlements could not be reached and other pertinent data. Any discussion relating to relocation must also be included in this contact report.

#### **5.505 NEGOTIATION ACTIVITIES**

After the initiation of negotiations, 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. Even 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. On most files an Agent should not need more than three or four contacts with the owners nor need more than 40 days in order to reach an agreement. On more complicated files or on files where the owner is out of town or getting an appraisal, more time and more numerous 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 Manager. If deemed appropriate, a Recommendation for Condemnation (R/C) should be prepared, but prior to submitting the R/C to Right of Way Headquarters, the Right of Way Project Manager or Region Manager should contact the grantor to make a final attempt to reach a settlement. If this effort is unsuccessful, the Agent is to promptly submit the R/C. The Agent should not delay in submitting R/Cs; it is unfair to the owner and can cause problems in meeting project schedules. Also, the written Letter of Offer from the Right of Way Manager can further negotiation progress since many owners postpone resolving matters until they perceive that the State is serious about acquiring the right of way.

#### **5.510 Updating Offer of Just Compensation**

The property owner is to be given reasonable opportunity to 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. If the information presented by the owner, or if a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the State shall have the

appraisal(s) updated or will obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the State shall promptly re-establish just compensation and offer that amount to the owner in writing.

### **5.515 Owner's Appraisal**

When an owner obtains an appraisal and makes it available to the Right of Way Agent, the Agent shall submit it through the Right of Way Project Manager to the Appraisal Reviewer for review.

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 assure that proper consideration can be given to it in the review process. (See Sec. 4.180)

### **5.520 Revised Offers**

If the approved estimate of just compensation is revised in the appraisal review process 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 may be used at the discretion of the Region Right of Way Manager 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.

### **5.525 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 be 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.

### **5.530 Purchase of Economic Remnants**

The purchase of excess property other than uneconomic remnants must have prior approval from the Right of Way Manager. The agent, Right of Way Project Manager or Region Manager might consider recommending such an action if it would:

1. Avoid litigation.
2. Prevent hardship to grantors.
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 and underlined in red.

### **5.535 Exchange for Surplus Property**

Property owned by the Department 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, Property Management). 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 Program Management Unit about the standard access, sign, junkyard, 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.

#### **5.540 State's Obligations**

During the negotiation period, the grantor may propose that the State be obligated to perform a specific task or affirm 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 the agreement. Those obligations relating to construction or access locations must be approved by the Region Manager or a designee. (See Sec. 5.425)

#### **5.545 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 the agreement, including a date for the grantor to complete the specified work, and the consequences for failure to complete the stated obligations. (See Sec. 5.435)

#### **5.550 Continued Occupancy by Rental**

If it is necessary for a displacee to remain in occupancy after the date of possession, and project requirements permit, the State can rent the premises to the displacee for a short term. 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.

#### **5.555 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 Manager or a designee 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 negotiates with the grantor on the basis of the revised access after any necessary appraisal revision has been made. The Final Report must include the signature of the Region Manager authorizing the access revision.

#### **5.560 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, at a salvage value prepared by the Right of Way Project Manager, if the Region Manager determines it will not be detrimental to the best interests of the State, e.g. when it will not mean delay or other interference with a construction contract letting. 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 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 should be deducted from the total compensation being paid. The Repurchase of Improvements Agreement (Form 734-3930) is used to encompass the terms of the repurchase.

#### **5.565 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 an inexact one, 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 and the owner's underlying reasons for requiring greater compensation. The Agent, with knowledge of the real estate market, the appraisal process, and the background of the negotiations on the file, should discuss potential increases in compensation with the Right of Way Project Manager and together determine the merits of seeking an agreement in excess of the approved amount. If the potential increase is substantial, (**see 5.591**) the Region Manager must contact the Right of Way Section Operations Manager for authorization to proceed with a settlement.

An agreement in excess of the approved amount, and/or including additional State construction obligations, requires that the Region Manager write a justification letter supporting a settlement. Per the parameters detailed in 5.591, the justification letter is used by either the Right of Way Operations Manager

or the Region 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.

**5.570 CONCLUDING NEGOTIATIONS**

Once an Agent reaches an agreement with property owners, it is necessary that the Agent obtain their 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 need to obtain their Tax Payer ID Number (TIN)

**5.575 Necessary Signatures**

Deeds and other documents usually 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 instruments' 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 both the contract purchasers and the fee owners to sign the deed, especially if the consideration will not be adequate to

pay off the contract. If the fee owners refuse to sign, and the consideration for the property exceeds the balance due on the contract, the contract purchasers may choose to pay off the contract by adding an Assignment of Consideration to the agreement (See Sec. 5.455(2)). 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 on which 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.

**5.580 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 can not 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. ORS 93.490 provides several acceptable formats for notarizing various types of signatures:

1. By Individuals:

STATE OF OREGON, County of \_\_\_\_\_, 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 \_\_\_\_\_, 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 in 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 \_\_\_\_\_, 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 in 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

**5.585 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.

**5.590 Final Reports**

On all transactions that require Commission approval, the Right of Way Agent assembles a Final Report packet, which the Region Manager completes and forwards to the . Right of Way Section Title/Closing Specialist. If there is a valid reason to expedite closing, the Final Report form should be marked "RUSH".

Each final report packet must contain a:

- 1. Final Report (Form 734-3042) 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 Region Manager or a designee must sign the Final Report to approve any construction obligations or access changes other than those previously approved or included in the plans. The Agent should include a signature line for this purpose.

- 2. Justification Letter for Administrative Settlements, if applicable
- 3. Region Right of Way Manager's Acquisition Report (Form 734-3763)
- 4. Preliminary Title Report.
- 5. Ownership Information Sheet (Form 734-3011)
- 6. Reports of Personal Interview (Form 734-3708)
- 7. Offer-Benefit Letter(s) A copy of any letter containing an offer to acquire an ownership interest should be included in the Final Report packet.
- 8. Statement of Negotiator (Form 734-3715)
- 9. Other pertinent information, including such things as sign purchase agreements or pertinent correspondence.
- 10. Copies of all correspondence sent or received.

**5.591 Authority to Approve Final Reports**

Acceptance and approval of Final Reports and all acceptance agreements and documents relating to the acquisition of property for the Oregon Department of Transportation has been delegated to the Right of Way Manager. The Right of Way Manager sub-delegates the authority to approve monetary settlements to the Region Right of Way Managers 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 \$50,000 total price;
3. For settlements over the just compensation amount and exceeding \$50,000 but within 20% of the approved just compensation amount.

Negotiated construction obligations and other State obligations approved by the Region must be appropriately valued and included in the final settlement total and subject to the above limits.

The Right of Way Manager sub-delegates settlement approval in all other instances to the three Headquarters Right of Way Unit Managers. The Operations Unit Manager has the primary sub-delegated responsibility. In the absence of the Operations Manager, the authority is sub-delegated to the Program Management Unit Manager and the Project Administration Unit 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 must sign the Justification Letter and include it in the Final Report packet.

Proposed settlements that are significantly over the reviewed amount and which will require the approval of the Operations Manager should be discussed with the Operations 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 Right of Way Manager.

### **5.595 Agreement Follow-up**

The Right of Way Agents' responsibilities do not end with the submission of a Final Report, but continue until title is cleared and final payment is made. Until that is done, Agents must carry the files on their RAIN screen.

### **5.600 Letter of Acceptance**

Upon acceptance of an agreement by the Transportation Commission, the Acquisition Unit must send to the grantor a letter of acceptance. This letter is generally delivered at the time payment is made to the

grantor. However, if the grantor requires, the region can request that the Title/Closing Specialist in the Operations Unit send an acceptance letter to the grantor prior to the transmittal of payment.

### **5.605 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 July 1 through June 30. Prorating is as of 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. (Ref. ORS 308.709(1))

The Agent should check the exceptions in the title report for information regarding special farm use assessments (Ref. ORS 308A.709(1)). (Also see Section 5.640 for "designated forest land".)

### **5.610 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 as is prudent, 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.

- For normal, uncomplicated files involving less than an entire take with a purchase price of \$10,000 or less (total cost of land, improvements and damages), preliminary title reports (PTRs) will normally not be obtained. The Region Right of Way Manager may determine that a PTR is necessary for files under \$10,000. Things that can make a PTR necessary are bankruptcies, delinquent mortgage or trust deed payments, delinquent taxes, judgments, etc.

- A PTR should be obtained for files in excess of \$10,000.
- The Region Right of Way Manager is authorized to decide what encumbrances are acceptable to not clear when closing a file with a purchase price under \$20,000. 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 \$10,000 or less.
- On files with a purchase price greater than \$20,000, the decision to take “subject to” specific encumbrances is to be made by the Title/Acquisition Specialist in the Operation Unit with input from the Right of Way Project Manager or Region Right of Way Manager. Consensus between the Operations Unit and Region Right of Way should always be the goal.
- The Title/Acquisition Specialist will provide guidelines to the Regions on evaluating title issues and risks.
- The Region should consult with the Title/Acquisition Specialist 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 are 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 State and Federal Aid projects. On Local Public Agency (LPA) projects, whether or not there is federal money involved, the local agency must decide the extent to which title must be cleared. The time to make that decision is when the services agreement is prepared. The services agreement

must specify whether the agency will accept the State’s policy, or require some other level of title clearance.

### **5.615 Expenses Incidental to Transfer of Title to the State**

Property owners shall be reimbursed for all reasonable expenses they necessarily 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 pre-existing recorded mortgage entered into in good faith encumbering the real property.
3. The pro rata portion of any prepaid real property taxes which are allocable 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 promptly be reviewed. The appeals process follows the procedures for relocation benefit appeals. (See Sec 6.925)

### **5.620 Delivery of Payment**

In general, payments for property are mailed by the Operations Unit. The 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.

### **5.625 Notices to Vacate**

According to Section policy, no owner shall be required to surrender possession prior to payment. See Chapter 6, Relocation for an explanation of required possession notices.

The Operations 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.

## **5.630 SPECIAL SITUATION ACQUISITIONS**

### **5.635 Acquisitions Conducted From Headquarters**

Some special situation acquisitions are not carried out within the Region. However, appraisals and relocation activities may be requested when necessary. Such acquisitions include land owned by railroads. Negotiations for operating railroad property are normally conducted by the Right of Way Project Administration Unit. However, negotiations for non-operating railroad property are usually conducted in the Region.

### **5.640 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))

### **5.645 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 in the 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.
2. Apply to their irrigation district or to the State Water Rights Division for a transfer of the water rights to other property. In this case the purchase offer would be based on the value of non-irrigated land.

If the owners are permitted to retain the water rights, the agent needs to obtain an agreement conditioned upon them retaining the rights and being able to transfer the rights to alternate land. If the time required

to transfer the rights is excessive and runs up against the project contracting date, the Region Right of Way Manager can request authority from the Operations Manager to obtain a Permit of Entry from the owners. (See Sec. 5.315)

## **5.650 Signs - Outdoor Advertising and Others**

According to Oregon law, a sign cannot be erected or maintained within the right of way of a state highway, other than 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 the Department as long as they are not within the right of way nor interfere with the State's intended use.

The Agent is to negotiate the acquisition of a sign with its owner.

### **Sign owned by landowner**

A sign in this category should be purchased in the same manner as any other improvement or fixture on the property.

### **Sign owned by a lessee or other third party**

A sign in this category is acquired in the same manner as other tenant-owned improvements. The Agent prepares an Offer-Benefit Letter for the sign owner and must have the sign owner execute a Sign Purchase Agreement (Form 734-1756). The Agent must also add a clause to the agreement releasing the landowner's interest in the sign. If an agreement cannot be reached with the sign owner, the Agent must submit a Recommendation for Condemnation for the file, including the landowner's interest and all other parties of interest.

**Outdoor advertising signs, including all of their components, are to be treated as personal property and moved under relocation procedures.**

**See Chapter 6, 6.860 – 6.875.5.655**

**RECOMMENDATION FOR  
CONDEMNATION (Also see 8.300-8.380)**

### **5.660 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 a purchase agreement with all owners of real property on a file, and if the Region Manager agrees that further negotiations appear futile, the Agent should immediately prepare a Recommendation for Condemnation, or R/C.

An R/C must be submitted to the Right of Way Manager at least 17 weeks in advance of a proposed contract letting. 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 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 Manager must notify the Right of Way Operations Manager immediately if there are any serious delays in field negotiations, or in the submittal of an R/C which might make it difficult to meet the above deadlines.

#### **5.665 How To Recommend Condemnation**

To begin Condemnation proceedings, the Right of Way Agent prepares a packet of materials, including a:

1. Recommendation for Condemnation (Form 734-3311).
2. Form 3300 (State's Obligations).
3. Exhibit A.
4. Report of Personal Interview.
5. Offer Benefit Package and Relocation Benefit Summary.
6. Copies of all correspondence.
7. Preliminary Title Report and Title Information Sheet.

The agent submits this packet to the Region Manager, who after review, forwards it to the Right of Way Manager and keeps a copy in the region file. If the appraisals of the property are not current, the Region 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 Compensation rather than an appraisal, additional appraisal review actions are required before the Right of Way Manager

can sign off on the dollar amount. The Region Manager should notify the project appraisal review of this intent prior to or at the time the RC is submitted.

#### **5.670 Final Offer Letter**

Either the Right of Way Section DOJ/ODOT Liaison or the Region 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 Manager or Project Leader indicates on the R/C form whether the Region will make the follow-up contact with the property owners. If that is not the Region's preference, the DOJ/ODOT Liaison makes the contact. The property owner's response is immediately conveyed by telephone or email to the Acquisition/Condemnation Specialist in the Operations Unit. The Agent must also complete a Report of Personal Interview (Form 734-3708) and send copies to the Acquisition/Condemnation Specialist.

#### **5.675 Negotiation of Legal Files**

Once a complaint has been filed and a legal file number assigned, there shall be no further negotiations by any Agent without prior approval from the trial attorney who has been assigned the case.

When a new or revised appraisal review indicating an increase in value is received in the region, the Agent must contact the DOJ/ODOT Liaison in Headquarters to determine who will present the new written offer to the owners.

When parties of interest named in a complaint advise an Agent they desire to continue negotiations, the Agent should promptly notify the DOJ/ODOT Liaison who will then discuss it with the trial attorney to determine who will negotiate with the owners.

The Trial Division is responsible for the acquisition through legal action of all interests named in an R/C and the subsequent complaint.

The trial attorney will notify the Right of Way Administration if an interest is not acquired through the legal settlement or final judgment. The attorney may request that the Agent attempt to negotiate for the remaining interest. Failing to acquire such an interest, the Agent should prepare a new R/C.

Communications between the Trial Division and ODOT over condemnation issues will typically pass through the DOJ/ODOT Liaison in the Right of Way Operations Unit.

### **5.680 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, even though the remainder may be uneconomic. At the request of owners or their attorney, the Right of Way Manager may instruct the Acquisition/Condemnation Specialist to amend the complaint to include the uneconomic remnant.

### **5.685 Reimbursable Litigation Expenses**

Property owners shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which owners actually incurred because of a condemnation proceeding, if:

1. The final judgment of the court is that the State cannot acquire the real property by condemnation.
2. The Condemnation proceeding is abandoned by the State other than under an agreed-upon settlement.
3. The court having jurisdiction renders a judgment in favor of the owner in an Inverse Condemnation proceeding or the State effects a settlement of such 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 promptly be reviewed. The appeals process follows the procedures for relocation benefit appeals. (See Chapter 6, Relocation)