



Transmittal Number PT 13-	Date August 2013
Publication Title / Publication Number <i>Right of Way Manual</i> M 26-01.12	
Originating Organization Project Development Division, Real Estate Services	

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For printed manuals, page numbers indicating portions of the manual that are to be removed and inserted are shown below.

Chapter	Remove Pages	Insert Pages
Title Page	i – ii	i – ii
Chapter 6 Acquisition	6-1 – 6-98	6-1 – 6-94

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**Washington State  
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# **Right of Way Manual**

M 26-01.12

August 2013

**Project Development Division**

Real Estate Services

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### 6-1 General Requirements

#### 6-1.1 Introduction

Section 8.26.010 of the Revised Code of Washington provides the following:

The state shall: (1) establish a uniform policy for the fair and equitable treatment of persons displaced as a direct result of public works programs of the state and local governments in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to minimize the hardship of displacement of such persons; and (2) encourage and expedite the acquisition of real property for public works programs by agreements with owners, to reduce litigation and relieve congestion in the courts, to assure consistent treatment for owners affected by state and local programs, and to promote public confidence in state and local land acquisition practices. (1988 c90§1; 1971 1st ex.s c240§ 1.)

This chapter provides the regulations and procedures which are necessary to carry out these objectives and are consistent with 49 CFR Part 24.

### 6-1.2 Rules

- A. **Negotiated Purchase** – Every reasonable effort shall be made to expeditiously acquire real property by negotiation.
- B. **Just Compensation** – Prior to initiation of negotiations for real property and/or property rights, the Washington State Department of Transportation (WSDOT) shall establish an amount which it believes to be just compensation. In no event shall such amount be less than WSDOT's approved appraisal of the market value of such property. In determining just compensation, any decrease or increase in the market value prior to the date of valuation caused by the project itself or by the likelihood that the property would be acquired for said project, will be disregarded.
- C. **Summary Statement** – Upon initiation of negotiations, WSDOT shall provide the owner of real property and/or property rights to be acquired with a copy of the appraisal or if an Administrative Offer Summary (AOS) a copy of the comparables, a written offer letter, including a summary of the basis for the amount it has established as just compensation for the proposed acquisition. At a minimum the offer letter shall include the following:
1. The amount established as just compensation.
  2. A statement explaining that the offer is based either on WSDOT's review and analysis of an appraisal(s) of such property made by a qualified appraiser(s) or by an administrative procedure.
  3. Identification of the real property to be acquired, including the estate or interest being acquired.
  4. Identification of improvements and fixtures considered to be part of the real property to be acquired.
  5. The amount of just compensation for the real property to be acquired and any amount included for damages to remaining real property shall be separately stated.
- D. **Occupancy** – No legal occupant shall be required to surrender occupancy of real property before: (1) the agreed purchase price is paid; or (2) there is deposited with a court having jurisdiction over such property, for the benefit of parties in interest, an amount not less than WSDOT's approved just compensation amount of the property, or the court's award of compensation.
- E. **Coercion** – In no event will WSDOT in order to compel an agreement on the price to be paid for the property:
1. Advance the time of condemnation.
  2. Defer negotiations.
  3. Defer condemnation and the deposit of funds in court for use of the owner.
  4. Take any other action coercive in nature.

- F. **Uneconomic Remnant** – If the acquisition of only part of a property would leave its owner with an uneconomic remnant, WSDOT shall offer to acquire the uneconomic remnant.
- G. **Special Conditions** – No payment shall be made to a tenant-owner for any real property improvement unless:
1. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to WSDOT all of the tenant-owner's right, title, and interest in the improvement; and
  2. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
  3. The payment does not result in the duplication of any compensation otherwise authorized by law.
- H. **Alternative Compensation** – Nothing in this section shall be construed to deprive the tenant-owner of any right to reject payment under this section and to obtain payment for such property interests in accordance with other applicable law.
- I. **Incidental Expense Reimbursement** – The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:
1. Recording fees, transfer taxes, excise tax when applicable, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to WSDOT. However, WSDOT is not required to pay costs solely required to perfect the owner's title to the real property.
  2. Penalty costs and other charges for prepayment of any preexisting recorded mortgage or deed of trust 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 WSDOT obtains title to the property or effective date of possession, whichever is earlier.
- Whenever feasible, WSDOT shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement.
- J. **Donations** – Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefore, to the state. WSDOT is responsible for assuring that an appraisal of the real property is obtained unless the owner releases WSDOT from this obligation.
- K. **Civil Rights** – The right of way acquisition function shall be conducted in such a way and manner as to assure that no person shall, on the grounds of race, religion, sex, or national origin, be denied the benefits to which the person is entitled or be otherwise subject to discrimination.

- L. **Conflict of Interest** – The Property and Acquisition Specialist (PAS) may not accept the assignment of a parcel:
1. If having appraised or assisted in the appraisal or review of appraisals on the parcel, if the determination of value (DV) is greater than \$10,000.
  2. If personally acquainted with or related to the property owner where such acquaintance or relationship might tend to influence or prevent acting in an unbiased and professional manner.
  3. In violation of [RCW 42.52.020](#), *Activities incompatible with public duties*.
  4. If they supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving federal financial assistance, the federal funding agency may waive this requirement if it determines it would create a hardship for the agency (see [49 CFR 24.102\(n\)\(2\)](#)).
- M. **Relocation Assistance** – When the acquisition of right of way requires the displacement of any family, individual, farm, business, nonprofit organization, or their personal property, that party or organization may be entitled to payments, separate and distinct from the acquisition compensation, in order to alleviate the costs of moving and replacement housing. Such payments and matters pertaining to eligibility are the subject of [Chapter 12](#).

## 6-2 Standard Acquisition Process

### 6-2.1 General

The following section outlines the requirements which must be met before acquisition of real property required for transportation purposes can be accomplished. The requirements listed are the end-products of many procedures covered elsewhere in the manual and other departmental and federal publications which can be assumed to have been properly accomplished in producing the end-products (see [Chapter 1](#)). Where special procedures are required because of the nature of the acquisition, specific details that vary from the norm are set forth.

The following end-products are required before acquisition of real property needed for transportation purposes is authorized:

- A. Approved right of way plan that may vary in name depending upon the scope of the authorized work.
- B. Work order accounting plan that states the scope of the authorized work and provides information concerning funds to pay for the work.
- C. Environmental clearance (FONSI, ROD, DCE/ECS approval).

Having received the end-products referred to above, the Region Real Estate Services Manager (RESM) is authorized to proceed with the specified acquisitions of the right of way in accordance with the provisions of this chapter.

### 6-2.1.1 Rules

The following federal codes, RCWs, and WACs apply:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended
- 49 CFR Part 24, Subpart B – Real Property Acquisition
- [Chapter 8.26 RCW](#) – *Eminent domain*
- [Chapter 47.12 RCW](#) – *Acquisition and disposition of state highway property*
- [Chapter 468-100 WAC](#) – *Uniform relocation assistance and real property acquisition*

No offer to acquire any parcel shall be made until an approved DV or AOS is available to the PAS.

### 6-2.1.2 Procedures

WSDOT will acquire property and/or property rights according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 49 CFR Part 24, RCWs, and WACs.

## 6-3 Early Acquisitions

Early acquisition is defined in Federal Regulation 23 CFR 710.105 as: Acquisition of real property by state or local governments in advance of Federal authorization or agreement.

Region is the lead for acquiring under early acquisition procedures.

WSDOT's policy is that there will be no early acquisition of 4(f) property. The requirements of 4(f) are found in 23 CFR 774, 49 USC 303, and 23 USC 138.

If state/local funding is used and the project staff are not far enough along in the environmental process to determine whether or not it is a 4(f) resource, no ground disturbance will be allowed, and any acquired structures shall not be demolished. If the agency is using federal funds per section 6-3.4, no ground disturbance, demolition, or development of the property is allowed.

If no federal funds were used for the early acquisition, the final determination that match will be available or that the agency will not seek match will be made at the time of the NEPA decision (ROD, FONSI, and DCE/ECS approval). "With Match" or "Without Match" is a funding determination made by Program Management or the Local Agency.

Right of way can be acquired in advance of project NEPA clearance and preserve the project's overall eligibility for federal participation. For state projects, right of way acquired in advance of project NEPA clearance can be purchased either using the State Advance Right of Way Revolving Fund or with state-only project funds for the following two processes:

- Early Acquisition with match/credit.
- Early Acquisition without match/credit.

Federal funds can be used for acquisition of property for a project in advance of the overall project NEPA decision using the following processes:

- Protective buying.
- Hardship acquisition.
- Corridor preservation.
- State-Funded Early Acquisition requesting reimbursement requiring Governor approval (very difficult and time consuming to use) (23 USC 108(c)).
- Federally Funded Early Acquisition.

There are certain risks associated with early acquisition regardless of the process used. The key is to identify and document the risk early in the project development process. Some of the specific risks include:

- Project may be ineligible for federal funds if the procedures are not followed.
- Potential to prejudice route selection, which may make the overall project ineligible for federal funding.
- Perception that it circumvents or conflicts with environmental process. Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.
- Design issues (total or partial, redesign, etc.).
- Public opposition.
- Maintenance, lease, and/or disposal issue if project does not get built or other alternatives are chosen.

It is critical to coordinate with Design, Access and Hearings, Right of Way Plans, Environmental, Program Management, and if appropriate, Highways and Local Programs.

It is important to remember that the early acquisition procedures are no different from the standard acquisition procedures. The main difference between acquisition and early acquisition are additional documentation requirements, and the funding source may be different.

### **6-3.1 Acquisition With State Advance Right of Way Revolving Fund**

#### **6-3.1.1 General**

The “advance right of way revolving fund” was created to acquire right of way for future construction projects. An acquisition may be made using the advance acquisition process when the following procedures are followed.

The advance right of way revolving fund is not a stand-alone process. It is in addition to the requirements of the “with match” or “without match” processes.

### 6-3.1.2 Rules

RCW 47.12.242 defines “advance right of way acquisition”: the acquisition of property and property rights, generally not more than ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance right of way acquisition. Any property or property rights purchased must be in designated highway transportation corridors and be for projects approved by the commission as part of the state’s six-year plan or included in the state’s route development planning effort.

RCW 47.12.244 created the advance right-of-way revolving fund and RCW 47.12.246 outlines the reimbursement of funds to the advance right of way revolving fund.

### 6-3.1.3 Procedures

#### A. Requests and Approvals

1. The Regional Administrator submits request in writing to the RES Program Administrator.
2. The RES Program Administrator reviews the request with the Director, Capital Program Development and Management. They will decide jointly whether to approve the request.
3. Decisions are announced within five business days of the request when possible. Progress reports will be provided as appropriate.
4. Decisions can be appealed to the Assistant Secretary, Engineering and Regional Operations, for review and final decision whether or not to approve.

B. **Time Limitations** – The approval to use the Advance Right of Way Revolving Account expires in eight months.

*Exception:* Approval time limits may be extended if the region provides documentation that progress is being made on the acquisition process.

#### C. Fund Requirements

1. The proposed purchase must be in a highway transportation corridor.
2. The proposed purchase is included in the state’s ten year capital improvement and preservation program.
3. There is a high degree of certainty that the right of way will be needed as evidenced by any of the following:
  - a. The right of way is necessary in a majority of project options.
  - b. If there is a preferred option, the right of way is necessary.
  - c. A major portion or all of the property is necessary.

4. There is a high degree of certainty that the right of way will increase in cost as evidenced by one of the following conditions:
  - a. There is a plan for a private industrial, commercial, or residential development in the area.
  - b. The property is in an area of rapid development.

**D. Required Documentation**

1. Estimated date property will be incorporated into a project and a commitment that the money will be repaid at that time.
2. Map that identifies the property. For less than total ownership, include sufficient design work and mapping to describe the right of way.
3. Estimated savings resulting from purchasing the property in advance.
  - a. Current costs for acquisition, relocation assistance, and demolition. Include what construction or other private improvement is currently being planned for the property.
  - b. Future costs for acquisition, relocation assistance, and demolition.
  - c. The estimated savings including relocation assistance and demolition costs.
  - d. The estimated time when the parcel will be incorporated into a project.

**E. Prioritizing Advanced Acquisitions**

1. Priority will be given to advanced acquisitions when construction project funding has been approved.
2. If requests exceed funding levels, priority is given to approved requests that will be repaid earlier.

**F. Right of Eminent Domain** – The right of eminent domain will not be used for properties that are acquired with the Advance Right of Way Revolving Account. This was a commitment made in testimony to the legislature when the fund was established.

**G. Oversight of Funds** – The RES Program Administrator and the Director, Capital Program Development and Management, provide joint oversight of the Advance Right of Way Revolving Account. To ensure effective use of the funds, they will:

1. Evaluate requests for savings potential.
2. Ensure account requirements are being met.
3. Monitor and track account expenditures and deposits.
4. Provide a financial plan of the money already committed for purchase of property for quarterly review of the account's ten-year cash flow and balance by the Transportation Fund Manager.

5. Provide a biennial allotment plan of estimated expenditures for each month of the biennium for the money already committed for purchase of property.

#### H. **Reimbursement to the Advance Right of Way Revolving Account –**

Types of funds that must be deposited into the Advance Right of Way Revolving Account:

1. Funds from interim management of the right of way.
2. Proceeds from the construction project for the net remainder of the right of way.
3. Proceeds from the sale of any properties or property rights that were acquired with the Advance Right of Way Revolving Account.
4. Other revenue required by [RCW 47.12.244](#).

### **6-3.2 Acquisition in Advance of Project NEPA Decision Using State/Local Funds (“With Match”)**

#### **6-3.2.1 General**

There are certain risks associated with early acquisition. The key is to identify and document the risk early in the process. Some of the specific risks include:

- Project may be ineligible for federal funds if the procedures are not followed.
- Potential to prejudice route selection, which may make the overall project ineligible for federal funding.
- Perception that it circumvents or conflicts with environmental process. Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.
- Design issues (total or partial, redesign, etc.).
- Public opposition.
- Maintenance, lease, and/or disposal issue if project does not get built or other alternatives are chosen.

The state may use its own funds to purchase right of way prior to NEPA clearance and may apply the purchase price (or if donated, the fair market value) toward their share of project costs, as long as it meets the requirements of 23 CFR 710.501(b). The state cannot be reimbursed for these costs.

#### **6-3.2.2 Rules**

The following federal codes, RCWs, and WACs apply:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended
- 49 CFR Part 24, Subpart B – Real Property Acquisition

- 23 CFR Subchapter H – Right of Way and Environment
  - Part 710, Subpart E – Property Acquisition Alternatives
  - Part 771 Environmental Impact and Related procedures
- [Chapter 8.26 RCW](#) – *Eminent domain*
- [Chapter 47.12 RCW](#) – *Acquisition and disposition of state highway property*
- [Chapter 468-100 WAC](#) – *Uniform relocation assistance and real property acquisition*

23 CFR 710.501(a) states: “The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.”

23 CFR 710.501(b) addresses eligible costs. Acquisition costs incurred by a state agency prior to executing a project agreement with the FHWA are not eligible for federal aid reimbursement. However, such costs may become eligible for use as a credit towards the state’s share of a federal aid project.

[RCW 47.12.242](#) defines “advance right of way acquisition” as the acquisition of property and property rights, generally not more than ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance right of way acquisition. Any property or property rights purchased must be in designated highway transportation corridors and be for projects approved by the commission as part of the state’s six-year plan or included in the state’s route development planning effort.

Early acquisitions must follow the federal acquisition process per the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and 49 CFR Part 24 to preserve the project’s eligibility for federal participation.

The conditions to receive credit (e.g. “match) towards the non-federal share are defined in 23 CFR 710.501(b).

### **6-3.2.3 Procedures for State Projects**

If the Region RESM, in coordination with the Regional Administrator and/or Project Engineer, establishes that the parcel is to be acquired early (in advance), then standard acquisition procedures are followed.

Eminent domain will not be used.

When the project is funded and credit is sought, WSDOT must provide documentation determining the following:

1. The property was lawfully obtained by the state.
2. The property was not land described in 23 USC 138 (a.k.a. 4(f)).
3. The property was acquired in accordance with the provisions of 49 CFR Part 24 (a.k.a. Uniform Act).

4. The state complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4).
5. The state determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
  - a. The decision on need to construct the project.
  - b. The consideration of alternatives.
  - c. The selection of the design or location.
6. The property will be incorporated into a federal aid project.
7. The original project agreement covering the project was executed on or after June 9, 1998.

Region RES shall coordinate with Region Environmental Services.

The above documentation will be attached to the Environmental Classification Summary (ECS) form or it needs to be sent in separately for concurrence if EIS or EA is being prepared. Contact Environmental Services for the procedure, process, and necessary forms.

WSDOT must provide FHWA (Area Engineer and Right of Way Program Manger) the above determination documentation for each parcel.

Use the fair market value (FMV) from the time of purchase of the property (historic acquisition costs) toward the match. Any settlement amounts above the FMV, relocation costs, appraisal fees, etc., are not eligible for match. Current fair market value (based on a new appraisal) may be used in those instances where: (1) there has been a significant lapse in time since the property was acquired, or (2) there has been a significant change in market conditions (not caused by the project) since the property was acquired. This would require FHWA approval.

### **6-3.3 Acquisition in Advance of Project NEPA Decision Using State/Local Funds (“Without Match”)**

#### **6-3.3.1 General**

There are certain risks associated with early acquisition. The key is to identify and document the risk early in the process. Some of the specific risks include:

- Project may be ineligible for federal funds if the procedures are not followed.
- Potential to prejudice route selection, which may make the overall project ineligible for federal funding.
- Perception that it circumvents or conflicts with environmental process. Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.
- Design issues (total or partial, redesign, etc.).

- Public opposition.
- Maintenance, lease, and/or disposal issue if project does not get built or other alternatives are chosen.

The state may use its own funds to purchase right of way prior to NEPA clearance and cannot apply the purchase price (or if donated, the fair market value) toward their share of project costs. 23 CFR 771.113(d)(4) does not prohibit the purchase of property with a 4(f) resource.

### 6-3.3.2 Rules

The following federal codes, RCWs, and WACs apply:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended
- [49 CFR Part 24, Subpart B](#) – Real Property Acquisition
- [23 CFR Subchapter H](#) – Right of Way and Environment
  - [23 CFR Part 710, Subpart E](#) – Property Acquisition Alternatives
  - [23 CFR Part 771](#) Environmental Impact and Related procedures
- [Chapter 8.26 RCW](#) – *Eminent domain*
- [Chapter 47.12 RCW](#) – *Acquisition and disposition of state highway property*
- [Chapter 468-100 WAC](#) – *Uniform relocation assistance and real property acquisition*

23 CFR 710.501(a) states: “The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.”

23 CFR 771.113(d)(4) – FHWA regulations at 23 CFR 710.501 address early acquisition of right of way by a state prior to the execution of a project agreement with the FHWA or completion of NEPA. In paragraphs (b) and (c) of §710.501, the regulation establishes conditions governing subsequent requests for federal aid credit or reimbursement for the acquisition. Any state-funded early acquisition for a federal aid highway project where there will not be federal aid highway credit or reimbursement for the early acquisition is subject to the limitations described in the CEQ regulations at 40 CFR 1506.1 and other applicable federal requirements.

40 CFR 1506.1

- (a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:
1. Have an adverse environmental impact.
  2. Limit the choice of reasonable alternatives.

- (c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major federal action covered by the program which may significantly affect the quality of the human environment unless such action:
1. Is justified independently of the program.
  2. Is itself accompanied by an adequate environmental impact statement.
  3. Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

[RCW 47.12.242](#) defines “advance right of way acquisition” as the acquisition of property and property rights, generally not more than ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance right-of-way acquisition. Any property or property rights purchased must be in designated highway transportation corridors and be for projects approved by the commission as part of the state’s six-year plan or included in the state’s route development planning effort.

Early acquisitions must follow the federal acquisition process per the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and 49 CFR part 24 to preserve the project’s eligibility for federal participation.

### **6-3.3.3 Procedures for State Projects**

If the Region RESM, in coordination with the Regional Administrator and/or Project Engineer, establishes that the parcel is to be acquired early (in advance), then standard acquisition procedures are followed.

Eminent domain will not be used.

Region RES shall coordinate with Region Environmental Services.

The above documentation will be attached to the Environmental Classification Summary (ECS) form or it needs to be sent in separately for concurrence if EIS or EA is being prepared. Contact Environmental Services for the procedure, process, and necessary forms.

WSDOT must provide FHWA (Area Engineer and Right of Way Program Manger) the above determination documentation for each parcel.

### **6-3.4 Acquisition in Advance of Project NEPA Decision (Federally Funded)**

#### **6-3.4.1 General**

There are certain risks associated with early acquisition. The key is to identify and document the risk early in the process. Some of the specific risks include:

- Examples of environmental risks include: Section 106, Environmental Justice, 4(f) Properties, and hazardous materials. This list is not inclusive.
- Property Management activities and costs need to be considered, especially in light of the prohibition of demolishing or developing the property prior to the completion of the overall project's NEPA documentation.
- There may be instances where early acquisition creates additional expenditures such as additional NEPA costs.
- Acquisition is "At Risk" and may require repayment of federal funds if the right of way is not incorporated into a qualifying transportation project.
- The agency discovers that the sellers are unwilling after funds have been spent.

### **6-3.4.2 Rules**

A State Certification form needs to be submitted to ensure the following:

- This Certification must be in writing and it needs FHWA concurrence.
- Any right of way interest purchased in advance must be for transportation purposes,
- Any right of way interest purchased in advance cannot influence the outcome or alternatives considered during the future project's NEPA process,
- The purchase of any right of way interest must not cause any significant environmental impact (to the property),
- Acquisitions must be approached without the threat of condemnation (e.g. it is a willing-seller transaction),
- The early acquisition will not reduce or eliminate relocation benefits (e.g. the acquisition is NOT voluntary),
- The acquisition complies with applicable Federal laws and regulations,
- The right of way acquisition is treated as a stand-alone project with a separate (parcel specific) NEPA document,
- A stand-alone project is included in the STIP for the advance/early right of way acquisition
- FHWA authorization is required prior to starting right of way acquisition
- Demolition of improvement or other irrevocable actions cannot occur until NEPA for the project is complete and the need for the right of way is documented.
- Acquisition of property interest must be incorporated into a project eligible for surface transportation funds within 20 years.

### 6-3.4.3 Procedures

Prior to proceeding with advance acquisition the following must occur

- A stand-alone right of way acquisition project must be included in the STIP, either through the annual approval process or by the STIP Amendment processed through the appropriate RTPO/MPO.
- The appropriate acquisition NEPA document must be prepared, reviewed and approved by the designated authority.
- FHWA approval of a federal aid project agreement must occur prior to starting right of way activities
  - For Local Agency projects a “LA Agreement” must be processed through Local Programs. Requirements for submittal and approval are consistent with the process outlined in Chapter 25 of the LAG.
  - For WSDOT projects a work order authorization must be processed and approved.
- Tracking will be accomplished by FHWA’s FMIS application.

#### ***State Certification Statement to be included in Federal Aid Agreements for Requesting Federal Participation in Early Acquisition of ROW***

The State certifies that the early acquisition complies with applicable Federal laws and regulations and is only for transportation purposes. The advance purchase of right of way will not influence the outcome of alternatives considered during the future project’s NEPA process nor will it cause any significant environmental impacts (to the property). The acquisition will not be done under threat of condemnation and the early acquisition will not reduce or eliminate relocation benefits. Demolition of any improvement on the property or other irrevocable actions will not be taken until NEPA for the overall project is complete and the need for right of way is documented.

### 6-3.5 Protective Buying

#### 6-3.5.1 General

Protective buying is the acquisition of land, using federal funds, within a potential corridor on which the owner has impending plans to develop the property. The land may only be acquired to prevent imminent development that would preclude future transportation use. Protective buying provides an avenue whereby the state could strategically purchase and preserve some critical parcels along a potential corridor without having to purchase the entire right of way.

Properties considered for protective buying include properties on which there is a known plan for major private development or a property offered for sale that is located within an area of rapid commercial, industrial, or residential development. Major development should include industrial or commercial construction, large apartment or condominium complexes, or a proposed subdivision of property.

### 6-3.5.2 Rules

23 CFR 710.503(a)1: The project is included in the currently approved Statewide Transportation Improvement Program (STIP).

23 CFR 710.503(b) states “The state must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.”

The following additional requirements must be met:

- The project is included in a currently approved STIP.
- WSDOT has complied with applicable public involvement requirements in 23 CFR Parts 450 and 771.
- A determination has been completed for any property subject to the provisions of 23 USC 138 (i.e., a 4(f) Evaluation has been completed for the subject property).
- Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 USC 470(f) (historic properties). (i.e., Section 106 is completed for the subject property).
- Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

### 6-3.5.3 Procedures

A. The Region RESM:

1. Determines that the property is within the limits of the proposed transportation corridor.
2. Coordinates with Environmental to get the required environmental documentation.
3. Prepares the following documentation:
  - a. A detailed report addressing the following:
    - Details that clearly demonstrate land development will preclude future transportation use and that such development is imminent.
    - The estimated increased right of way cost if the request is not granted, and comments regarding the possibility of similar requests.
    - A description of, and status report on, the proposed development, or other action which prompted the request.
    - Comments regarding the economic effects upon the community if the development is not permitted to proceed.
    - Comments on how the proposed alignment will be affected if the development is permitted to proceed.

- b. The Relocation Assistance Program Plan (including tenants and owners).
  - c. The Project Funding Estimate (see [Chapter 4](#)).
  - d. Title reports and supplemental.
- B. The above documentation, together with the environmental clearance specific to the parcel (typically a DCE on the ECS form), is submitted to FHWA for approval prior to first offer.
- C. Upon receipt of the Work Order Accounting Plan, the Regional Administrator notifies the Region RESM to proceed with the parcel acquisitions on an expedited basis.
- D. Using the procedures of this chapter, the Region RESM expedites further region processing of the parcel(s).

### **6-3.6 Hardship Acquisition**

#### **6-3.6.1 General**

Hardship is defined as inability to sell a property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

A parcel may be acquired by hardship acquisition procedures if such purchase will alleviate a department created hardship situation for a property owner (see [Chapter 1](#)).

Hardship acquisition envisions hardship occasioned or complicated by the impact of the potential transportation project. Such hardship is in contrast to others because of an inability to sell the property through normal market channels. “Others” (in the context just stated) are considered to be those not impacted by the project or those impacted by the project but not suffering particular hardship as a result of the impact.

Authorization of hardship acquisitions is premised on reasonable and supportable justification of the action. This type of acquisition is approved with discretion and only after the justification clearly demonstrates that the acquisition is necessary to alleviate particular hardship to a property owner.

#### **6-3.6.2 Rules**

23 CFR 710.503(a) states:

- The project is included in the currently approved STIP.
- WSDOT has complied with applicable public involvement requirements in 23 CFR parts 450 and 771.
- A determination has been completed for any property subject to the provisions of 23 USC 138 (i.e., a 4(f) Evaluation has been completed for the subject property).

- Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 USC 470(f) (historic properties). (i.e., Section 106 is completed for the subject property).
- Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

23 CFR 710.503(c): The state must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

1. Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others
2. Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

State's requirements:

- A. Hardship acquisition procedures may be exercised within the limits of the proposed transportation corridor and may be authorized following the public outreach.
- B. Hardship acquisition procedures may be authorized on a parcel by parcel basis where it is shown that all of the following are applicable:
  1. The owner's circumstances constitute an emergency substantially as described in one or more of the "emergency criteria" following:
    - a. Needs to move immediately because of a change in location of employment.
    - b. Is advised by a licensed physician to move from the area for reasons of health.
    - c. Has made a legal commitment (e.g., an earnest money agreement) to purchase alternate property. Please note that this action may jeopardize the owner's eligibility for relocation assistance entitlements (see [Chapter 12](#)) depending upon timing.
    - d. Has encountered legal or business circumstances requiring divestiture of title to the subject property.
    - e. Is required to make substantial capital improvements (e.g., new equipment for a factory) in order to continue use of the subject property and these capital improvements would be financially unsound in view of the pending transportation project.

2. The case qualifies as described in the list of hardship qualifications following:
    - a. The owner initiates the application for hardship acquisition.
    - b. The application is in writing and sets forth the exact circumstances creating the hardship.
    - c. The only appropriate action for the owner is the immediate sale of the subject property.
    - d. Because of the pending transportation project, the owner is unable to sell the subject property on the open market at its market value.
  3. The acquisition is necessary to alleviate the particular hardship to the property owner.
- C. If the property lies within a project with known terminal limits but which has not been programmed, the region may submit the case documentation together with programming data (including estimate of the cost of the entire right of way project). The project may then be programmed as a Stage 1 or 2 right of way project and funds set up only for the acquisitions requested.

### 6-3.6.3 Procedures

#### A. The Region RESM:

1. Assures that information regarding right of way acquisition procedures and relocation assistance entitlements and procedures is made available at public meetings as specified in [Chapters 6 and 12](#).
2. Determines that the ownership is within the limits of the proposed transportation corridor.
3. Sends a letter to the property owner acknowledging receipt of the application and advising the owner of the approximate processing time.
4. Evaluates the application for hardship acquisition to assure that it meets the criteria specified above.
5. Prepares the following data package:
  - a. A report covering a field investigation of the application.

**Note:** This report either confirms or refutes the hardship alleged in the acquisition application letter, includes the Region RESM recommendations, and documents necessary factors for full coverage of the three elements described above.

- b. The Relocation Assistance Program Plan (including tenants and owners).

- c. The Project Funding Estimate (see [Chapter 4](#)) for the parcel(s) prominently identified as “Hardship Acquisition” and showing: the name of the owner, the parcel number, the estimated cost of the parcel, a breakdown of the five right of way groups, a breakdown of urban and rural (if applicable), and the number of individuals, families, businesses, etc., displaced. If the parcel is concurrently affected by more than one project, the breakdown is allocated to each project.
  - d. The title report for each hardship parcel.
- B. The above documentation, together with the environmental clearance specific to the parcel (typically a DCE on the ECS form), is submitted to FHWA for approval prior to first offer.
  - C. Upon receipt of the Work Order Accounting Plan, the Regional Administrator notifies the Region RESM to proceed with the hardship parcel acquisitions on an expedited basis.
  - D. Using the procedures of this chapter, the Region RESM expedites further region processing of the hardship parcels.

### **6-3.7 Corridor Preservation**

#### **6-3.7.1 General**

The term “corridor preservation” refers to any techniques that state and local governments use to protect existing transportation corridors or planned corridors from inconsistent development, in an effort to minimize negative environmental, social, or economic impacts. Corridor preservation tools might include, but are not limited to:

- Annexation or development agreements (land owner agreements).
- Regulating the use of such land (land use regulations).
- Acquiring property rights within a corridor (land acquisition).

#### **6-3.7.2 Rules**

The state may purchase right of way prior to NEPA clearance under the corridor preservation provisions of 23 CFR 630.106(c)(3)&(4) and be reimbursed. This process is similar to the process for protective buying. Generally, this is only done for parcels, which will not require any displacement. Note, however, that as with hardship and protective buying, these purchases are in advance of formal NEPA clearance of the project and individual clearance via a DCE/ESC approval is required. This option will be rarely used.

In order to maintain eligibility for federal aid reimbursement, all requests for corridor preservation must be approved by FHWA prior to making an offer to purchase.

### 6-3.7.3 Procedures

#### A. The Region RESM:

1. Determines that the parcel is within the limits of the proposed transportation corridor.
2. Prepares the following documentation:
  - a. A detailed report addressing the following:
    - Circumstances that would require acquisition to preserve corridor.
      - Possible sale to developer.
      - Notice of pending zoning change.
      - Potential annexation.
    - The potential for increased cost of acquiring right of way.
  - b. The Relocation Assistance Program Plan (including tenants and owners) if applicable.
  - c. The Project Funding Estimate (see [Chapter 4](#)).
  - d. Title reports and supplemental.

B. The above documentation, together with the environmental clearance specific to the parcel (typically a DCE on the ECS form), is submitted to FHWA for approval prior to first offer. If multiple parcels will be acquired, then contact HQ RES for additional guidance.

C. Upon receipt of the Work Order Accounting Plan, the Regional Administrator notifies the Region RESM to proceed with the parcel acquisitions on an expedited basis.

D. Using the procedures of this chapter, the Region RESM expedites further region processing of the parcel(s).

### 6-3.8 Governor and EPA approval

#### 6-3.8.1 General

The state may use its own funds to purchase right of way prior to NEPA clearance and be reimbursed. However, they must meet the very stringent requirements of 23 USC 108(c)(2)(c&d), as explained in 23 CFR 710.501(c). This option (which requires the Governor's and EPA's sign-offs) will rarely be used.

## 6-4 Normal Preparation

### 6-4.1 Plan Preparation

- A. The Region RESM attends all public meetings to provide information as needed. Written information explaining the state's acquisition and relocation policies will also be available.
- B. The Region RESM serves as a member by appointment of the interdisciplinary team to provide information and expertise on such issues as:
  - 1. Route selection.
  - 2. Reconnaissance estimates.
  - 3. Wetlands, cemeteries, gas stations, etc.
  - 4. Right of way plan or sundry site plan preparation.

### 6-4.2 Project Inspection and Parcel Assignment

The Region RESM ensures that:

- A. The right of way plan sheets are accurate with respect to ownership details and rights to be acquired.
- B. Authority to purchase the necessary property rights has been received.
- C. The project has been physically inspected.
- D. The appropriate computer entries have been made.
- E. Any remainder whose water system and/or septic system may be affected by the state's acquisition is identified. The procedures given in [Chapter 8](#) are followed.
- F. Any recent or pending public improvement assessments are identified.
- G. Action is taken in accordance with [Chapter 8](#) to identify and clear utility interests on a project-wide basis.
- H. Individual parcel files are prepared which include:
  - 1. Title report and assessor's total area.
  - 2. Appraisal report if appropriate.
  - 3. DV or Administrative Offer Summary (AOS). See [Chapter 4](#) for details.
  - 4. Salvage Appraisal Report (if applicable).
  - 5. Appropriate right of way plan sheet(s).
  - 6. Relocation Assistance booklet (if applicable).
  - 7. Acquisition booklet. (*Note:* To be delivered with offer.)

- I. The Special Acquisitions Section Manager is notified of any of the following types of parcels which are to be acquired through Headquarters' negotiations.
  1. Land owned by the United States (including property rights held by the Bonneville Power Administration but not including lands of the Bureau of Indian Affairs).
  2. Lands owned by the state of Washington.
  3. Lands owned by major railroads.
  4. Acquisitions for Equipment and Facilities.
  5. Acquisitions for the Ferries Division.
  6. The following information shall be provided to the Special Acquisitions Section Manager for situations 6-4.2.I.1, 2, and 3 above:
    - a. Title report and all supplemental reports.
    - b. Identification of needed land or interest.
    - c. Negotiator's copy of approved appraisals, DV or AOS.
    - d. Any other pertinent information: federal aid number, right of way number, control section, parcel number, negotiation cut-off date, ad date, etc.
    - e. Copy of cross sections and construction plan (for railroad acquisitions only).

## **6-5 Acquisition of Property and/or Property Rights by WSDOT**

### **6-5.1 General**

- A. WSDOT normally acquires fee title to all lands lying within the right of way of a programmed project.
  1. WSDOT acquires fee title when it needs the exclusive right of use and occupancy of the property for itself or for transfer to another public service agency.
  2. WSDOT may acquire an easement when it needs a nonexclusive right to enter upon the property of another. The easement will set forth WSDOT's right to the use of the property under specified circumstances.

### **6-5.2 Access Rights**

- A. When only the access rights are to be obtained, the PAS:
  1. If from the fee owner of a parcel proceeds in much the same manner as for a normal acquisition, the PAS obtains a Warranty Deed, Access Rights Only ([RES-305](#)), and clears encumbrances (see [Chapter 8](#)).

2. If from the owner of a benefitted parcel (an easement holder), the PAS proceeds to obtain a Quitclaim Deed (Access Use Rights) (RES-356) and clears the easement per Chapter 8. See [Appendix 6-1](#) for an example of RES-356.
- B. When a limited access facility is being built in an entirely new location:
1. WSDOT's policy is to obtain access rights from the abutters of the new facility even though the abutters did not have the right of access in the before.
  2. If WSDOT acquires a parcel that is encumbered by an easement for access, then the PAS acquires the benefitted owner's access rights (per the standard acquisition process) and clears the easement.
- C. When a managed access facility is being converted into a limited access facility, the PAS:
1. Acquires the abutting owner's access rights per the standard acquisition process.
  2. Acquires the rights of use from the easement holder (RES-356). See [Appendix 6-1](#) for an example of RES-356.
- D. Compensation for loss of access is justified only if so indicated by a DV or AOS pursuant to [Chapters 4](#) and [5](#).
- E. If no access restriction is shown on the right of way plans, access cannot be acquired without prior written approval from the Headquarters Real Estate Program Administrator and the Access and Hearings Engineer.

### **6-5.3 Easements, Temporary Easements, Permits, and Rights of Entry**

#### **6-5.3.1 Easement**

WSDOT may acquire a permanent easement when it needs a continuing, nonexclusive right to enter upon the property of another. The easement will set forth WSDOT's right to the use of the property under specified circumstances. The following are examples of typical easement situations:

1. An easement for cut or fill slopes, provided that:
  - a. The slope can be put to use with the adjoining lands without detriment to the state's project (e.g., grazing land).
  - b. The slope may be eliminated in the future by bringing the abutting lands to the same grade as the highway facility.
2. An easement for the construction of and continued access to project protection features (e.g., channel change, drainage).
3. An easement for land needed to replace the functional requirements of an existing easement.

### 6-5.3.2 Temporary Easement

WSDOT acquires a temporary easement when it needs the temporary right to enter upon the property of another. The temporary easement will set forth WSDOT's right to the use of the property under specified circumstances and/or conditions for a limited time period. The following are typical temporary easement guidelines and situations:

1. The temporary easement is used when the state requires a property right of a temporary nature. In most cases the rights required or the work to be performed is not beneficial to the property owner and just compensation will be paid.
2. The temporary easement will expire by its own terms by inclusion of a statement to the following. "The temporary rights herein granted shall terminate on (*date*).” Caution should be taken to allow ample time for completion of construction and the opening of the highway to traffic.
3. The recording of temporary easements will be based upon the following:
  - a. The temporary rights are shown on the R/W plan.
  - b. Value is \$1,000 or more.
  - c. That it has a term of more than six months.
  - d. That there is an expiration date.

*Note:* All of the above shall be met to be recorded.

### 6-5.3.3 Permit

A permit is used for temporary rights and should not be used when WSDOT needs a perpetual right. A permit is valid with the current owner only and must be renegotiated if property ownership changes before the permit expires. The following are typical permit guidelines and situations:

1. Permits will be drafted by the Region Real Estate Services Office. They will also fulfill the criteria listed below.
  - a. Construction permits will involve relatively minor work that is beneficial and acceptable to the property owner, such as driveway reconnections, slope flattening, and/or contouring.
  - b. In most situations, construction permits will be used where no other property rights are to be acquired from the same ownership as a part of the same project.
  - c. Permits may also be obtained for preliminary testing on the property, e.g., archaeological, geotechnical, or piezometers, etc.
  - d. The permit is normally obtained without payment of compensation.
  - e. Need not be submitted to or approved by Headquarters Real Estate Services Office.

2. Executed permit is retained in the Region Real Estate Services Office in a file created for that purpose.
3. If at any time during the acquisition process it becomes apparent that the required permit no longer matches the qualifying characteristics, a temporary easement must be obtained following the formal process as noted herein.
4. The recording of permits will be based upon the following:
  - a. The temporary rights are shown on the R/W plan.
  - b. Value is \$1,000 or more.
  - c. That it has a term of more than six months.
  - d. That there is an expiration date.

#### **6-5.3.4 Right of Entry**

- A. Certain actions by the Department of Transportation or its agents do not require a written right of entry as provided by [RCW 47.01.170](#), i.e., examinations, locations, surveys, and appraisals.
- B. A right of entry is a personal right not a property right. It gives WSDOT the right to perform a service with the permission of the property owner. These documents are used for some soils analysis, wetland delineation, septic or well testing, or such work usually associated with the initial scoping and design of the project. The work typically does not require the movement of equipment or activities that disturb the property, such as drilling, digging, or excavating where a temporary easement is appropriate (see [Section 6-5.3.2](#)). The right of entry can be revoked by the property owner and is only valid with the current property owner. Should the property be transferred or sold, the right of entry will need to be renegotiated. Unless payment is required, rights of entry are not transmitted to Headquarters.
- C. The right of entry contains the basic language into which is inserted the specific language describing the reason for the right of entry and the expiration date of the right.

#### **6-5.3.5 Emergency Permit and Right of Entry – Reserved**

#### **6-5.4 Easement for Transfer**

##### **6-5.4.1 Access Easement for Transfer**

###### **6-5.4.1.1 Rules**

When a R/W plan shows an “Access Easement for Transfer” across a private owner (A), the servient tenement, to serve another single private owner (B), the dominant tenement, we cannot condemn for the easement. We cannot use public money to condemn a private access for a third party because this situation is not a *Public Use* as defined in [RCW 8.04.070](#).

Owner A does not have to grant the easement to Owner B. Owner B does not have to accept the easement across Owner A.

#### **6-5.4.1.2 Procedure**

1. The region orders title reports for both parcels and assigns state parcel numbers. Both parcels need to be shown on the right of way plan.
2. Prior to plan approval, the region should have an agreement from both parties accepting the proposed easement.
3. During the appraisal stage of acquisition, the appraiser prepares a two-premise report for each property. The before description and valuation is the same for both premises. The after description and valuation is different.
  - a. For Owner A, the first premise in the after situation is without the easement. The second premise in the after is with the easement.
  - b. For Owner B, the first premise in the after situation is without the easement from Owner A. The second premise in the after situation is with the easement from Owner A.

The DV is handled the same way so that the PAS will have all the information required to cover the situation.

4. Upon establishment of just compensation, the PAS proceeds with the acquisition. If either owner is unwilling to agree to the easement, contact the Region RESM for further direction and the easement is removed from the right of way plans.

#### **6-5.4.2 Utility Easement for Transfer – Reserved**

### **6-5.5 Change of Grade**

#### **6-5.5.1 General**

Once the grade of an existing street, road, or highway has been established, any change of that grade may cause a compensable damage to any abutting property owner. The fact that a change of grade can be accomplished within the existing right of way does not eliminate the need to negotiate with the abutting owner.

#### **6-5.5.2 Procedure**

- A. When right of way is being acquired from the abutting owner, the PAS proceeds with the acquisition in the normal manner.
- B. When no land is being acquired from the abutting property owner, the PAS has the property owner execute the Consent to Change of Grade ([RES-323](#)) (see [Chapter 9](#)) and appropriate voucher (see [Chapter 10](#)). Compensation, if any, is determined through the appraisal process (see [Chapter 4](#)).

## 6-5.6 Acquisition Leases

### 6-5.6.1 Rules

- A. For the acquisition of temporary rights, WSDOT uses a lease if a permit or temporary easement does not secure adequate interest and if a lease is customarily used in private real estate practices involving the types of rights required.
- B. A lease is generally used if WSDOT is unable to acquire a materials source or other sundry site in fee and temporary rights are determined to be an acceptable alternate for the state.

### 6-5.6.2 Procedures

- A. The Region RESM determines the appropriate instrument of conveyance to be used.
- B. If it is impossible to negotiate a purchase of a materials site, the RESM:
  - 1. Obtains information from the Regional Administrator on quantities and types of materials to be removed.
  - 2. Coordinates with the Headquarters RESM to determine the Attorney General's (AG) opinion with respect to condemnation of the site.
  - 3. Obtains appraisal(s) and appraisal review(s).
  - 4. Submits recommendations to the Regional Administrator regarding a proposed lease. These recommendations include:
    - a. The reclamation plan as prepared in accordance with the reference cited in [Chapter 1](#).
    - b. The AG's opinion regarding condemnation of the site.
    - c. The potential resale value of the site after reclamation.
    - d. The amount of material required and its estimated cost on a lease basis.
    - e. Lease for Pits and Quarries ([RES-342](#)) completed as specified in [Chapter 9](#).
  - 5. Upon receipt of Regional Administrator's approval or rejection, takes the appropriate action:
    - a. If approved, instructs the PAS to secure the owner's execution of the lease.
    - b. If disapproved and no alternative material site is available, submits the parcel for condemnation per [Sections 6-24](#) or [6-25](#).
- C. If so instructed, the PAS obtains the owner's execution of the appropriate lease and transmits the lease and other associated data.

## 6-6 Identity of Parties

### 6-6.1 General

- A. A title report may question the ability of a party in interest to give a legal conveyance. These questions normally arise from the appearance of filings (by name) for dissolution of marriage (divorce), of guardianships, commitment of persons to institutions for the care of mental illnesses, or registration of corporations, etc.
- B. It may also be appropriate for the PAS to raise questions of personal identity, questions of legal capacity of any party in interest, and questions of parties in possession of the premises as a result of field investigation.

### 6-6.2 Rules

The state is responsible for determining and clarifying:

- A. The identity of parties in interest and/or in possession.
- B. The status (ability to give a legal conveyance) of parties in interest.

## 6-7 Acquisition Party Types

### 6-7.1 General

Acquisitions are within the following three types: standard, governmental, and other.

### 6-7.2 Procedures for Standard Acquisition Types

#### A. **Individuals** – The PAS:

1. Verifies the individuals names against the title report, if different, documents why and adjusts the documents accordingly.
2. Verifies the marital status of the individuals. If necessary, obtains copies of any dissolutions of marriage, death certificates, and/or probates to establish signatories.

#### B. **Fiduciaries** – A generic term for persons or legal entities such as executors, trustees, and guardians appointed by the court, under a will, or by a trust to manage, control, or dispose of the property of others.

1. **Trust** – A written agreement whereby the party creating the trust is called the settlor, the party holding the property is the trustee, and the party for whose benefit the property is held is called the beneficiary. The trust cannot convey property; it must be conveyed by the trustees.

The PAS:

- a. Requests a copy of the trust agreement and any amendments and examines the agreement for the proper trustees for execution of the document.

b. The owner may not provide a full copy of the trust. They may provide pertinent sections as to the trustees and conveyance authority.

2. **Guardianship** – A legal appointment of a guardian by the court to manage the affairs of a minor or incapacitated adult. This may involve making personal decisions on his or her behalf, managing property, or both.

Examines the title report for information regarding a guardianship. The sale of property may require a court order prior to completion of the sale. If a guardianship exists, discuss with the Region RESM procedures to complete the acquisition.

3. **Estate** – An estate is the interest or nature of the interest in which real estate is held, such as a life estate or the estate of a deceased person.
  - a. **Life Estate** – The interest in real property for the life of a living person reserved in a conveyance document. Upon death of the holder of the life estate, the property is then held by the grantee under the conveyance document reserving the life estate.

The PAS either obtains proof of death of the life estate holder or obtains signatures from all parties.

- b. **Probate** – The legal process of determining a will’s validity, paying the debts of the estate, and distributing the estate’s remaining assets.

The PAS examines the title report for any probate actions filed with the court. The sale of the property may require a court order prior to completion of the sale. If a probate exists discuss with the Region RESM procedures to complete the acquisition.

4. **Bankruptcy** – Voluntary (petitioned by the debtor) or involuntary (petitioned by the creditors of the debtors) proceedings under federal bankruptcy statutes for the cancellation of debt and the distribution of property.

The PAS examines the title report for any bankruptcy proceedings. The sale of property may require a federal court order. If a bankruptcy exists discuss with the Region RESM procedures to complete the acquisition.

- C. **Corporations** – A corporation is a legal entity under state law and has many of the capacities of a natural person. Many of the procedures used in dealing with individuals may be adapted for use in dealing with corporations. Several special procedures are given below. Also see [Chapter 8](#) for procedures pertaining to acquisitions from public and private utilities.

The PAS:

1. Checks the title report and the records of the county auditor or Secretary of State for:
  - a. Exact corporate name.

- b. Payment of license fees.

**Note:** Nonprofit, charitable, religious, educational, and fraternal organizations are exempt from paying annual license fees but must file an Annual Report of Officers. The Secretary of State's Office can verify the corporation is in good standing.

- c. Deficiencies in the corporate authority, e.g., a foreign corporation not authorized to do business in this state.
- d. Dissolved, defunct, or suspended corporations.

- 2. Examines the articles of incorporation and the bylaws of the corporation to determine who has the authority to execute instruments for the corporation.

**D. Partnerships** – A partnership is an association of two or more persons to carry on a business for profit. The firm name adopted may or may not reveal the name of any partner and may contain the word “company” and so disguise the fact of partnership. Partnerships are of two kinds: general and limited. The basic difference is that a limited partnership has “limited partners” whose rights, duties, and liabilities are limited by law. This fact is of little importance in the acquisition of real property. Existence of a partnership may be disclosed in the title report but a PAS may be faced with acquisition from a partnership without prior warning and may include a small business or an individual operating a small business.

The PAS:

- 1. Checks the title report and the records of the county auditor or Secretary of State for:
  - a. Exact partnership name. If the partnership name is not found then the partnership should be treated as a general partnership.
  - b. There may or may not be payment of license fees.
  - c. Deficiencies in the partnership authority, e.g., a foreign partnership not authorized to do business in this state.
  - d. Dissolved, defunct, or suspended partnerships.
- 2. Examines the partnership agreement and any amendments to determine who has the authority to execute instruments for the partnership.

**Note:** A written partnership agreement is not required to form a partnership. If there is no partnership agreement or statement of partnership authority, then see [RCW 25.05.110](#). The PAS can review [RCW 25.05.105](#) to determine who can execute the instruments for the partnership.

- E. **Limited Liability Companies** – A Limited Liability Company is a business entity that has the income tax benefits of a partnership and the limited liability of a corporation. The limited liability company must file a Certificate of Formation with the Secretary of State and prepare a Limited Liability Agreement. The Certificate of Formation shall include spousal consent to form the company. The Limited Liability Agreement establishes the authority of the “members” or “managers” to act on behalf of the company. Title to property vests in the name of the company and the company name must be followed by “Limited Liability Company,” “Limited Liability Co.,” or “LLC” To clear title, all members must sign the conveyance document unless the Limited Liability Agreement grants authority to convey or mortgage to certain members or managers.

The PAS:

1. Checks the title report and the records of the county auditor or Secretary of State for:
  - a. Exact company name.
  - b. Payment of license fees.

*Note:* Nonprofit, charitable, religious, educational, and fraternal organizations are exempt from paying annual license fees but must file an Annual Report of Members. The Secretary of State’s Office can verify the company is in good standing.
  - c. Deficiencies in the company authority, e.g., a foreign company not authorized to do business in this state.
  - d. Dissolved, defunct, or suspended companies.
2. Examines the limited liability agreement and any amendments to determine who has the authority to execute instruments for the company.

### 6-7.3 Procedures for Governmental Acquisition Types

- A. **Political Subdivisions of the State of Washington** – Examples of political subdivisions of the state of Washington are counties, cities, towns, school districts, irrigation districts, etc. Some political subdivisions are municipal corporations (e.g., cities and school districts). Irrigation districts are not municipal corporations. In preparing instruments, etc., the PAS should use the terminology given in the title report.

1. **Counties** – In the state of Washington, county governments may be either on a commissioner system or on a council-executive system. In either case, the PAS makes contact through the appropriate county office. The exact process by which the county transfers real property to the state is controlled by the county’s charter or lack thereof. Check with the local county to determine what system is used.

If the county road is located within the highway right of way, then using normal acquisition and those in [Chapter 9](#), the Region RESM secures a Quitclaim Deed from the county for all county rights of way that lie within the right of way limits of each new state highway project. This action is postponed until the transactions with all other owners are substantially completed in order to avoid the necessity for supplemental instruments due to plan revisions. It is not necessary to recite the area of the lands conveyed.

2. **Cities** – In the state of Washington, city and town governments may be either on a commissioner system, council-mayor system, or on a council-manager system. In any case, the PAS makes contact through the city engineer’s office.

- a. **City Streets Located Within Highway Right of Way**

- (1) **Nonaccess Controlled Highways** – When a street, etc., in an incorporated city or town is placed on the route of a nonaccess controlled state highway (pursuant to [RCW 47.24.020](#)), title to such street, etc., remains vested in the city or town. If the state elects to improve its highway by the widening of such a street, the additional right of way may be acquired either by the city or town or by the state, and the costs of acquisition split, as may be mutually agreed upon. By statute, the title to such additional widths vests in the city or town. If the agreement is for the state to acquire, the PAS proceeds to do so in the normal manner.

- (2) **Limited Access Facilities** – The title to the right of way for limited access facilities vests in the state (pursuant to [RCW 47.52.210](#)). No documents are necessary to transfer ownership of a city street to the state when it is within the right of way limits of a limited access highway.

3. **Other Political Subdivisions** – When acquiring property from any other political subdivision, the PAS adapts the procedures outlined above as necessary for the political subdivision involved. Procedures for acquisitions from irrigation districts are covered in [Chapter 8](#).

## B. State Agencies

1. **Department of Natural Resources** – Certain public lands (such as school trust lands, escheat lands, forest board lands, tide and shore lands, and bed and shore lands) are managed by the Department of Natural Resources (DNR). The acquisition of rights of way over and across said lands is controlled by provisions of one of the following portions of the Revised Code of Washington:

- [RCW 47.12.023](#) for all DNR-controlled uplands (other than rights of way over and across the beds of navigable waters and/or harbor areas).

- [RCW 47.12.026](#) for rights of way over aquatic lands (across beds of navigable waters and/or harbor areas).

a. **The Region Real Estate Services**

- (1) When ready to appraise DNR-held property, contacts DNR's Project Sales and Leasing Department in the Natural Resource Building in Olympia to offer DNR personnel the opportunity to accompany the WSDOT appraiser.

*Note:* An appraisal is not required if rights of way needed are over and across beds of navigable waters or harbor areas as these rights are transferred by DNR without charge.

An appraisal is made of the ownership as if owned by a private individual.

- (2) Forwards completed appraisal to the Appraisal and Appraisal Review Section Manager, for a determination of value to be completed. Upon completion sends appraisal and DV to Region RESM.
- (3) Requests Headquarters acquisition of DNR lands by letter transmitting the following acquisition package to the Local Agency/Special Acquisitions/Certifications Section Manager:
  - (a) Title reports and all supplemental reports (including DNR title reports).
  - (b) Federal aid number, right of way number, control system number, parcel number, ad. date, etc.
  - (c) PAS's and DNR's copy of appraisal with DV.
  - (d) Two color-coded copies of approved right of way plan showing area to be acquired.
- (4) On request from the Local Agency/Special Acquisitions/Certifications Section Manager or designee, clears interests (including access rights and relocation assistance entitlements, if appropriate) of lessees and/or contract purchasers.

b. **Special Acquisitions Section Manager**

- (1) Upon receipt of the acquisition package from the Region RESM, makes a request to Headquarters Plans section for the preparation of a land plat.
- (2) Upon receipt of land plat from the Plans Section, files the following items with DNR as WSDOT's "Notice of Intent to Acquire" ([RCW 47.12.023](#) and [RCW 47.12.026](#)):

- (a) Statement that the lands or interest in lands is required for highway purposes.
    - (b) Statement of just compensation to be paid for the property based upon the department's approved appraisal with a statement that the payment will be paid to DNR electronically, or statement that, pursuant to [RCW 47.12.026\(1\)](#) no compensation is being offered.
    - (c) Copy of appraisal and/or AOS for upland acquisitions.
    - (d) Two paper copies of land plat.
    - (e) Copy of right of way plan with the area to be acquired colored in.
    - (f) Request for transfer of jurisdiction for upland properties and for an easement across aquatic properties.
    - (g) Request names and addresses of all lessees and/or contract purchasers having an interest in the required lands.
  - c. When names and addresses of lessees and/or any contract purchasers, if any, are received from DNR, forwards this information to region so that these interests (including access rights and relocation assistance entitlements, if applicable) can be cleared.
2. **Other State Agencies** – Negotiations are conducted between the HQ Special Acquisition Section and a representative of the particular agency. Normal acquisition procedures are followed in that WSDOT offers to pay market value as reported on the Determination of Value (Form RES-214). The Region RESM clears the interest of lessees and/or contract purchasers. Normal relocation assistance procedures are followed and relocation assistance entitlements are available as may be required for displacements.
- a. When agreement is reached, the HQ Special Acquisition Section submits a Real Property Voucher ([RES-321](#)) to the agency representative for signature and when required prepares the necessary instruments (usually a Release and Transfer of Jurisdiction, Quitclaim Deed, or easement).
  - b. The signed voucher is returned together with the signed instrument transferring control of the property to WSDOT. The file is processed for payment following normal procedures and documentation is placed in the right of way parcel file. The HQ Special Acquisition Section verifies that the region has cleared the interests of all lessees and/or contract purchasers and transmits a copy of the signed instrument(s) to the region.

## C. Federal Agencies

### 1. Forest Service Lands

- a. The Regional Administrator coordinates engineering activities with the U.S. Forest Service, Department of Agriculture, from the reconnaissance stage on through final approval of the highway plans. According to the provisions of the Federal Highway Act of August 27, 1958, the Federal Highway Administration on behalf of the U.S. Forest Service (USFS) conveys an easement for the right of way to the state of Washington (under the terms and conditions set forth in the Letter of Consent and the separate Stipulation) by issuing a Highway Easement Deed.
- b. The Regional Administrator, the Region RESM, and the forest supervisor of the appropriate national forest coordinate to ensure that:
  - (1) Application is made to the USFS for the right of way. Said application is prepared and sent to FHWA by the HQ RES Special Acquisitions Section.
  - (2) All encumbrances (e.g., leases, mining claims) are cleared.
- c. Stipulations are agreed to and signed by USFS and WSDOT Regional Administrator.
- d. All NEPA requirements are met.
- e. The right of way plans submitted to USFS are stamped “Reviewed” and signed by the forest surveyor of the appropriate national forest.
- f. A Letter of Consent is signed by the forest supervisor.
- g. Contact Headquarters Special Acquisitions for assistance with any of the above. When all of the above are completed, Special Acquisitions will contact the Federal Highway Administration and complete the Highway Easement Deed process.
- h. Temporary uses of national forest land outside of the easement area can be acquired by the Region RESM (or designee). Temporary use, such as a waste site, only requires a special use permit from USFS.

### 2. Other Federal Agencies – The Local Agency/Special Acquisitions/Certifications Section Manager or designee:

- a. Applies to FHWA as provided in Title 23 USC, Section 107(d) (Interstate), or Section 317 (other federal aid systems or other projects to be constructed, all or in part with federal funds) when either:
  - (1) The federal agency that controls the needed lands does not have the authority to grant rights of way.

- (2) The federal agency that controls the needed lands wishes to proceed under Title 23 USC, Section 107(d), or Section 317.
- b. When any of the following agencies wish to handle their own transactions, the Special Acquisitions Section applies to the appropriate agency:
  - (1) **U.S. Army or Air Force** – Installation Commander and Region Engineer, Corps of Engineers, Department of the Army.
  - (2) **U.S. Navy** – Region Public Works officer of the appropriate Naval Region.
  - (3) **Veterans Administration** – Director, Veterans Administration, Washington, D.C.
  - (4) **U.S. Department of the Interior**
    - (a) **Bureau of Land Management** – Either Chief, Branch of Lands and Mineral Operations (BLM), Portland, Oregon, or Manager (BLM), Regional Office, Spokane, Washington.
    - (b) **Bonneville Power Administration (BPA)** – BPA’s Regional Office.
    - (c) **National Park Service** – Supervisor of the local installation.
- c. Includes the following in the request:
  - (1) The purpose for which the lands are to be used.
  - (2) The estate or interest in the land required and/or extent of access control.
  - (3) Federal aid project number.
  - (4) Name of the agency having jurisdiction over the land and present use of the land.
  - (5) A commitment by the state to commence use of the land for the intended purpose within a period of not more than ten years following the transfer of the land to the state.
  - (6) An approved map showing parcel number, area of the needed lands, and extent of access control.
  - (7) The legal description of the needed lands to conform to the survey of the needed lands as same appears on the maps.
  - (8) Assurance of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.), the Historic Preservation Act, 16 U.S.C. 470 (f), and with the Preservation of Parklands Act, 49 U.S.C. 1653 (f), if applicable.
  - (9) Assurance of compliance with Title VI, Civil Rights Act of 1964 (49 CFR 21).

## D. Tribal Lands

1. **Tribal Trust Lands** – The Bureau of Indian Affairs, U.S. Department of the Interior, has jurisdiction over applications for rights of way across tribal trust lands (Title 25 CFR, Section 169). The Region RESM contacts the superintendent of the Indian agency (or other official of the Bureau of Indian Affairs) whose responsibilities include the lands involved. In completing the transaction, the PAS complies with all the regulations and requirements of the Bureau of Indian Affairs and acquires any needed releases of lease.
2. **Nontribal Trust Lands** – WSDOT proceeds with negotiations directly with the Native American Tribe or individual Native American for the acquisition of the necessary property
3. **Notification** – Per [Secretary’s Executive Order E 1025.01](#), the Tribal Liaison Office shall be notified of any acquisition pertaining to Native Americans.

### 6-7.4 Procedures for Other Acquisition Types

- A. **Tax Title Lands** – The Region RESM (or his designee) secures a Quitclaim Deed from the county for all tax title lands (using a parcel by parcel form of description) that lie within the right of way limits of each new state highway project. [RCW 36.35.150](#) provides that the consideration be for not less than the principal amount of the unpaid taxes. Therefore, contact the county treasurer to determine the exact amount to be paid. The deed will be prepared by the county treasurer as provided in [RCW 84.64.080](#). Refer unusual title problems to the Acquisition and Title Section Manager, for decision on a case-by-case basis, e.g., if the prior owner of tax title land was either a minor or a legally incompetent person, that person has three years from the issuance of the deed to reclaim the property ([RCW 84.64.070](#)). Any portions of tax title lands acquired that lie outside of the right of way limits will be excess lands and disposed of under the procedures governing such.

## B. Sundry Sites

### 1. Materials Sites

- a. A materials site is acquired either in fee (preferred) or by lease (see [Section 6-5.5](#)). In either case, one or more options (with respect to purchase and/or renewal) may be secured during the acquisition process.
- b. Although the procedures for the acquisition of a materials site are similar to those for any other right of way acquisition, the following special procedures are applicable:
  - (1) A reclamation plan is prepared by the region for each site in accordance with requirements of the [Plans Preparation Manual](#) M 22-31. Since the reclamation plan is an excellent source

of information and an aid to settling with the owner, a copy of the plan is included in the parcel file that is furnished to the PAS.

- (2) When other than a fee interest in a materials site is to be acquired by the state, the concurrence of the owners/lessors in the concept of the reclamation plan is required. The PAS submits the reclamation plan to the owners/lessors during negotiations and seeks their concurrence. Assuming such concurrence, the PAS prepares a Memorandum addressed to the Regional Administrator stating:

“The (owners/lessors/etc.) of this site have reviewed the reclamation plan, approved (dated), and concur with its concept.”

*Note:* The original of the Memorandum goes to the Regional Administrator, and two copies are included with the data transmittal to Headquarters.

- (3) If the owners/lessors do not concur in the reclamation plan as presented, the PAS breaks off negotiations, notes the owners/lessors objection to the reclamation plan, and advises the Region RESM of the facts.
- (4) The Region RESM reports the objections to the Regional Administrator, and obtains either a modified reclamation plan or a decision to condemn the parcel. The PAS is advised accordingly, and either resumes negotiations or turns the parcel in for condemnation.
- (5) The PAS acquires an equivalent interest in the right of way for any needed access road (e.g., if the site is being acquired in fee, the access road is acquired in fee or by easement).

*Note:* Temporary access to a site is acceptable only when the state obtains either a temporary interest in the site or when an alternate access will be established.

- (6) If all efforts to acquire a fee interest in the materials site by negotiations fail, the PAS refers the matter to the Region RESM.
- (7) After proceeding as described, the Region RESM instructs the PAS whether to negotiate a lease, file a Negotiator’s Report, or to begin negotiations for an alternate site.

## 2. **Mitigation Sites** – Reserved

3. **Facility Sites** – Facilities are managed by the Maintenance and Operations Division, Facilities Administration. Any decision to purchase, lease, or sell any such facility must have the approval of the Facilities Office. Facility sites include: pit sites, quarry sites, maintenance facilities or sites, regional offices, and safety rest areas.

Otherwise, the procedures for the acquisition of a facilities site are similar to those for any other acquisition.

4. **Rail Property** – Rail sites are managed by the Rail and Marine Office. Any decision to purchase, lease or sell any such rail property must have the approval of the Rail Office. Otherwise, the procedures for the acquisition of rail properties are similar to those for any other acquisition
  5. **Aviation Property** – Aviation property is managed by the Aviation Division. Any decision to purchase, lease or sell any such Aviation property must have the approval of the Aviation Division. Otherwise, the procedures for the acquisition of Aviation properties are similar to those for any other acquisition
  6. **Ferries Property** – Ferries property is managed by the Ferries Division. Any decision to purchase, lease, or sell any such ferry property must have the approval of the Ferries Division. Otherwise, the procedures for the acquisition of Ferries properties are similar to those for any other acquisition.
- C. **Timber and Crops** – WSDOT desires that its projects be environmentally compatible and aesthetically pleasing. Therefore, to the greatest extent possible, the natural vegetation is left intact within the limits of the right of way. To the greatest extent practicable, WSDOT acquires timber standing on the right of way, and the owner is discouraged from retaining salvage. The DV will reflect any compensation for the timber. With respect to crops other than timber, the property owner is permitted to harvest the crop if it will not interfere with the construction schedule. (Care must be taken to distinguish the crop from the fruit trees or vines producing it. Trees or vines stand in the same situation as timber as discussed above.)
1. The PAS does not offer timber for salvage.
  2. If the property owner refuses to settle without being allowed to salvage at least some of the timber, the PAS refers the matter to the Region RESM.
    - a. The Region RESM coordinates with the Regional Administrator and obtains either:
      - (1) Approval for the owner to log the right of way.
      - (2) Approval for the owner to log specified area(s) within the right of way. In this case, the area must be described in the instrument, mapped and flagged, or staked on the ground.
- Note:*
- (a) In each of the above cases, the Region RESM requests that a salvage appraisal be made with respect to the amount of logging approved by the Regional Administrator.

- (b) In each of the above cases, the property owner must agree to abide by the State Forest Practices Act as amended ([Chapter 76.09 RCW](#)) and any restrictions that might be imposed by WSDOT's environmental plan for the project.

(3) Denial of permission to log the right of way.

- b. The PAS proceeds as instructed. If any timber cutting is allowed, the value of the timber salvage is shown on the salvage appraisal report.
3. With respect to crops other than timber, the PAS permits the property owner to harvest the crop provided this can be accomplished without interfering with the department's construction schedule. The owner must be willing to execute a rental agreement if the crop cannot be harvested before the state assumes control of the property.
4. Tenant owned crops – Reserved
5. Acquired timber is reported on the Fixtures and Improvements Agreement ([RES-335](#)). Any salvage rights sold back to the property owner are also indicated on this form. Agreement with respect to compliance with the State Forest Practices Act and the department's environmental plan for the project are inserted in the remarks section. A rental agreement is required for any period of salvage activity after the payment date.

D. **Mining Claims** – The following covers procedures for acquiring both patented and unpatented mining claims. Mineral rights and reservations are covered in [Chapter 8](#).

1. The Region RESM contacts the U.S. Bureau of Land Management (BLM) to determine whether the right of way crosses lands "open to mining claims." If so, the Region RESM files an application with the BLM to have the right of way withdrawn from the "open" lands. This procedure ensures against the filing of future mining claims within the right of way. Mining claims filed on other than "open" lands are invalid and may be ignored. When a mining claim is found to be invalid because it was filed on other than "open" lands or because of any other reason, the fee ownership must be determined and dealt with.
2. To determine the existence of valid mining claims, the Region RESM:
  - a. Checks the mining claim records at the county courthouse.
  - b. Makes an on site inspection of the project. Checks for the existence of unpatented mining claims on patented mining claim lands for overlapping claims, etc.
  - c. Interviews area residents and prospectors.
  - d. Has the BLM determine the validity of all existing mining claims.

3. Usually mining claims are acquired for a nominal amount (up to \$500). However, a valid, mineral-rich, and actively worked claim may not be available on this basis. In this case, the Region RESM has the mining claim appraised by a licensed professional mining engineer. After the specialist report is filed, appraisal review and acquisition proceed in the normal manner.
  4. If the claim holder wishes to retain the subsurface mineral rights, the PAS uses the procedures in [Chapter 8](#) as well as those given below.
  5. A patented mining claim is essentially a fee ownership and several special steps must be followed:
    - a. The Region RESM checks the conditions and stipulations in the patent. For example, timber rights are often reserved by the United States. If ignored, this could result in an overpayment to the patentee.
    - b. The PAS proceeds in the same manner as for any other fee ownership. If the on site inspection reveals any unpatented mining claims on the property or other problems arise, the PAS reports this to the Region RESM and awaits further instructions.
  6. An unpatented mining claim is the personal property of the claimant and is only a possessory right. However, the courts have ruled that this possessory right is a real property interest that is compensable in eminent domain proceedings. In effect, it is an encumbrance and acquisition of the right does not provide the department with all interest in real property.
    - a. The PAS offers a nominal payment (up to \$500) for a Quitclaim Deed ([RES-306](#)) to clear the mining claim.
- E. **Water Rights** – Water rights, being most frequently encumbrances rather than subjects of acquisition, are covered in [Chapter 8](#).
- F. **Water and Septic Systems** – A water or septic system lying within the area to be acquired may be a damage item and as such will be covered in the appraisal of the property. Water or septic systems lying within the remainder may become a problem. After completion of a project, the owner may file a claim that the project has impaired the quality and/or quantity of the water or damaged the septic system. To determine the validity of the claim, it is necessary to have data on the quality and quantity of water produced by the water system prior to construction of the project. See [Chapter 8](#) for procedures on obtaining tests prior to construction.

**Water and septic problems can sometimes be handled with the use of agreements. The decision to use a Water System or Septic System Agreement should be made by the Region RESM with input from the Appraiser and the Appraisal Supervisor. If it is decided to use a Water or Septic System Agreement, the department needs to be reasonably assured that a system can be replaced on site. A visit to the County Health**

**Department or an appropriate specialist is required. While a detailed analysis or cost breakdown is not required, the opinion of the county or specialist on the ability to replace and the type of system required should be documented.**

**If the system cannot be replaced, a Water or Septic System Agreement cannot be used.**

#### **G. Registered Lands (Torrens Title)**

1. When a title report shows that a parcel is registered land and that the duplicate certificates are not on file in the registrar's office, the PAS includes the following items together with the usual instrument, voucher, etc., in the transaction package:
  - a. The owner's duplicate certificate of ownership. If the original "owner's duplicate" has been lost, the owner must execute an affidavit, file it with the registrar (county auditor), and apply to the courts for an order to issue a new duplicate certificate.
  - b. The mortgagee's duplicate certificate, if there is a mortgage to be satisfied or partially released.
  - c. The lessee's duplicate certificate, if there is a registered lease (for a term of three years or more) to be released.
2. All instruments that are to be filed must be prepared and executed in duplicate, in order to provide an instrument for Headquarters' records (the registrar retains the original as part of the county's records).
3. In the event that a parcel of registered land is condemned, the PAS proceeds as described in [Section 6-24](#).
4. As part of the acquisition of the registered land, the PAS shall fill out the application for removal from registered land and submit with the transmittal.

#### **H. Mobile Homes (Manufactured Homes) and Recreations Vehicles (RVs)**

1. Mobile Home Work Sheet ([RES-220](#)) is available to assist the Region RESM with determining whether or not to acquire a mobile home and will serve as the administrative settlement justification if the mobile home is purchased. A mobile home determined to be personal property cannot be acquired under eminent domain or the imminent threat of the state's exercise of its rights of eminent domain.

The authority to purchase a mobile home when it is personal property has been delegated (S7 Mobile Home Right of Way Purchase) to WSDOT by General Administration (GA) each biennium. HQ will be responsible for providing GA with a quarterly report regarding the acquisition of mobile homes.

If the Region RESM determines that the mobile home should be purchased the PAS shall:

- a. Provide the owner of the mobile home with a separate mobile home offer letter (RES-349).
- b. Verify that title has been eliminated or obtain title to the mobile home:
  - (1) If title has been eliminated (considered real property per the criteria set forth in Chapter 4):
  - (2) All mobile home information is included in deed, i.e., “together with a 1985 20x78 Saratoga mobile home.”
- c. If title has not been eliminated (Considered Personal Property per the criteria set forth in Chapter 4):
  - (1) Obtain original title or prepare a Department of Licensing Affidavit of Loss/Release of Interest form. Owner must sign either the original title or the Affidavit of Loss/Release of Interest.
  - (2) Prepare a Department of Revenue Mobile Home Real Estate Excise Tax Affidavit form and have the owner sign as Seller.

*Note:* This applies to mobile/manufactured homes only. Sales tax will have to be paid on recreational vehicles.
  - (3) Complete a Bill of Sale form.
  - (4) Confirm that the property taxes and/or personal property taxes are paid in full through the current year. (See Chapter 8.)
  - (5) Prepare a Department of Licensing Vehicle Certificate of Ownership Application a/k/a Vehicle Title Application form.

*Note:* The form will be signed at Headquarters as the new registered owner by the Headquarters RESM.
  - (6) Prepares Release of Interest/Power of Attorney. Complete power of attorney portion only for owner’s signature.

*Note:* Leave appointed name blank, HQ Title will complete.
  - (7) If the Region RESM submits for escrow:
    - (a) The Region Title Examiner obtains confirmation that the title company or escrow company is willing to escrow (close) a mobile home and verifies any additional fees that the company will require to complete the transaction.

- (b) Prepare an escrow agreement that includes:
  - i. The transfer of the mobile home.
  - ii. Instructions for a UCC search or notes that HQ Title Section has completed a UCC search.
  - iii. Clearance of any liens disclosed.

(8) If Region RESM decides not to submit to escrow then:

- (a) The agent contacts HQ Acquisition and Title Section to conduct a UCC search or prepares the UCC 11 form obtained from Department of Licensing and submits it with the proper fees to the Department of Licensing. After results are obtained, clears any liens disclosed per policy.
- (b) The agent contacts the Department of Licensing to determine all applicable transfer fees.

**Note:** Headquarters will transfer the title through the Department of Licensing upon submission of originals.

(9) Submit all original paperwork with transmittal

(10) After original title is received from the Department of Licensing in the region (approximately six to eight weeks); a copy is transmitted to HQ for inclusion in the acquisition file.

- d. The PAS advises the Regional Property Management Section that a mobile home is being acquired.

**Note:** If title is eliminated, advise Property Management that if mobile home is being moved off site, Property Management will need to apply for the title to be reinstated from the Department of Licensing.

- 2. If the Region RESM determines that the mobile home should not be purchased per the criteria set forth in [Chapter 4](#), it will be moved pursuant to the procedures set forth in [Chapter 12](#).

I. **Condominiums** – Condominiums created prior to July 1, 1990, are organized under [Chapter 64.32 RCW](#) and after July 1, 1990, they are organized under [Chapter 64.34 RCW](#). Under both situations the declaration will contain the information on how the acquisition is completed. In the majority of acquisitions WSDOT will be acquiring the common area of the condominium.

- 1. Obtain copies of the declaration and any amendments and a copy of the survey map and plans.
- 2. If there are improvements within the acquisition area, then a title report shall be ordered on each unit of the condominium.

3. If no improvements are within the acquisition area, then a Memorandum of Title shall be completed.
4. If there is a section/article in the declaration for acquisitions under eminent domain, then the acquisition will be completed in accordance with this section/article.
5. If there is not a section/article in the declaration regarding eminent domain, then the acquisition shall conform to the appropriate section/article for sale and withdrawal of property from the condominium.  
*Note:* [RCW 64.34.348](#) also governs the conveyance of common elements.
6. An amendment to the declaration and the condominium survey map and plans shall be completed to withdraw the acquisition area from the condominium.

**J. Donations – Reserved**

**K. Functional Replacement of Publicly-Owned Real Property** – Occasionally it is necessary to acquire publicly-owned, special use properties, e.g., a school, fire station. Generally, just compensation for such special use properties cannot be found by use of the common market value approach. Instead, just compensation for such properties may be measured by the cost of replacing the property with one that is functionally equal to the acquired property. Hence, if a fire station is being acquired, the just compensation for the fire station may be the cost of sufficient land in an equally suitable location upon which to build a replacement plus the amount necessary to construct a new fire station thereon. Functional replacement is limited to replacement of acquired lands and facilities with functionally equivalent lands and facilities. To qualify for reimbursement from FHWA, if there are federal funds in the right of way acquisition, FHWA must approve. Although the state of Washington has no specific case or statute law covering functional replacement, the principle of substitution and the provisions of [RCW 47.12.040](#) and [47.12.150](#) are relied upon.

1. Cases that require functional replacement are identified as early as possible in the location and design stages so that they can be included in the environmental impact studies and addressed following plan development.
2. Functional replacement may be authorized under the following conditions:
  - a. The property to be functionally replaced is in public ownership (except that properties owned by railroads and utilities are ineligible).
  - b. The functional replacement actually takes place and the costs of replacement are actually incurred.
  - c. The replacement site and construction thereon are in compliance with existing codes, laws, and zoning regulations.
  - d. Functional replacement costs include:

- (1) The actual cost of providing a replacement facility having the same functional capabilities.
  - (2) Either of the following:
    - (a) The appraised current market value of the land to be acquired for transportation purposes, where the owning agency has other lands on which to relocate the facilities.
    - (b) The reasonable cost of acquiring a functionally equivalent substitute site where lands in the same public ownership are not available or suitable.
  - (3) Costs chargeable to increases in capacity and other betterments are not eligible, except:
    - (a) Those necessary to replace utilities.
    - (b) Those required by existing codes, laws, and zoning regulations.
    - (c) Those related to reasonable prevailing standards for the type of facility being replaced.
  - (4) If the appraised market value of the property to be acquired exceeds the cost of functional replacement, the market value may be paid.
3. To be eligible for functional replacement, publicly-owned real property actually must be in a specific use. For example: lands which are in actual use as a public park would be eligible. Undeveloped lands that are being held for future park use normally would not be eligible.
  4. Eligibility for functional replacement of a volunteer fire department (VFD) is determined on a case by case basis. Authorization to permit functional replacement may be obtained if the state's file clearly shows that:
    - a. The VFD's facilities are devoted strictly to public use and are serving a public need that would otherwise have to be provided if the subject facility did not exist.
    - b. The VFD's facilities are physically unique. Facilities do not qualify if they are of a type that is found in the normal market.
    - c. The VFD has clear title to the land and the facilities on the land.

**Note:** The functional replacement concept may independently apply to owned improvements if they are on land that is not owned by the VFD. Title to land and/or facilities may be cleared by the VFD if it is desirable to qualify for functional replacement where all other conditions are met.
    - d. The VFD agrees to follow a nondiscriminatory policy consistent with Title VI of the Civil Rights Act of 1964 and 23USC 324 with regard

to race, color, national origin, and sex, and to amend, revise, or modify any existing charter, bylaws, deed restrictions, etc., to that end.

5. The Region RESM:

- a. In the advance planning, design, or access and right of way phase, identifies real properties that are in public ownership and may qualify for functional replacement.
- b. Subject to appropriate authority from the Regional Administrator, meets with officials of the owning agency to discuss the effects of the proposed acquisition and the potential for application of functional replacement procedures, and:
  - (1) Establishes a parcel file for the case by taking the actions specified herein and assures that it includes a Diary of Right of Way Activities – Acquisition and a Functional Replacement Checklist.
  - (2) Offers to have property valuation made on both market value and functional replacement bases.
  - (3) Allows owning agency to select valuation method(s).

*Note:* A market value appraisal and DV are made in every case except when the owning agency specifically waives its right to have its property appraised.

- c. Reports the results of discussions and decisions concerning functional replacement to the Regional Administrator for inclusion in environmental impact statements, etc., if required on a project.
- d. Assures that appropriate instructions are given to appraisers, specialists, and review appraisers (see [Chapters 4 and 5](#)).

*Note:* Appraisal and DV on both the market value and the functional replacement premise may be required.

- e. If the owning agency has indicated that it elects functional replacement, verifies that the owning agency has submitted a letter (addressed to the Regional Administrator) formally requesting functional replacement, fully explaining why such replacement would be in the public interest, and, if it so elects, waiving its right to have its property appraised.
- f. Submits to the Headquarters RESM:
  - (1) Cost estimate data showing comparative costs.
  - (2) A memorandum covering:
    - (a) Tentative agreements reached with the owning agency.
    - (b) Justification for functional replacement.

- (c) Assurance that all replacement property will be acquired in compliance with all state and federal regulations concerning acquisition and relocation assistance.
  - (3) The owning agency's letter requesting functional replacement.
  - (4) Any other pertinent data.
- 6. The Headquarters RESM:
  - a. Reviews the submittal from the Region RESM.
  - b. If federal funds are to participate, prepares and transmits a letter (to be signed by the Director for Environmental and Engineering Programs) to FHWA, Division Administrator, including:
    - (1) A request for FHWA concurrence in functional replacement.
    - (2) A request for FHWA authorization to proceed with the acquisition of a substitute site, the physical construction of minor site improvements, and the preparation of PS&E for major site improvements.
    - (3) Appropriate additional data received from region.
  - c. Upon verification from FHWA that functional replacement is in the best interest of the state, notifies the Regional Administrator. Such verification stems from the approval of the Director for Environmental and Engineering Programs when federal participation is not involved.

*Note:* When required, PS&E for major site improvements are prepared by the owner of the improvements being replaced and submitted for FHWA review and approval. Costs of PS&E preparation are normally reimbursable under functional replacement.
- 7. The Region RESM:
  - a. Obtains execution by the appropriate officials of the owning agency of a formal agreement which sets forth:
    - (1) The rights, obligations, and duties of each party with regard to the facility being acquired and the acquisition of the replacement site specifying how the agencies name is to appear on acquisition.
    - (2) How the costs of the new facility are to be shared between the parties.
  - b. Proceeds with the acquisition of the substitute site, if appropriate, in the name of the party specified in the agreement.
  - c. Submits proposed PS&E for the functional replacement to the Headquarters RESM, if required.
  - d. Submits the agreement to the Headquarters RESM for execution.

8. The Headquarters RESM:
  - a. Reviews the agreement and executes it for the state of Washington.
  - b. If federal funds are to participate, submits the executed agreement to FHWA together with a letter requesting FHWA concurrence.
  - c. Notifies the Region RESM upon receipt of FHWA concurrence.
9. Upon completion of construction, the Region RESM:
  - a. Makes a joint final inspection of the replacement facility with the appropriate representatives of the owning agency.
  - b. Verifies that the conveyance from the agency to the state of the lands required for highway purposes has been accepted by the state.
  - c. If appropriate, submits voucher for any costs, e.g., relocation assistance, due to the agency pursuant to the agreement.
  - d. Obtains a statement from the appropriate officials of the owning agency that:
    - (1) The costs of the replacement facility have actually been incurred in accordance with the provisions of the executed agreement.
    - (2) A final inspection of the replacement facility has been made by both parties.
    - (3) The Department of Transportation is released from any further responsibilities.

## **6-8 Property and Acquisition Specialist's Actions Prior to Contact With the Owner**

The PAS:

- A. Adds to the parcel file the Diary of Right of Way Activities – Acquisition Form.
- B. Reviews the title report(s). Checks the description to ensure conformity with right of way plans, determines the action to be taken with respect to each encumbrance, and obtains any supplemental title reports which may be necessary.
- C. Studies the appraisal report and the Review Appraiser's DV or AOS, taking special note if there are any tenant-owned improvements identified or improvements to be salvaged. **Note:** Salvage items should be identified during the appraisal inspections and any salvage values should be included in the appraisal report.
- D. Studies and investigates all details of the right of way plans, utility plans, drainage plans, channelization plans, as well as the profiles, cross sections, road approach schedules, and any other specialist's reports for complete familiarity and understanding.

- E. Reviews hearing transcript and EIS documents when available.
- F. Makes an on site inspection of the proposed acquisition. Notes evidence of any recent or pending public improvements (because these may cause an assessment). Notes physical access in the before and after situations. Notes any item such as improvements (fences, buildings, business signs, etc.), utilities (including drop lines continuing service to buildings), and evidence of septic drain fields that may have been missed in the title report and/or the appraisal.
- G. Coordinates with Relocation Assistance and Property Management as required. If improvements and/or land are to be rented back to grantors, follows procedures in [Chapter 11](#).
- H. Prepares an appropriate “Offer Letter” in accordance with specific guidelines shown in form [RES-350](#). Each letter is individually prepared on region letterhead.
  - 1. If the offer is administrative and the AOS is \$10,000 or less, the offer must state that an administrative offer is being made and an appraisal has not been completed.
  - 2. If the offer is administrative and the AOS is over \$10,000, the offer must state that an administrative offer is being made and that an appraisal has not been completed and an appraisal will be prepared if requested by the property owner.
- I. Whenever possible, prepares the instruments and vouchers necessary to complete the transaction (see [Chapters 9](#) and [13](#)).

## 6-9 Relocation Assistance Program

If an acquisition requires the moving of persons or personal property from the parcel, the PAS completes a Relocation Eligibility Report ([RES-524](#)). Upon obtaining proper signatures on the Relocation Eligibility Report, immediately forwards the original to the Relocation Assistance Section Manager.

If requested, the PAS can deliver a Relocation Assistance Program booklet and a General Notice of Relocation Rights (see [Chapter 13](#) for example) to the property owner.

The PAS should only try to answer relocation questions posed by property owners based on their knowledge and experience of the Relocation Assistance Program. If the agent is unfamiliar with relocation, it is better to offer to have a relocation agent contact them.

If a decision is made by the department to withdraw an offer to purchase from a property owner and relocation is involved, the PAS should forward a copy of the letter withdrawing the offer to the relocation department.

More complete information and instructions are found in [Chapter 12](#).

## 6-10 Property and Acquisition Specialist's Contact With the Owner

### 6-10.1 In-State Owner

The PAS:

- A. Contacts all parties having an ownership in property rights required (land, encumbrances, and improvements). Encourages a setting for meetings that will allow for proper display of maps and affords enough privacy to avoid unnecessary distractions.
- B. Verifies that the person(s) to whom the offer is to be made is the parcel owner, contract buyer, or an agent for same who is authorized to convey the subject parcel.
- C. Explains purpose of the project, what property rights will be required, and why.
- D. Presents the state's offer orally and in writing. The state's offer is normally presented during the first or second personal contact with the owner(s) or their representative. Reviews the offer letter with the owner to ensure complete understanding.
- E. Provide the Appraisal/AOS to the owner as follows:
  1. Deliver the bound copy of the appraisal (but *not* a copy of the DV).
    - a. If the DV is different from the appraised amount, the PAS will deliver the Reviewer's deviation memo to the property owner as justification for the difference.
    - b. Instruct the property owner to direct questions about the appraisal only to the PAS as the representative of WSDOT.
  2. The PAS will present a copy of the approved AOS including the appropriate market data sheets to the property owner upon making the offer.
- F. Reviews the right of way plans and title report(s) with owner for accuracy and completeness. In the case of a partial acquisition, points out the impact of the project on the remaining property such as water rights, drainage, access restrictions, road approach details, etc.
- G. If there are no persons or personal property displaced by the state's acquisition, the agent so states in the diary.
- H. Provides the owner with the *Transportation Property Needs and You* booklet.
- I. Provides the owner with an original and one copy of all instruments necessary for the transaction.

- J. Provides the owner with the original and one copy of the Real Property Voucher(s) (RES-321)
- K. Provide the property owner(s) with a substitute Form W-9 to complete in accordance with the procedures set forth in Chapter 10.
- L. Provide the property owner(s) with a Statewide Vendor Registration and Payment Options form (SWV Form) to complete in accordance with the procedures set forth in Chapter 10.
- M. If there are persons or personal property to be displaced, follows instructions herein or have the relocation specialist present to explain the relocation program and entitlements.
- N. Obtains information from the owner regarding tenants on the parcel to be acquired by requesting the owner complete the Landlord/Tenant Form (RES-352) for each tenant on the total premises.
- O. Obtains copies, if applicable:
  - 1. Articles of Incorporation and Bylaws and any amendments.
  - 2. Limited Liability Company Operating Agreement and any amendments.
  - 3. Partnership Agreement and any amendments.
  - 4. Trust Agreement and any amendments.
- P. Meets with the owner or owner's designee and discusses WSDOT's offer at least three times (including the meeting during which the Initial Offer Letter is presented) before parcel may be considered for condemnation.

49 CFR Part 24.102(f) Appendix A provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the Agency. In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but 30 days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

**Note:** Telephone calls to set up an appointment do not count as a meeting unless the owner refuses to grant an appointment and instructs the PAS to submit the parcel for condemnation.

- Q. If it is impossible to make WSDOT's offer in person because the owner refuses to grant any appointments, the PAS proceeds in the same manner as dealing with an alternate method by mail, except that a paragraph is added to the offer letter requesting an appointment and a chance to explain the state's offer in detail.

### **6-10.2 Alternate Contact (Offer) by Mail With In-State Owner or Out-of-State Owner**

The Region RESM may designate projects in which the first contact (offer) with property owners may be accomplished by mail. In these instances, the PAS:

- A. Contacts all parties having an ownership in property rights required (land, encumbrances, and improvements) as shown on the title report or in the appraisal.
- B. Verifies that the person(s) to whom the offer is to be made is the parcel owner, contract buyer, or a specialist for same who is authorized to convey the subject parcel.
- C. Sends to the owner by certified mail, with return receipt requested:
  1. A written explanation of the purpose of the project, what property rights will be required, and why.
  2. The original and one copy of the offer letter ([RES-350](#)), with the copy marked requesting signature and return.
  3. Provide the appraisal/AOS to the owner as follows:
    - a. The negotiator will send the bound copy of the appraisal (but *not* a copy of the DV).
      - (1) If the DV is different from the appraised amount, the Negotiator will send the memo to the property owner as justification for the difference.
      - (2) The negotiator will instruct the property owner to direct questions about the appraisal only to the Negotiator as the representative of WSDOT.
    - b. The negotiator will send a copy of the approved AOS including the appropriate market data sheets to the property owner.
  4. A copy of the right of way plan marked to definitely show the area to be acquired and any remainder(s).
  5. *Transportation Property Needs and You* booklet.
  6. Relocation Assistance Program booklet, if appropriate.
  7. Such additional relocation assistance material as may be deemed necessary upon consultation with the Region Relocation Assistance Supervisor.
  8. Original and one copy of all instruments necessary for the transaction.
  9. Real Property Voucher(s) ([RES-321](#)).
  10. Send the property owner(s) a substitute Form W-9 to complete in accordance with procedures set forth in [Chapter 10](#).

11. Send the property owner(s) a Statewide Vendor Registration and Payment Options form (SWV Form) to complete in accordance with procedures set forth in [Chapter 10](#).
  12. Special instruction on what to sign, where to sign, how to sign requirements for acknowledgments, and instructions for return mailing.
  13. Self-addressed, stamped envelope.
- D. Upon return of the certified mail receipt, telephones the owners to discuss the state's offer and to obtain the owner's reaction.
  - E. Upon receipt of the executed instruments, signed voucher(s), and receipted offer, sends a "thank you" letter and completes the Right of Way Acquisition Transmittal ([RES-353](#)) as specified in [Section 6-8](#).
  - F. If the owners do not respond within two weeks, sends by certified mail (return receipt requested) a "follow-up" letter or contacts by telephone to follow-up.
  - G. If the owners do not respond within two weeks to the "follow-up" letter, sends by certified mail (return receipt requested) an urgent letter or delivers in person.
  - H. If the owners reject the state's offer or do not respond within two weeks to the "urgent" letter, prepares the final action notice per [RCW 8.25.290](#).

### **6-10.3 Post-Meeting Responsibilities**

#### **6-10.3.1 Diary of Right of Way Activities – Acquisition ([RES-301](#))**

The PAS makes detailed entries in the Diary of Right of Way Activities – Acquisition ([RES-301](#)) covering every contact, meeting, etc., involving the assigned parcels. These entries are made as soon as possible after each contact to assure accuracy. Upon completion of entries, the agent is to sign and date the diary.

**Diary entries must be limited to a recitation of the facts because the diary is subject to the rights of discovery by all parties in any court proceedings.**

Diary entries include, but are not limited to, the following:

- A. The date of the parcel assignment.
- B. The date, time, telephone number, and full name (e.g., Mr. John F. Jones, not Mr. Jones) of any party of interest who is contacted by telephone.
- C. The date, time, address, and place of every meeting with any party in interest. This includes the actual location of the meeting, e.g., the dining room of the owner's residence, Attorney John T. Smith's office in the Block Building, etc.
- D. The full names of all adult participants in a meeting and their relationship to the owner. If children are participants, note their approximate ages.

- E. The amount in dollars of the state's offer and the fact that the offer was made both orally and in writing. The same information is given for any revised offers by the state.
- F. A summary of the events of the meeting, including:
  - 1. The owner's reaction to the state's offer.
  - 2. Details of any counter offers, etc.
  - 3. Owner's questions and PAS's responses.
  - 4. Any concerns or issues noted.
  - 5. The explanation of the statutory evaluation allowance.
  - 6. The explanation of the Relocation Assistance Program or that they will be contacted by a Relocation Specialist.
  - 7. If improvements are being acquired, an explanation of any salvage allowed.
- G. Either an indication of who signed the receipts for the offer letter and for the relocation booklet, the acquisition booklet, or a statement that the letter and booklets were delivered but that the owner refused to sign the receipts.
- H. The details of any negotiated/administrative settlement that is reached.
- I. The details of any revised offers.
- J. The details of any issues that may result in the withdrawal of the offer.
- K. If condemnation is to be filed per [RCW 8.25.290](#), the following details shall be included in the diary:
  - 1. Dates notice published in the local paper or papers.
  - 2. Date notice mailed to "taxpayer" by certified mail.
  - 3. Date and attendance at final action meeting.
- L. Date negotiator's report completed ([RES-320](#)).

### **6-10.3.2 Continued Negotiation**

The PAS:

- A. If there is a revision to the right of way plan or if there is a reappraisal, either of which result in a new Determination of Value ([RES-214](#)), makes an appointment with the owners to present the state's revised offer. Uses the same general presentation as in the original offer except that the agent presents the state's revised offer orally and in writing using the revised offer letter ([RES-351](#)), in which the occupancy date remains unchanged. If the acquisition involves an owner-occupied dwelling, a revised Notice of Eligibility and Entitlements must be presented. If the original offer did

not require relocation of the occupant(s), then required relocation notices must be sent out according to the procedures set forth in [Chapter 12](#).

- B. Submits any appraisal provided by the owner to the review appraiser, in accordance with instructions in [Chapter 5](#).
- C. Continues the negotiations until either:
  - 1. A satisfactory settlement is reached. In this case, the PAS prepares the Right of Way Acquisition Transmittal ([RES-353](#)) and its accompanying data package.
  - 2. A settlement cannot be reached. In this case, the PAS prepares the final action notice per [RCW 8.25.290](#).

#### **6-10.4 Owner Represented by Others**

##### **6-10.4.1 General**

- A. The property owner (or any other party of interest) may choose to be represented by another party. Certain individuals (e.g., minors, or incompetents) are required by law to have another party represent them.
- B. An attorney at law may act as the owner's representative but may not contract or convey in the place or name of the owner (without legal authority).

##### **6-10.4.2 Rules**

- A. At the owner's written request, the state conducts acquisition activities with the interested party's representative.
- B. The state accepts conveyances from the owner's duly authorized attorney-in-fact as provided in a recorded durable or special power of attorney that has not been revoked or superseded and the principal is alive.

##### **6-10.4.3 Procedures**

###### **6-10.4.3.1 Attorney at Law**

- A. If the property owner (or any other interested party) is represented by an attorney, the PAS deals only with that attorney. The PAS requests that the property owner furnish written confirmation of the scope and fact of such representation. When furnished, such confirmation is made part of the parcel file.
- B. If the property owner subsequently decides to deal directly with WSDOT, the PAS requests that the owner furnish a letter of notification. When received, such letter is placed in the parcel file.
- C. In either case, the circumstances should be noted in the diary and the written confirmation or letter is referenced.

### **6-10.4.3.2 Attorney in Fact**

- A. When dealing with an owner's attorney in fact, the PAS may accept conveyance from either the individual (the principal) or from the attorney in fact, provided (in the latter case) that the PAS:
1. Reviews the recorded power of attorney and determines that the attorney in fact is authorized to convey the subject property.
  2. Determines that the recorded power of attorney has not been revoked or superseded.
  3. Uses the proper form of acknowledgment, etc. (see [Chapter 9](#)), thereby obtaining the attorney in fact's sworn statement that the principal is alive.
  4. Includes a copy of the power of attorney, showing recording data in the transaction package when forwarded for processing.

## **6-11 Remainders**

The following sections cover acquisitions involving two categories of remainders: "uneconomic remnants" and "excess acquisition."

### **6-11.1 Uneconomic Remnants**

- A. If the DV includes a statement by the reviewer that a remainder is an uneconomic remnant, the department shall offer to purchase such remnant at its determined value by selecting "Clause A" for the offer letter (see [RES-350](#)). Although the department is required to offer to purchase uneconomic remnants, the owner is not required to sell them. If the remnant shows evidence of contamination, any offer to buy should be contingent on the property being acquired in a clean condition.
- B. If the owner rejects the state's purchase offer and the PAS files the Negotiator's Report ([RES-320](#)), the uneconomic remnant is normally not included in the condemnation action except by agreement between the Assistant Attorney General (AAG) and the property owner.

### **6-11.2 Excess Acquisition**

#### **6-11.2.1 Rules**

- A. An excess acquisition is the acquisition of a remainder or remnant which has not been identified in the DV as being "uneconomic."
- B. The department tries to avoid acquiring excess property, but may do so when the excess is to be used for "trading stock" on the same project, or for a pit or borrow site not yet mapped, or when appraisal considerations dictate that such excess acquisition is in the best public interest.
- C. If the state has no interest in acquiring a remainder for the purposes set forth in 6-11.2.1.B and the owner is adamant in his refusal to keep the remainder, then the PAS may acquire the excess using the following procedures.

### 6-11.2.2 Procedures

- A. If the “after value” of the remainder, as shown on the DV, up to and including \$10,000, the PAS prepares form [RES-336](#) requesting the approval of the Region RESM. Upon receipt of the approved memo, the PAS proceeds with the transaction in the normal manner.
- B. If the “after value” of the remainder, as shown on the DV, exceeds \$10,000, the PAS also includes a signature line for the approval of the Regional Administrator.
- C. The PAS includes any memos authorizing the excess acquisition with the Right of Way Acquisition Transmittal.
- D. If the owner rejects the state’s offer and the PAS files the Negotiator’s Report ([RES-320](#)) the Negotiator’s Report specifies only the required right of way.

## 6-12 Administrative Settlement

### 6-12.1 General

If it is impossible to reach an agreement to purchase based upon just compensation, WSDOT may attempt acquisition by means of an administrative settlement.

### 6-12.2 Rules

- A. The Region RESM reviews the state of acquisitions on the project before permitting the acquisition of a parcel for an amount in excess of that given on the Determination of Value ([RES-214](#)) or Administrative Offer Summary ([RES-216](#)).

Authorization to proceed with an administrative settlement is given only when it has been determined that such action will not unduly jeopardize the remaining acquisitions on the project.

- B. In each case, the effect of an administrative settlement upon the entitlement amount under the Relocation Assistance Program is considered.
- C. Each administrative settlement must consider the following:
  - 1. Condemnation process (updating for trial, pretrial, conferences, attorney’s expenses, witness fees, etc.).
  - 2. Trial risk (based on experience in the particular county).
  - 3. Other parcel specific issues.

**Note:** Specific information about the parcel, including copies of appraisals, estimates, bids, research information, etc., **must** carry the most weight in the justification.

### 6-12.2.1 Authority

The authority to approve administrative settlements on parcels being acquired by the department is as follows:

1. Unlimited settlement authority is delegated to each Regional Administrator. This authority may be further delegated. The region is responsible for documenting any further delegation and providing evidence of that delegation to Headquarters.
2. Each settlement must be supported by adequate documentation and justification. Adequate justification is providing sufficient information or documentation to “tell the story” so that another person or party not familiar with the parcel can ascertain if the decision is supportable.
  - a. A diary entry signed by the approving authority or authorities is sufficient documentation when the administrative settlement amount is \$50,000 or less.
  - b. A memorandum to the file, signed by the appropriate authority or authorities, must be provided to support administrative settlements that exceed \$50,000.

The diary or memorandum explains the rationale for the administrative settlement to an extent consistent with the circumstances and need, the amount of money involved, and is retained as a permanent document in the file.

### 6-12.3 Procedures

#### 6-12.3.1 Region Actions

A. The PAS:

1. Makes every sincere effort to negotiate a purchase for the just compensation as listed in the DV or AOS. This must at least meet the minimum negotiation requirements contained herein.
2. If all efforts to negotiate a settlement at the just compensation fail, discusses the parcel (especially offers, owner demands, counteroffers, etc.) with the Region RESM.

B. The Region RESM:

1. Reviews the Diary of Right of Way Activities – Acquisition and weighs all factors affecting the parcel, including:
  - a. Basis for owner’s refusal of WSDOT’s offer.
  - b. Owner’s counteroffers, etc.
  - c. Status of negotiations on the project, including negotiation cut-off date.
  - d. Costs of condemnation.

- e. Effects upon Relocation Assistance Program entitlements.
  - f. All available appraisals, including any owner's appraisal. **Note that where an administrative settlement is made for cost-to-cure items (that were not addressed in the original AOS) that would put the parcel over the \$25,000 threshold for appraisal waiver, an appraisal is required.**
  - g. Trial risks.
2. May instruct the PAS either:
    - a. Negotiate a settlement.
    - b. Submit the parcel for condemnation.
  3. If the administrative settlement is to be for an amount greater than that authorized to the Region RESM by this section, prepares the memorandum, attaches copies of any estimates or bids and transmits it to the Regional Administrator or delegate for approval.
  4. Upon receipt of the approved administrative settlement memo, transmits it to the PAS for inclusion with the Right of Way Acquisition Transmittal with instruction to negotiate an administrative settlement.
  5. Without approval for an administrative settlement, instructs the PAS to submit a Negotiator's Report for Condemnation.

C. The Acquisition Specialist:

1. If instructed to negotiate an administrative settlement:
  - a. Notes the authorization to proceed in the Diary of Right of Way Activities and, if the administrative settlement is within the appropriate limits, obtains the signature of the appropriate authority on this diary notation. Included in the diary is reference to any estimates and bids in the file.
  - b. Makes an oral offer to the owners to settle for the amount of the just compensation plus the administrative settlement. Assures that the owners are aware of the effects that an administrative settlement may have upon the amount of relocation assistance entitlement and notifies the Relocation Specialist.

**Note:** No written offer letter is presented on an administrative settlement.

- c. If the owners accept the administrative settlement, prepares and obtains execution of the necessary instruments, vouchers, etc., as in a normal closing. Then prepares the Right of Way Parcel Transmittal and its accompanying data package

- d. If the owners refuse the administrative settlement, prepares the Negotiator’s Report and its accompanying data package as described in Sections 6-24 or 6-25.
- 2. If instructed to condemn, proceeds as described in Sections 6-24 or 6-25.

**6-12.4 Sample Administrative Settlement Format**

Amount of Approved AOS or DV: \$  
 Amount of Proposed Administrative Settlement: \$  
 Amount of Proposed Total Settlement: \$

- 1. Condemnation will take additional time and money, i.e., updating for trial, pretrial, conference, staking of right of way, attorney’s expenses, and witness fees (appraisers, consultants, etc.).
- 2. Describe the trial risks based on experience in the particular county.
- 3. Describe other parcel specific issues:
  - a. Brief summary of the basis of the owner’s refusal of the state’s offer.
  - b. Counteroffers and negotiations relative thereto.
  - c. Detailed explanation of the justification for the administrative settlement including the following:
    - i. WSDOT’s review of the owner’s appraisal or counteroffer.
    - ii. Evaluation of value differences.
    - iii. Evaluation of cost-to-cure items including copies of estimates or bids.
    - iv. Other impacts to construction such as fish windows, channel change, or irrigation canal relocation.

	<b>WSDOT Appraisal</b>	<b>Proposed Settlement</b>	<b>Difference</b>
XXX S.F. of Land in Fee	\$9,600 (\$2.15 sf)	\$15,600 (\$3.50 sf)	\$6,000
Fencing	\$2,800	\$3,600	\$800
Sign Relocation	\$6,000	\$8,550	\$2,550
Proximity Damages	\$0.00	\$5,900	\$5,900
Total	\$18,400	\$33,650	\$15,250

Signature of (Approving Authority)

**Reminder:** Attach copies of any bids or estimates to the memorandum.

**6-12.5 Web Based Training Link for Administrative Settlements – Reserved**

## 6-13 Payment of Rent Prior to the Acquisition of the Property

### 6-13.1 General

If a current tenant vacates property or the property is already vacant before the department acquires possession, then it may be appropriate for the department to pay rent to prevent the property from being rented to another tenant, resulting in another displacement or in a property owner claiming loss of rent.

### 6-13.2 Rules

- A. The payment of rent is to be utilized at the discretion of the Region RESM based on the following criteria:
1. Terms and rental rate for the current leasehold interest held by the displaced person.
  2. Lead-time for business and tenants to find and secure replacement sites.
  3. Availability of replacement sites suitable to the displaced person.
  4. Potential of the owner to rent the subject site.
  5. Facilitate negotiations and goodwill with the property owner.
  6. The acquisition schedule (ad date).
- B. The Region RESM must analyze the cost effectiveness of paying rent. Consideration should be given to time and cost of rent versus the payment to the displaced person(s).

For example, if the rent is \$100 per month on a 10 foot by 10 foot storage unit and the proposed rent period is 6 months, then it would not be cost effective to enter into a rental agreement because the personal property benefit is only \$300 (for 10 foot by 10 foot unit).

- C. The Region RESM concludes that the rent is justified or not justified and instructs the Region Acquisition Supervisor and Region Relocation Supervisor.
- D. If the property is occupied by a tenant then the PAS and the relocation agent coordinate to establish timelines regarding the vacation of the property by the displaced person(s) and the date to commence protective rent. Upon vacation of the premises by the current tenant, the PAS will obtain verification that the existing lease has been terminated and that all deposits have been returned to the tenant.

### 6-13.3 Procedures

The following options for rent, prior to the acquisition, require that the region establish a rental rate and provide documentation justifying said rate. The rental rate for the property should reflect an appropriate reduction in services no longer required by the owner:

- A. An Agreement Not to Rent ([RES-343](#)) may be completed and signed by the owner and the Region RESM.
- B. The PAS requests that the owner (landlord) provide WSDOT with a lease/rental agreement.
  1. The PAS will submit the lease/rental agreement to the Region RESM for review and approval. The Region RESM will consult with the Acquisition and Title Section Manager regarding complex issues or non standard language (such as hold harmless, indemnity, etc.).
  2. If the owner (landlord) does not provide a lease/rental agreement, then the appropriate WSDOT acquisition lease will be utilized.
- C. The PAS prepares the right of way acquisition transmittal package.

#### **6-13.4 Payment Options**

The following are suggested methods of payment available for either option 6-13.3.A or B above:

- A. **Agreement** – The region executes three original instruments and establishes a OP Agreement following procedures outlined in the [Agreements Manual M 22-99](#).
- B. **Real Property Vouchers** – The region executes Real Property Vouchers to make monthly, quarterly, or yearly payments based on the terms of the agreement.
- C. **Administrative Settlement** – The region and the property owner reach an agreement on the amount of protective rent to be paid. This amount is justified as per the administrative settlement procedures as shown in this chapter and is paid in the primary real property voucher upon final settlement with the property owner.

*Note:* Payment of rent should continue until the department has obtained possession of the property (e.g., by deed or possession and use).

#### **6-14 Special Benefits**

- A. The subject of special benefits may arise in partial acquisitions. In this state, it is necessary to differentiate between and understand three concepts when value may be created by a pending highway improvement. The three concepts are defined as follows:
  1. **Enhancement** – Increases in real estate values in advance of right of way acquisition created by knowledge of pending highway improvement.
  2. **Special Benefits** – Value accruing to the remainder of a property by reason of acquisition and use by the state of a portion of such property where such value is special to said remainder and not enjoyed by the general public. Benefits may be special even if other owners on the facility receive similar benefits.

3. **General Benefits** – Washington law does not clearly define general benefits. Because of this we have only attempted to explain special benefits and will assume that any benefits that are not “special” may be properly considered to be “general” benefits.

Under both state and federal procedures, an owner may not receive compensation based on values due to “enhancement.” In federal condemnation cases, both special and general benefits must be offset against compensation for the part being acquired and/or damages. In state condemnation cases, only special benefits are to be offset against compensation for the part being acquired and/or damages.

B. The PAS:

1. Shows the amount of special benefits charged (as shown on the DV) in the Offer Letter ([RES-350](#)) by adding the appropriate clause.
2. Selects Clause “B” on the Offer Letter and attaches a copy of [RCW 8.25.210](#) through [RCW 8.25.260](#) to the owner’s copy of the Offer Letter.
3. Modifies the owner’s receipt for the Offer Letter to include receipt of a copy of the statutes.
4. Gives the owner adequate time to consult with counsel.

## 6-15 Toxic/Hazardous Waste Situations

Initial site assessments and preliminary site investigations should have already been conducted before the PAS is assigned the property. [Chapter 4](#) contains information on the indications of a contaminated site.

- A. When the appraisal indicates the possibility of the property being contaminated, the PAS will consult with the Environmental Service Office (ESO), the Region RES Manager, and the Acquisition and Title Section Manager for the appropriate method of mitigating the risk to WSDOT. Items F and G below provide direction.
- B. When a potential hazardous waste or contamination situation is observed or indicated to the PAS, will complete a hazardous waste checklist and submit it to the Region RES Manager.
- C. The Region RES Manager will forward to ESO with a copy to the project engineer and the project development engineer. When a contaminated site is discovered at this stage of the right of way project, there could be significant project delays. It is imperative the project managers be notified.
- D. ESO will report back with its assessment and estimates for costs to clean up the contamination.

- E. The Region Appraisal Supervisor should be consulted to determine if the appraisal needs to be revised. If so, a new offer will need to be presented.
- F. Several methods of cleanup procedures can be used. These will be unique to each parcel and the following list is not meant to be the only methods available. Each method should be discussed with the Region RES Manager and Acquisition and Title Section Manager to assure proper risk assessment and avoidance is applied.
  - 1. The property will be purchased as if clean and the PAS withholds the cleanup costs from the compensation. The risk is the estimate may over or understate the cleanup costs. Depending on the confidence of the ESO in the estimate and the potential for additional contamination, an indemnity clause may be needed in the deed.
  - 2. The property is purchased as if clean and the property owner agrees to an indemnity clause in the deed. This means the owner will be liable for any future cleanup costs.
  - 3. The funds to acquire the property can be placed in escrow. The property owner then cleans up the contamination using draws on the escrowed funds to pay for the cleanup. This method will only work on early acquisitions or shelf projects as there is not usually sufficient time to clean up a site in our construction schedule. Once the site is cleaned to ESO's satisfaction, the remaining funds can be released. Indemnity language may or may not be needed in the deed, depending on the risk of future cleanup costs.
  - 4. If the appraisal used contaminated sales, the diminution of value due to the contamination is recognized and no indemnity language would be needed in the deed. It is extremely unusual that this situation will occur without extensive environmental investigation and very substantial sales comparisons in the appraisal.
  - 5. Prospective Purchasers Agreements – The Washington State Department of Ecology has a procedure for resolving the liability for a particular site prior to the purchase of the site. This procedure involves entering into what is known as a prospective purchaser agreement. Through this process, the agency is able to negotiate with Ecology prior to purchase to limit the extent of the agency's responsibility.
  - 6. When access rights only are acquired, there is no need for an indemnity clause or a deduction for cleanup costs.
- G. ESO and RES will need to work together to assure the appropriate measures are used in the cleanup of the property. ESO will process all Department of Ecology filings.

## 6-16 Property Rights Acquired and Occupancy by WSDOT

### 6-16.1 General

#### A. Definitions

1. **Property Acquired (Ownership)** – WSDOT acquires ownership of property and/or property rights on the “payment available date” (when owner has received and has the opportunity to deposit the payment or when funds are disbursed through escrow).
  2. **Early Occupancy** – The right to use and occupy the property subsequent to settlement agreement and prior to ownership.
- B. When lands are occupied by persons, personal property, business, or farm operations, WSDOT cannot acquire occupancy without providing the owners and tenants with a written assurance at least 90 days prior to the earliest date by which they could be required to vacate the property as specified in [Chapter 12](#).

### 6-16.2 Rules

- A. Any occupancy by the original owner or tenant after the state acquires ownership requires payment of rent to WSDOT and execution of a lease. Any deviation from the requirement shall be approved in writing by the Property Management Section Manager. (See [Chapter 11](#).)
- B. Rental to the original displaced owner or tenant beyond the initial displacee lease period is allowed only with prior written approval by the Headquarters RESM.
- C. Rental rates to the original displaced owner or tenant may not exceed fair market rent.
- D. Either a copy of the displacee lease or a statement shall be included in the Diary that the lease is being obtained by the region prior to transmittal of the acquisition documents to HQ.
- E. In the case of tenant occupied properties, the acquisition specialist verifies that all damage deposits and prepaid rents have been addressed. If an amount is disputed between the owner and tenant WSDOT shall withhold the disputed amount as a performance bond until the dispute is resolved.

### 6-16.3 Procedures

If the property is occupied, the PAS:

- A. Reviews the appraisal for determination of rent and coordinates with the Region Property Management Specialist to determine the amount of rent and any leasehold excise tax which will be required after the state acquires ownership (see [Chapter 11](#)).

B. For Owner Occupied Property:

1. States that the owner will be required to sign a lease with WSDOT and surrender occupancy in accordance with the terms of the lease once WSDOT acquires ownership of the property. The lease cannot terminate prior to the displaced occupant being provided with their Notice of Relocation Eligibility, Entitlement, and 90 Day Assurance Letter. This also applies to those parcels where just personal property is involved.

*Note:* The Region RESM will assign an agent for delivery and execution of the displacee lease in accordance with the procedures set forth in [Chapter 11](#).

2. States that WSDOT is required by law to advise any owner of their rights and entitlements under the Uniform Relocation Assistance Act.
3. During negotiations, ensures that the owner is fully aware of the amount of rent to be collected after WSDOT acquires ownership and any other terms or conditions which may be required (i.e., leasehold excise tax).
4. Obtains execution of the instrument(s), and, if required, the Fixtures and Improvements Agreement.

C. For tenant occupied property:

1. States to the owner that it is WSDOT's policy to discourage tenants from vacating the subject prior to the sale to the state.
2. States to the owner and the tenant that the owner's right to collect the rents from the tenant terminates on the date WSDOT makes payment for the property available to the owner, and that the collection of such rents should be adjusted accordingly
3. Provides the Landlord/Tenant Form ([RES-352](#)) previously filled out by the owner for review and obtains acceptance of the statements by requesting the tenant's signature on the form. If tenant disputes the information then the agent requests a meeting between the tenant and the owner.
4. If there is tenant owned real property, a Quitclaim Deed shall be executed.
5. If no tenant owned real property, then either Partial Release of Lease ([RES-312](#)) shall be executed by the tenant and concurred to by the owner or a Release of Lease ([RES-313](#)) shall be executed by the tenant, as applicable.
6. States that the tenant will be required to sign a lease with WSDOT and surrender occupancy in accordance with the terms of the lease once WSDOT acquires ownership of the property. The lease cannot terminate prior to the displaced occupant being provided with their Notice of Relocation Eligibility, Entitlement, and 90-Day Assurance Letter.

*Note:* The Region RESM will assign an agent to coordinate with property management and relocation regarding delivery and execution of the displacee lease in accordance with the procedures set forth in [Chapters 11 and 12](#).

7. States that WSDOT is required by law to advise any tenant of their rights and entitlements under the Uniform Relocation Assistance Act.

## **6-17 Miscellaneous**

### **6-17.1 Expenses Incidental to Selling to the State**

#### **6-17.1.1 Statutory Evaluation Allowance**

By statute ([RCW 8.25.020](#)) parties having interests in a parcel may be reimbursed up to \$750 for “expenditures actually and reasonably incurred” in evaluating the state’s offer. The PAS uses the following guidelines and procedures in making the claim for the statutory evaluation allowance:

- A. In making the offer to the owners, the PAS explains the statutory evaluation allowance. The agent suggests to the owners that, if they choose to have an evaluation made, it should be made by knowledgeable personnel. Do not suggest that they have their own appraisal made. An evaluation of the state’s offer may take many forms—an appraisal is only one of those forms.
- B. Only one allowance may be paid per transaction. This rule applies in the following situations as well as to the standard single parcel-single owner transaction:
  1. More than one offer is made on a parcel.
  2. Two or more tracts which have separate parcel numbers but are combined for appraisal and acquisition purposes due to common ownership.
  3. More than one party in interest elects to have an evaluation made.
- C. The PAS reviews the documentation accompanying the claim for payment and prepares a Real Property Voucher not to exceed \$750 for those items which qualify. The documentation for the claim must accompany the signed voucher.
- D. The statutory evaluation allowance is normally paid at the time of final settlement unless unusual delays in settlement are experienced due to department activities (e.g., lack of funding).

### 6-17.1.2 Allowance for Other Expenses

Certain “incidental expenses” incurred in transferring property to the state are payable by the department.

#### A. Payable Expenses

1. **Real Estate Excise Tax** – If the property is not acquired under eminent domain, i.e., early acquisition, advanced acquisition and remainders, then the department shall pay the real estate excise tax. If property acquired under eminent domain, then the department shall pay the administrative fees due.
2. **Processing Expenses** – The mortgagee’s reasonable fees for processing documents and analyzing the account, recording fees, owner’s legal fees, etc., required to pass good title.
3. **Prepayment Penalties** – Loan prepayment penalties charged by a mortgagee.

*Note:* There are no prepayment penalties in the case of FHA insured loans.

4. **Reconveyance Fee.** A trustee is entitled to a fee for execution of a reconveyance (see [Chapter 8](#)).
5. Other charges incidental to the conveyance of clear title by the owner such as attorney’s fees in connection with the appointment of a guardian, administrator, or executor.

#### B. Nonpayable Expenses

1. Prepayment penalties when they are incurred by the voluntary act of the grantor (i.e., when the grantor elects to prepay all or part of a loan).
2. Any other expense incurred solely for the convenience of the grantor (e.g., general attorney’s fees related to advice rather than to perfecting title).

#### C. Procedures – The PAS:

1. Obtains the amount of Real Estate Excise Tax due from the Department of Revenue’s website ([www.dor.wa.gov](http://www.dor.wa.gov)).
2. Obtains a bill or letter from the charging agency, person, or company for any fee and/or prepayment penalties.
3. Questions the lender and verifies the necessity for a processing charge or prepayment penalty. The Region RESM shall approve and document any processing charges or prepayment penalties.
4. Includes the payable expenses (6-17.1.2.A) in the appropriate section of the Real Property Voucher ([RES-321](#)). If the charging agency, person, or company is joining on the voucher, these expenses may be shown on the principal Real Property Voucher. Otherwise, they may be separately vouchered. The trustee’s reconveyance fee is separately vouchered at the time of delivery of the reconveyance.

## 6-18 Trades and Exchanges

### 6-18.1 General

Sometimes it is possible to arrange a settlement by trading or exchanging unneeded lands for needed lands. The lands traded may be either full or partial compensation for the lands acquired.

### 6-18.2 Rules

A. There are three sources of land available for trades or exchanges:

1. Land shown on the approved right of way plans as “excess right of way,” provided such land has been entered into the Real Property Inventory in the computer system (see [Chapter 11](#)) and has been declared surplus.

*Note:* It may be necessary to delay the actual transfer of this type of land until after the opening of the new facility.

2. Any state-owned, department-controlled land in the vicinity of the project which is shown on the Real Property Inventory as “surplus” (see [Chapter 11](#)).
3. Any “remainder” acquired on a specific project may be used as trading stock on that same project, provided that:
  - a. The “remainder” is entered into the Real Property Inventory (see [Chapter 11](#)).
  - b. The state has acquired a valid title to the “remainder.”
  - c. The property has been declared surplus in Headquarters and a value for the property has been established by the Property Management Section.

B. In addition to the formal instruments, documents, etc., the acquisition transmittal includes a completed Exchange Agreement ([RES-322](#)).

C. In all trades or exchanges involving the payment of money by the state, a Real Property Voucher ([RES-321](#)) is prepared as described in [Chapter 10](#).

D. Full credit for the value of traded or exchanged surplus lands, as determined by a current Determination of Value (DV) ([RES-214](#)), must be realized against the costs of acquisition of the needed lands, or the difference justified through administrative settlement procedures as set forth in [Section 6-9](#).

### 6-18.3 Procedures

A. When the approved right of way plans are available, the Region RESM:

1. Adds all “excess right of way” and “remainders” to the Real Property Inventory.
2. Initiates procedures to have all “excess right of way” and available “excess” lands in the vicinity of the project evaluated and declared “surplus” (see [Chapter 11](#)).

3. Notifies the Acquisition Supervisor of all “surplus” land and “remainders” that are available for trades or exchanges.
- B. The PAS:
1. Confers with the Acquisition Supervisor as to which surplus land and remainders are available as inducements for a particular parcel. Obtains copy of Surplus Property Report showing disposal approval.
  2. Conducts negotiations in the normal manner but is prepared to offer a trade or exchange of surplus land at full value as shown by the current Surplus Property Report approved in Headquarters.
  3. Prepares the Real Property Voucher as described in [Chapter 10](#) when the trade/exchange represents only partial consideration.
  4. In coordination with Property Management, has the Exchange Agreement prepared for execution by the grantor.
  5. Prepares the Right of Way Acquisition Transmittal with care to include the Exchange Agreement as specified in this section, and the Surplus Property Report.

## 6-19 Construction Items

- A. WSDOT may mitigate damages to a “remainder” by the inclusion of special construction items in the construction contract. An item may be part or all of the consideration to be paid for a given parcel, but its cost may not exceed the estimated reduction in damages to the “remainder” of that parcel. Some types of construction items may affect more than one parcel, in which case the cost of the item may not exceed the sum of the reductions in damages to the remainders of the parcels so affected. The cost of these construction items is eligible for federal participation when FHWA is participating in the costs of right of way acquisition.
- B. All construction items require the submission of a Memo: Construction Item ([RES-344](#)) approved by the project engineer and the property owner. When necessary to enter upon lands not acquired to perform an obligation, a further clause granting a right of entry to the state for that purpose is also required ([RES-381](#)). The original memo is sent to the project engineer and a copy is included in the transmittal package.

## 6-20 Road Approaches

- A. Road approaches on nonlimited access facilities are governed by [Chapter 47.50 RCW](#). Specific formulas for establishing road approaches have been determined. All new or altered road approaches must be documented by access connection permit. For alteration of an existing access point, contact the region’s access personnel.
- B. Road approaches on limited access facilities are governed by [Chapter 47.52 RCW](#). Specific clauses for inclusion on documents are in [Chapter 9](#).

## 6-21 Salvage of Improvements

- A. If improvements are being acquired as a part of the state's acquisition, the PAS, prior to contacting the owners:
1. Prepares a Fixtures and Improvements Agreement ([RES-335](#)).
  2. If the region has determined that project scheduling and other factors will allow for salvage of improvements.
    - a. Obtain written approval from the project engineer and the Region RESM for all tenant occupied improvements to be salvaged.
    - b. Obtains a Salvage Appraisal Report ([DOT Form 263-003](#)) from Region Property Management Section.
    - c. Determines from the Region Property Management Section the amount required as a performance bond. This amount shall be sufficient to cover the costs to perform the necessary cleanup if the owner does not perform as promised.
- B. If the owners desire to salvage any or all improvements and it will not adversely impact construction, the PAS may offer the same at the amount of the salvage value given on the Salvage Appraisal Report, plus the required Performance Bond. See [Chapter 10](#) for preparation of the Real Property Voucher(s).
- C. See [Chapter 11](#) for more complete information and instructions.

**Note:** If the improvement acquired is a mobile home, whether it is determined to be real property or personal property, then follow procedures set forth in [Chapter 11](#).

## 6-22 Acquisition Transmittal

After acquiring or clearing all interests in a parcel, the PAS prepares the data package for transmittal.

**Note:** All interests in each respective parcel must be acquired, cleared, or noted for future clearance (see [Chapter 8](#)). If any one interest cannot be acquired, cleared or noted for future clearance, the PAS refers the parcel for condemnation using the procedures of [Sections 6-24](#) or [6-25](#).

### 6-22.1 Special Handling

#### 6-22.1.1 General

- A. "Hardship" acquisitions are automatically given priority handling both in region and in Headquarters.
- B. All other cases receive normal routing unless an approved "Memo: Special Handling" ([RES-354](#)) is attached to the face of the Right of Way Parcel Transmittal.

### 6-22.1.2 Rules

Transactions are given “special handling” only in emergencies such as, a threat of irreparable damage to the grantor in terms of monetary loss or burden, extreme hardship, an urgent public relations problem where the state is correcting its own error, tax payment, or an ad date in jeopardy.

### 6-22.1.3 Procedures

#### 6-22.1.3.1 “Hardship” Acquisition

All “hardship” acquisitions have already been authorized for special handling. Therefore, the PAS stamps or writes in large red letters “Hardship” on the face of the Right of Way Parcel Transmittal to assure that the transmittal will receive “special handling.”

#### 6-22.1.3.2 Memo: Special Handling

- A. In compliance with this section, the PAS prepares a memo requesting that the transaction be given special handling
- B. The Region RESM reviews the memo, and if approved, signs the memo in the space provided.
- C. The PAS attaches the “Memo: Special Handling” to the face of the Right of Way Parcel Transmittal.

## 6-23 Right of Way Parcel Transmittal

Having successfully negotiated a transaction, the PAS prepares the Right of Way Parcel Transmittal ([RES-353](#)), as follows:

### A. Identification and Headings

1. Enters right of way project number, state route, right of way plan title, federal aid number, control section number, and right of way number.
2. **Grantors** – Inserts the grantor’s name.
3. **Inventory Control Number** – If available inserts the number in the transmittal.
4. **Contract Ad Date (if scheduled)** – Insert the currently scheduled ad date for the first construction project that will require the availability of this property or property right.
5. **Map Sheet** – Inserts appropriate map sheet number (e.g., 13 of 47).
6. **From** – Inserts closing right of way agent’s name.
7. **Preacquisition, Negotiated Possession and Use, Final Settlement, or Post Acquisition Transmittals** – Places an “X” or shades in the appropriate box and inserts the date in the blank provided.

## B. Transaction Data

1. **Real Property Voucher(s)** – Inserts the amounts of each voucher.
2. **Instruments** – In the space provided, indicates the types of executed instruments attached (e.g., warranty deed, partial reconveyance, exchange agreement).
3. **Encumbrance Report** – Shows the method of clearance of every encumbrance on the title report and on all supplemental reports (see [Chapter 8](#)).
4. **Mailing Addresses** – Lists the correct names and mailing addresses for all parties signing the voucher(s).
5. **Parcel Number** – Inserts WSDOT parcel number.

## C. PAS's Summary

1. **Settlement** – Places an “X” in the appropriate box to indicate whether the acquisition was “total” or “partial.” Inserts the amount of the settlement before adjustments for salvage, performance bond, statutory evaluation allowance, etc. Inserts in the blanks provided: the right of way area, date of deed, amounts and dates of all offers. Gives any required explanations in Section C, “Remarks.”
2. **Occupancy** – Places an “X” in the appropriate box to indicate whether the property being acquired by WSDOT was “occupied” or “unoccupied” on the date of the Initial Offer Letter.  
  
*Note:* Property is “occupied” if persons are in residence, if it is being used as a part of a business or farm operation, or if it is being used for storage of personalty.
3. **Remarks** – Enters any pertinent explanations, information, etc., including, if appropriate, the fact that the parcel had been previously turned in for condemnation.

### 6-23.1 Right of Way Parcel Package

In addition to the Right of Way Parcel Transmittal, the remainder of the package is made up of the following attachments (as appropriate) in the order listed:

- A. Acquisition and Title Contents Form\*.
- B. Fully executed document(s).
- C. Proof of payment.
- D. TRAINS Property Voucher(s).
- E. Executed Real Property Voucher(s).

- F. Do not include executed substitute Form W-9. **Note:** Once submitted to accounting, no copies should remain in file.
- G. Do not include completed Statewide Vendor Registration and Payment Options form (SWV). **Note:** Once submitted to accounting, no copies should remain in file.
- H.. Administrative Settlement – Attaches letter justifying any administrative settlement or makes appropriate diary entry.
- I. Diary of Right of Way Activities ([RES-301](#)) – Assures that the diary is complete and that the certificate is signed and dated.
- J. Escrow Agreement ([RES-337](#)) – Completely filled out and signed.
- K. Escrow Statements (HUD)\*.
- L. Offer Letter and Revisions – Assures that the delivery data is completed on all.
- M. Title Policy – Reviewed and approved by Region\*.
- N. Closing Order (do not use for escrow)\*.
- O. Excise Tax Affidavit(s)\*.
- P. Title Report – Assures that the title report and all supplemental reports are included, together with copies of all exception and vesting documents, and are not older than six months.
- Q. Entity documentation include necessary resolutions, corporate papers, partnership agreements, trust agreements, LLC operating agreements, etc.
- R. Request to Accept Encumbrance form ([RES-333](#)).
- S. Letter: Instrument Guarantee – Includes, if applicable, a letter from an interested party guaranteeing that a required instrument will be executed upon receipt of funds (usually partial satisfaction of mortgage or partial reconveyance).
- T. Letter: Taxes – Includes, if applicable: (1) a letter from the mortgagee guaranteeing that the real estate taxes will be paid out of the reserves, or (2) a letter signed by the grantors and approved by the county assessor requesting that the real estate tax lien be set over to the remainder of the property.
- U. Memo: Construction Item – Include a copy of memo (Construction IOC) signed by the Regional Administrator or designee and the property owner authorizing a special construction item.
- V. Memo: Special Handling – Attaches the memo to the face of the acquisition transmittal form.
- W. Affidavits/Comments – Includes any necessary affidavits or documents.

- X. Miscellaneous Correspondence – Includes correspondence relating to the transaction. Assures that all correspondence from the grantor is included. Includes bills/receipts for statutory evaluation allowance, etc. Correspondence should be in reverse chronological order.
- Y. Copy of Displacee Lease.
- Z. Copy of the Relocation Eligibility Report ([RES-524](#)) and the appropriate Relocation Eligibility forms per [Chapter 12](#).
- AA. Exchange Agreement ([RES-322](#))
- BB. Salvage Appraisal Report ([DOT Form 263-003](#)) – Accounts for salvage values, if applicable.
- CC. Fixtures and Improvements Agreement ([RES-335](#)) – Itemizes all fixtures and improvements acquired, if applicable.
- DD. Determination of Value ([RES-214](#)).
- EE. Appraisal(s).
- FF. Administrative Offer Summary ([RES-216](#)).
- GG. Copy of Right of Way Plan Sheet(s).

*Note: All items notated with an \* are included after processing and payment.*

### **6-23.2 Region Processing**

Region processing includes the following functions: title, property management, relocation assistance, appraisal, and accounting. The transmitting PAS should not be responsible for any part of the region review of the transmittal, but makes certain all appropriate entries are made in computer.

The Region RESM or designee makes a detailed review of the entire data package, to assure that WSDOT will acquire an insurable title in the interest required. The primary focus of this review includes the following:

- A. **Instruments** – Verification that all instruments needed to convey and/or clear title either have been executed or are provided for by the escrow instructions. The emphasis shall be on identification of correct parties, signatures, notaries, and legal descriptions.
- B. **Clearance of Title** – The emphasis shall be on compliance with the requirements set forth in [Chapter 8](#) and documentation of risk analysis by the Region RESM.
- C. **Administrative Settlements** – The emphasis shall be on compliance with the current WSDOT policy, documentation, and justification.
- D. **Vouchers** – Reviews all real property vouchers to assure that they have been prepared and executed in accordance with [Chapter 10](#).

- E. All necessary property management forms have been completed, i.e., Fixtures and Improvement Agreement and Displacee Lease (if applicable), as noted in [Chapter 11](#).
- F. All relocation requirements per [Chapter 12](#) have been met.
- G. Upon completion of review, the Region RESM:
  - 1. Signs and dates the conveyance instruments for acceptance and approval by WSDOT.
  - 2. Signs and dates the appropriate vouchers as approving authority.

*Note:* The authority to execute documents for the various transactions required for acquisition of Real Property has been delegated by [Secretary's Executive Order E 1012.01](#), *Delegation of Authority to Approve Certain Department Documents*, memorandum dated August 20, 2008, and as further subdelegated.

- 3. Transmits construction memo(s) to the appropriate project engineer.
- 4. In non-escrow cases:
  - a. Transmits closing orders and instruments to title insurance company (that prepared the title report) for recording.
  - b. Order funds by one of the following methods:
    - (i) **Electronic Fund Transfers (EFT)** – New option for vendors. If EFT is selected, all banking information must be filled out. This option could take up to ten or more days for first time payments after W-9, SWV form, and Voucher is submitted for payment processing. Subsequent payments will be processed in the normal three to four day timeframe. According to accounting, this is the most cost effective method of providing payment. **Acquisition documents must be recorded prior to requesting payment.**
    - (ii) **Inserted Warrants From AFRS** – Payment is processed and mailed directly to the vendor from OFM. The warrant does not come back to WSDOT. This payment option provides warrants three to four days from the date of processing. **Acquisition documents must be recorded prior to requesting payment.**
    - (iii) **Standard Warrant Return** – This option may take a few days longer as the warrants will be returned to WSDOT and not directly processed and mailed from AFRS to the vendor. RES payments are typically sent to property owners/vendors by certified mailed, hand delivered, or mailed with back up documentation/instructions to vendors.

- c. If methods b(i) or b(ii) are used, then upon receipt of notice of recording from the title insurance company a payment letter may be sent to the appropriate parties using [RES-360](#) for b(i) or [RES-361](#) for b(ii).
  - d. If method b(iii) is used, then upon receipt of notice of recording from the title insurance company prepares and sends payment letter using [RES-362](#) and warrant by certified mail to the appropriate parties.
  - e. Enters appropriate dates and recording numbers into computer database.
5. In escrow cases:
- a. Order funds by one of the following methods:
    - (i) **Electronic Fund Transfers (EFT)** – New option for vendors. If EFT is selected, all banking information must be filled out. This option could take up to ten or more days for first time payments after W-9, SWV form, and Voucher is submitted for payment processing. Subsequent payments will be processed in the normal three to four day timeframe. According to accounting this is the most cost effective method of providing payment.
    - (ii) **Inserted Warrants From AFRS** – Payment is processed and mailed directly to the vendor from OFM. The warrant does not come back to WSDOT. This payment option provides warrants three to four days from the date of processing.
    - (iii) **Standard Warrant Return** – This option may take a few days longer as the warrants will be returned to WSDOT and not directly processed and mailed from AFRS to the vendor.
  - b. If methods a(i) or a(ii) is selected, then immediately upon ordering funds transmits to the escrow company the following:
    - (i) Appropriate cover letter ([RES-357](#) or [RES-358](#)).
    - (ii) Escrow agreement ([RES-337](#)).
    - (iii) Documents.
    - (iv) Excise tax affidavit.
  - c. Upon receipt of warrant(s), mails by certified mail, or hand delivers obtaining written proof of delivery, the following to the escrow company:
    - (i) Cover letter ([RES-359](#)).
    - (ii) Warrant.
    - (iii) Escrow agreement Form ([RES-337](#)).

- (iv) Documents.
  - (v) Excise tax affidavit.
  - d. Executes all necessary closing statements (HUD forms, etc.) with the escrow company and authorizes recording of the transaction.
  - e. After recording, notifies property management section of recording numbers and date funds disbursed.
  - f. Enters appropriate dates and recording numbers into computer database.
6. Upon verification of recording and payment, completes the Acquisition and Title File Contents form (RES-347) and transmits the completed original acquisition file (and title policy if received) in the order specified in Section 6-23.1 to the Acquisition and Title Section Manager in Headquarters for compliance review and records retention.
7. Upon receipt of title insurance policy, the policy is reviewed to make sure that it complies with the closing order or escrow instructions.
- a. If approved, the title policy is sent to the Acquisition and Title Section Manager to be added to the original acquisition file.
  - b. If not approved, coordinates with the title company for corrections. When corrected policy is received, forwards to the Acquisition and Title Section Manager to be added to the original acquisition file.

### **6-23.3 Headquarters Processing**

- A. All acquisition files when received are date-stamped and then submitted to the Acquisition and Title Section Manager or designee who:
- 1. Assures that compliance is completed on a minimum of 25 percent of a project's acquisition files. This is a minimum and a greater percentage is at the discretion of Headquarters. All early acquisitions, protective buying acquisitions, hardship acquisitions, corridor preservation acquisitions as defined in Section 6-3 shall be reviewed for compliance.
    - a. The primary area of focus will be on conveyance documents. The emphasis will be on identification of correct parties, signatures, notaries, and legal descriptions.
    - b. The second area of focus will be on clearance of title and documentation of risk. The emphasis will be on compliance with Chapter 8 and documentation of risk analysis.
    - c. The third area of focus will be on administrative settlement justification. The emphasis will be on compliance with current WSDOT policy, documentation, and justification.

2. Posts all acquisition documents on the appropriate official Real Estate Services ownership maps.
  - a. If an instrument does not agree with the approved plan, the Headquarters Acquisition and Title Reviewer notifies the Region RESM that the instrument the instrument should be corrected to agree with the current approved plan.
  - b. If the parcel had been previously submitted for condemnation action, prepares and delivers to the AG's Office, Memo: Stop Condemnation Request ([RES-319](#)).

## 6-24 Condemnation, State

### 6-24.1 General

When title to private property, or property rights, needed for transportation purposes cannot be acquired by negotiation, the state exercises its power of eminent domain and acquires or clears the interests of all private parties by condemnation action.

The probable necessity to condemn is determined by the Region RESM when efforts to obtain a settlement with the owner have not been successful or title cannot be conveyed to the state.

The Region RESM discusses the potential necessity to condemn with the AG's office.

### 6-24.2 Rules

A Notice of Final Action must be mailed to the taxpayer's address and a meeting held per [RCW 8.25.290](#).

A Negotiator's Report ([RES-320](#)) containing proof of the final action meeting is submitted to the Acquisition and Title Section Manager.

After the final action is held, all offers are considered withdrawn and the acquisition is referred to the Attorney General's Office. The Attorney General then assumes full responsibility for all aspects of the acquisition, except that settlements negotiated by the Assistant Attorney General must be coordinated with and approved by the appropriate regional level of authority for administrative settlements.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees that the owner actually incurred because of a condemnation proceeding, if:

- A. The final judgment of the court is that WSDOT cannot acquire the real property by condemnation; or
- B. The condemnation proceeding is abandoned by WSDOT other than under an agreed-upon settlement; or
- C. The court having jurisdiction renders a judgment in favor of the owner at least 10 percent higher than the state's 30-day offer.

### 6-24.2.1 In-State Owners

- A. No parcel may be considered for condemnation until the PAS has met with the owner or owner's designee and discussed WSDOT's offer at least three times (including the meeting during which the Initial Offer Letter is presented).

*Note:* Telephone calls to set up an appointment do not count as a meeting unless the owner refuses to grant an appointment and instructs the PAS to submit the parcel for condemnation.

- B. If it is impossible to make WSDOT's offer in person because the owner refuses to grant any appointments, the PAS proceeds in the same manner as dealing with an alternate method by mail, except that a paragraph is added to the offer letter requesting an appointment and a chance to explain the state's offer in detail.

### 6-24.2.2 Out-of-State Owners

If it becomes necessary to condemn a parcel that belongs to an out-of-state owner, the PAS meets the requirements of [RCW 8.25.290](#).

### 6-24.2.3 Exceptions

The PAS may deviate from the rules in [Section 6-24](#) under the following circumstances:

- A. The owner (owner's attorney) rejects the state's offer and instructs the PAS to submit the parcel for condemnation.
- B. The owner is abusive and/or orders the PAS to "get out."
- C. The final notice requirements shall be followed per [RCW 8.25.290](#).

### 6-24.2.4 Precondemnation Agreements

- A. Possession and Use Agreement. If, at the conclusion of negotiations, the only remaining issue is the amount of the just compensation, when so instructed by the Region RESM, the PAS attempts to obtain a Negotiated Possession and Use Agreement ([RES-317](#)) from the owners.
- B. Compensation Agreement for Condemnation ([RES-318](#)). This instrument is for use in those circumstances where the property owner is in agreement with the state's offer of compensation, but is faced with title complications which make it impossible to convey good title, or for the PAS to perfect the title through clearance of encumbrances. If the agreement is executed by the person or persons who appear to have the paramount claim to the property, the state will be safe in entering upon the property under the terms of the right of immediate entry contained in the agreement, even prior to the actual clearing of the title encumbrances or the entry of the judgment and decree.
- C. Compensation Agreement for Condemnation shall be secured by the PAS only at the request of the Region RESM who shall make his decision (1) upon the same criteria as to time set forth in 6-24.2.4.A and (2) consultation with the Acquisition and Title Section Manager.

- D. If either of the above forms is sought and executed, it will be forwarded to Headquarters as a separate transmittal. The Negotiator's Report will be a separate transmittal which is to include a copy of the Possession and Use Agreement or Compensation Agreement and voucher(s) for the information of the Assistant Attorney General assigned to the case.

### **6-24.3 Procedures**

#### **6-24.3.1 Region Processing**

- A. If it becomes necessary to submit a parcel for condemnation and after the requirements of the final action notice are met, the PAS:
1. When so instructed by the Region RESM, determines whether the owners will sign a Possession and Use Agreement or a Compensation Agreement for Condemnation as appropriate to the case.
    - a. If so, prepares and obtains execution of the appropriate agreement, a Real Property Voucher, if appropriate, and all other documents normal to the acquisition.
    - b. If not, notes the refusal to sign the agreement in the Diary of Right of Way Activities – Acquisition.
  2. Completes the Negotiator's Report according to the instructions thereon.
    - a. If operating under the critical project deviation procedure and if the owner does not accept the state's offer at the meeting at which the Initial Offer Letter is presented:
      - (1) Avoids taking any coercive action by simultaneously:
        - (a) Continuing the negotiations to meet the minimum requirements without notifying the owner of the critical project deviation procedure.
        - (b) Preparing and submitting the Negotiator's Report, but reserving additional negotiating time by inserting in the remarks section of the report: "Under the critical project deviation procedure, negotiations will continue until \_\_\_\_\_."
      - (2) If the subsequent negotiations are successful, submits a supplemental Right of Way Acquisition Transmittal as specified in [Section 6-8](#).
      - (3) If the subsequent negotiations are unsuccessful, submits a supplemental Condemnation Report at the end of the additional time.
    - b. If the parcel is "Registered Land" (see [Section 6-5](#)), notes that fact in the remarks section of the report.

3. Assembles the data package required for the condemnation transmittal. This data package includes at least the following in the order listed:

Three copies (original plus two copies):

- a. Negotiator's Report.
- b. Diary of Right of Way Activities.
- c. Approved DVs or AOSs and all updates.

Two copies (original plus one copy):

- a. Title report and supplementals including instruments shown in title report under special exceptions. Title report must be updated to within 30 days of transmittal to Headquarters. Detailed information as to the clearance of encumbrances, easements (including private and utility), restrictions, maintenance obligations, etc. and parties to be named in the condemnation action must be contained in the Negotiator's Report. The detailed information must include the current beneficial interest and easement holders and their addresses.
- b. Correspondence (offer letter, letters, emails, memorandums). In reverse chronological order (most recent on top).

One copy:

- a. Right of way plan sheets (full or half size) showing area or interest to be acquired.
- b. Proposed Real Property Voucher.
- c. Copy of latest appraisal with pictures (color, if available).

Please email one copy of the proposed deed, easement, etc., to the Headquarters Acquisition and Title Reviewer assigned to the region.

4. Submits the Negotiator's Report and its accompanying data package as listed above to the Region RESM.

**B. The Region RESM:**

1. Contacts the owner (or owner's attorney) and attempts to negotiate a settlement. Takes care to avoid any charge of coercion.
  - a. Completes a Diary of Right of Way Activities – Acquisition indicating the results of this contact.
  - b. If a settlement is arranged, converts the data package to an Acquisition Transmittal.
  - c. If it is not possible to arrange a settlement, adds the diary (above) to the condemnation data package, and notes the addition in the "remarks" section of the Condemnation Report.

2. Coordinates with the Regional Administrator to determine the exact procedures and routing for the region review of the Condemnation Report and its accompanying data package. As a minimum, the region processing includes: title, appraisal, and computer system. The PAS should not be responsible for any part of the region review.
3. Every file that is submitted for processing to condemnation must include evidence that a conversation involving the Regional Administrator (or the project development engineer), the Region RESM, and AG's Office took place.
  - a. Evidence of this conversation must be in the file when it is submitted. A short diary entry or copy of an email message indicating who was involved in the conversation and what was decided will provide the minimum information needed. Details on what was discussed would be very helpful to document the conversation for anyone looking at the file in future years. This entry will also provide the Assistant AG who is assigned to the case with information he or she might otherwise not have.
  - b. Evidence of the final action procedures per [RCW 8.25.290](#) must also be submitted.

### **6-24.3.2 Final Region Review**

Upon completion of all other steps in the region review process, the condemnation data package is reviewed by the Region RESM. Upon concurrence, the Region RESM signs and dates in the region action block of the Negotiator's Report, and transmits the data package to Headquarters.

### **6-24.4 Headquarters Processing**

- A. The Acquisition and Title Section Manager, or designee:
  1. Inputs appropriate data into the computer tracking system.
  2. Transmits the condemnation data package to the appropriate HQ Acquisition and Title Reviewer.
- B. The HQ Acquisition and Title Reviewer reviews the Negotiator's Report and its accompanying data package to determine whether adequate efforts to obtain a settlement were made.
  1. If not, discusses the package with the Acquisition and Title Section Manager prior to returning the package to the region for further negotiation.
  2. If appropriate, proceeds with review of the Negotiator's Report transmittal package.

3. If the transmittal is a “hardship” or “protective buying” condemnation, weighs all factors (e.g., nature of the hardship, state’s construction schedule) and recommends to the Headquarters RESM whether to proceed to immediate condemnation or to let the case await the normal acquisition schedule.

C. HQ Acquisition and Title Reviewer:

1. Reviews each transmittal that has been approved for condemnation processing to assure that all departmental and federal negotiation requirements have been met.
2. Prepares exhibit maps by color coding five copies of the approved right of way plan to show the total before ownership and the interest (e.g., fee, easement) to be acquired. All copies are certified for use as court exhibits by the Acquisition and Title Section Manager.
3. Checks the legal description given in the title report for the “before” ownership against the right of way plan to ensure conformance.
4. Verifies the legal description of the interest to be acquired.
5. Prepares a list of all parties in interest (including: names, addresses, and instructions as to where the parties may be located for legal service). The prime source of this information is the Negotiator’s Report; however, other sources (e.g., the PAS, title report, data from adjacent parcels) are used as required.
6. Coordinates with the Assistant AG as needed to determine recommendations on the makeup of blanket condemnations.
7. Groups the parcels for filing of one or more blanket condemnation actions.
8. Prepares a data package for each parcel being condemned including:
  - a. Exhibit maps.
  - b. Title reports.
  - c. Legal description(s).
  - d. List of parties in interest as defined in 6-24.4.C.5.
  - e. Appraisal reports.
  - f. Determination(s) of value.
  - g. The remainder of the negotiating agent’s data package forwarded with the Negotiator’s Report.
  - h. A cover letter to the AGO requesting that the required interests be acquired by legal action. A single cover letter is used to forward all parcels grouped into a blanket condemnation.

9. Makes the following distribution of the data packages:
  - a. Attorney General, Transportation Division.
  - b. Regional Administrator.
  - c. Headquarters parcel file.
10. Examines all right of way plan revisions and supplemental title reports to determine their effects, if any, on any pending condemnation case. As a result, supplies the Attorney General, Transportation Division, with corrected descriptions, maps, lists of interested parties, etc.
11. Upon receipt of the Memo: Stop Condemnation Request ([RES-319](#)) and upon confirming that an appropriate settlement has been obtained, sends a letter to the Attorney General, Transportation Division, requesting that the parcel be deleted from the condemnation action.

### **6-24.5 Attorney General's Processing**

The AAG who is assigned to act as the trial attorney:

- A. Prepares pleadings.
- B. Files the action in the superior court for the county in which the property is located, and secures a hearing date for obtaining the Order Adjudicating Public Use (OAPU).
- C. Files the Lis Pendens with the county auditor for said county.
- D. Obtains the OAPU and secures a trial date.
- E. In preparing the case, may obtain the services of additional or alternate expert witnesses and/or specialists by contracting for the needed services.
- F. Holds a pretrial conference.
- G. May continue action to effect settlement from date of assignment to case.
  1. If, during the preparation of the case for trial, whether before or after filing, the trial attorney and the attorneys for the condemnee reach a basis for settlement which is greater than the reviewing appraiser's DV, the trial attorney coordinates with the Chief Counsel, Transportation Division, and the Region RESM for the required approvals.
  2. If the basis for settlement is reached during the trial of the case, the trial attorney may secure the necessary approval by telephone during a recess by obtaining the approval of the Regional Administrator or designee.
  3. In either case (1 or 2 above) the trial attorney may obtain possession and use under appropriate circumstances. If possession and use by WSDOT is desired and can be had by offers of payment into court, the trial attorney must obtain the same approvals indicated in 6-24.5.G.1 and 2 if the amount to be paid exceeds the Review Appraiser's Determination of Value.

4. Having reached an approved basis of settlement in any case (6-24.5.G. 1, 2, or 3) the trial attorney enters into an appropriate stipulation with opposing counsel for presentation to the court.
- H. Depending upon the form of approved settlement, if any, which is secured pursuant to G above, takes action as follows:
1. Acquires the required interest by a Stipulated Judgment and Decree of Appropriation and complies with paragraph 6-24.5.L.
  2. If the condemnee wishes to settle by deed rather than judgment, sends a memo to the appropriate Region RESM requesting the region conclude a settlement by deed and voucher. Such memo should include an explanation of the amount above the DV and who approved same.
  3. Sends to the Headquarters RESM conformed copies of the Stipulated Order of Immediate Possession and Use, copies of the Certificate of Immediate Possession in Condemnation (Trial Attorney's Certificate) and the AG Memo: Transmittal – P&U and Request for Warrant. If the stipulated amount varies from the DV, submits a signed memo explaining the circumstances.
- I. If no agreement can be reached, proceeds with trial of the case and acquires the required interest by either a court or jury Judgment and Decree of Appropriation (J&D).
- J. If an adverse verdict is received, submits recommendations for appeal to the Chief Counsel, Transportation Division, then pursues the appeal, if so directed.
- K. If WSDOT does not appeal, causes the J&D to be entered.
- L. Sends to the Headquarters RESM two conformed copies of the J&D, and two copies of the Trial Attorney's Certificate, the Trial Attorney's closing report, and the AG Memo: Transmittal – J&D and Request for Warrant. If the J&D was reached by stipulation pursuant to Paragraph H-1 above, the closing report includes a statement of the circumstances regarding the amount in excess of the Determination of Value and the fact of approval and by whom approved.
- M. If in any of the cases stated above, attorney's fees are payable in addition to the settlement, the AAG will initiate a voucher and warrant request to cover same and forward the voucher, warrant request and any necessary affidavits to the appropriate HQ Acquisition and Title Reviewer.

## 6-24.6 Closing

- A. The Acquisition and Title Section Manager or appropriate HQ Acquisition and Title Reviewer:
1. Assures that:
    - a. All interested parties have been named, appeared, and/or defaulted.
    - b. The proper legal description was used.
    - c. All necessary documents were received.
    - d. All pertinent data is entered into computer.
  2. Prepares and signs a Real Property Voucher made payable to the Clerk of the appropriate court in the amount of the Trial Attorney's Certificate.
  3. Transmits the Real Property Voucher to the Headquarters accounting office.
  4. Distributes copies of the Stipulated P&U or the J&D, and the closing report to the Region RESM
  5. Prepares the Condemnation Cover Sheet

## 6-25 Condemnation, Federal

### 6-25.1 Rules

- A. Condemnation proceedings in federal court system are used:
1. Only on interstate and defense access highway projects.
  2. Only when the property owner has refused the state's request for immediate possession and use.
  3. Only when the Attorney General, Transportation Division, advises the Region RESM that the superior court calendar for the appropriate county precludes acquisition of the required right of way in time to meet the construction ad date.
- B. All of the rules and procedures of [Sections 6-24.2](#) (except for 6-24.2.4), [6-24.3.1](#), and [6-24.4](#) are followed.

### 6-25.2 Procedures

#### 6-25.2.1 Region Procedures

The Region RESM:

- A. Prepares a letter for the signature of the Regional Administrator explaining the situation and requesting the Secretary of Transportation's authorization to proceed to federal court.

- B. Prepares and transmits the Negotiator's Report according to the instructions thereon.
- C. Coordinates with the U.S. Region Attorney on all matters concerning the proceeding.

### **6-25.2.2 Headquarters Procedures**

The Acquisition and Title Section Manager:

- A. Coordinates with the project engineer to obtain accurate exhibit maps as required for the federal court. The federal court requirements include:
  - 1. Color-coded right of way plan sheet(s) for each parcel.
  - 2. Legend on each sheet (as to meaning of symbols employed).
  - 3. Parcel number within the right of way boundaries.
  - 4. A known monument shown on each sheet.
  - 5. Metes and bounds delineation of the part taken expressed completely on the face of the plan.
  - 6. Vicinity map on each sheet showing entire ownership.
  - 7. Distances expressed in hundredths of a foot.
  - 8. Areas expressed in thousands of an acre.
  - 9. Deputy Secretary's signature and seal.
- B. Prepares a legal description of the acquisition that agrees with the delineation on the exhibit map.
- C. Coordinates with FHWA to obtain their preliminary approval of the state's:
  - 1. Exhibit maps.
  - 2. Legal description.
  - 3. Appraisals.
- D. Submits legal description and orders federal form title insurance reports from the title insurance company—the amount of the insurance being the amount of the FHWA-approved preliminary appraisal.
- E. Coordinates with Photogrammetry to obtain aerial photographs of the area involved as close to the date of the Declaration of Taking as the weather permits.
- F. Coordinates with the U.S. Region Attorney as needed to obtain additional appraisals, plans etc.
- G. Prepares, coordinates and submits through channels a data package containing:

1. A letter to the U.S. Department of Transportation signed by the Secretary of Transportation including:
  - a. The justification for the federal acquisition of the lands or interests in lands.
  - b. The date FHWA authorized WSDOT to commence right of way acquisition, the date the project was advanced to Stage 2 program status, the date of the project agreement and a statement that the agreement contains the provisions required by Sections 108(a), 108(b), and 111 of Title 23, U.S.C.
  - c. The necessity for acquisition of the particular lands under request.
  - d. A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access.
  - e. WSDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition.
  - f. A statement on compliance with the provisions of 23 CFR Part 771 relating to environmental concerns.
  - g. Adequate legal descriptions, plats, appraisals, and title data.
  - h. An outline of the negotiations which have been conducted by the agency with landowners.
  - i. An agreement that WSDOT will pay its pro rata share of costs.
  - j. A statement that assures compliance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and amendments thereto.
2. A letter to FHWA Division Administrator signed by the Headquarters RESM transmitting the following:
  - a. Transmittal letter to the Federal Director.
  - b. Title page, for each blanket or single case.
  - c. The following items for each parcel:
    - (1) Negotiator's reports.
    - (2) Diary of Right of Way Activities.
    - (3) Exhibit maps (ten copies).
    - (4) Legal description (ten copies).
    - (5) Appraisal reports and DV's (five copies).

- (6) Federal form title certificates (five copies).
  - (7) Schedule “A” showing:
    - (a) Parcel number.
    - (b) Owners.
    - (c) Owner’s addresses.
    - (d) Estimated just compensation.
    - (e) Legal description.
  - (8) Scheduled ad date.
  - (9) Statement of the state’s inability to acquire in state court in time for contract advertising.
  - (10) Statement of access control.
- H. Checks and accepts the deed(s) from the USA to the state.

## 6-26 Damage Claims

### 6-26.1 Initial Action

- A. Upon receipt of a claim for damages from a property owner, the Region RESM starts a Diary of Right of Way Activities ([RES-301](#)), and investigates the basis for the claim.

**Note:** A damage claim may be initiated by an oral communication and preliminary investigation made on the basis of that communication. An alleged damage must be claimed in writing, however, before it can receive any official status. No format is prescribed.

**Note:** Investigators are to obtain the facts, but are not to make any comments on cause or liability to the claimants.

**Note:** If a construction project is ongoing in the area of the claim, the Region RESM and the Project Manager should investigate the possibility of having the problem corrected by the contractor.

If the claim is based on taking or damaging of private property or property rights for which the owner has not been paid and rights will need to be acquired, the claim is a right of way responsibility; however, if the claim appears to be based on tort liability (i.e., contractor carelessness), the claim is forwarded to the department’s Risk Management Office. If it is unclear who should have responsibility for the claim, the package should be forwarded to Risk Management for their input. If the claim is determined to be the responsibility of Risk Management, they will take over the processing of the claim and Real Estate Services will only be involved if requested by Risk Management to help with claim resolution. It is possible that some claims have elements that cross boundaries and responsibility may be shared.

**Note:** In general, Tort Claims have a three-year Statute of Limitations and Inverse Actions have a ten-year Statute of Limitations.

- B. If the claim is determined to be a damage (the responsibility of RES), then the Region RESM submits a report to the Headquarters RESM including:
  - 1. The original written claim.
  - 2. A copy of the Diary of Right of Way Activities stating the facts and conclusions developed as a result of the investigation of the case.
  - 3. An estimate of the direct costs to WSDOT if WSDOT is found liable for settlement.
  - 4. All related correspondence.
  - 5. Maps and/or information identifying the geographic location.
  - 6. Damage Claim Evaluation ([DOT Form 220-025](#)) signed by Region RESM.
- C. The Headquarters RESM opens a new Diary of Right of Way Activities by an entry showing receipt of the damage claim, maintains the file, and coordinates all further activities.
- D. If there is any doubt about department liability, the Headquarters RESM refers the case to the Attorney General Division for an opinion.
- E. Upon receipt of the opinion of the Attorney General, the Headquarters RESM forwards same to the Regional Administrator with the directions to proceed.

### **6-26.2 Procedures – State Liabilities**

- A. The Regional Administrator's staff prepares and submits the following data to document the Work Order Authorization ([DOT Form 120-020](#)) as specified in [Chapter 1](#).
  - 1. An estimate of all necessary costs including:
    - a. Title report (if needed).
    - b. Salaries (appraisers, reviewers, title examiners, PAS, relocation specialists, property management specialists administration).
    - c. Travel and per diem.
    - d. Appraisal fees.
    - e. Specialist fees.
    - f. Cash settlement.
    - g. Relocation assistance entitlements.
    - h. Property management expenses.
    - i. Costs (other than cash settlement) of state force or state contract activity to resolve damage.

2. A copy of the Diary of Right of Way Activities stating the facts and conclusions developed as a result of the investigation of the case.
3. A statement as to what costs are chargeable to construction.

*Note:* If the damage or taking was the result of construction (e.g., owner's basement cracked by vibration or blasting) the claim is chargeable to construction. If the damage was due to a taking of additional property, the claim is chargeable to "right of way acquisition."

- B. Upon receipt of the Work Order Accounting Plan, the Regional Administrator expedites the settlement transaction by using the normal right of way acquisition procedures including appraisal and Determination of Value addressed to the dollar amount of the damages. Instruments and vouchers are drawn and executed as appropriate to the settlement.
- C. When the transmittal is received in Headquarters, the Headquarters RESM submits the settlement transaction to the Attorney General (AG) (Transportation Division) for certification and approval of the voucher. Upon approval, the AG stamps the voucher and signs it. The text of the AG's stamp is as follows:

*This voucher is in payment for private property taken or damaged for public use without just compensation having been first made to the owner in violation of Article 1, Section 16, of the constitution of the State of Washington.*

*Approved for Payment*

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*Assistant Attorney General*

This step is required when the release of damages is being obtained due to an unconstitutional entry and use of private property without prior negotiation and agreement with the property owner.

- D. If WSDOT's settlement offer is rejected by the claimant, condemnation reports are informational and are submitted in the normal manner, but these reports are not acted upon directly by the Attorney General (Transportation Division). Instead, the PAS informs the claimant that to obtain a settlement it will be necessary for the claimant to file legal action (i.e., inverse condemnation) against WSDOT.

### **6-26.3 Procedures – State Not Liable**

When the Attorney General (Transportation Division) determines that WSDOT is not liable, the Regional Administrator informs the claimant by letter, and sends a copy of the letter to the Headquarters RESM. The Regional Administrator calls upon the Headquarters RESM and the Attorney General (Transportation Division) as needed in preparing the letter. The letter may be hand-delivered by the PAS thus permitting a personal explanation.