Washington State
Department of Transportation

# Right of Way Manual

M 26-01.14

December 2014

**Project Development Division**

Real Estate Services

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# Foreword

This manual provides guidance on statewide policies and standards for real estate transactions to both internal and external customers.

The Washington State Department of Transportation (WSDOT) follows the federal regulations found in the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended, and is guided by Chapters 8.04, 8.25, 8.26, and 47.12 RCW which are the state laws that control the appraisal, acquisition, condemnation, relocation, and property management processes. The intent of these laws is to assure fair and equitable treatment of displaced persons, to encourage and expedite acquisitions by negotiations, and provide direction on properly managing properties once acquired by the department.

Chapters 468-30 and 468-100 WAC contain the administrative regulations pertaining to the appraisal, acquisition, condemnation, relocation, and property management processes. WSDOT publicizes the regulations to assure implementation of state and federal laws.

Updating the *Right of Way Manual* M 26-01 is an ongoing process and revisions are issued on an annual basis. This is an ***electronic only*** manual and no printed copies will be provided. The manual can be accessed through the Publications Services Web page at www.wsdot.wa.gov/publications/manuals/index.htm or the Real Estate Services Web page at www.wsdot.wa.gov/realestate/.

Comments, questions, and improvement ideas are welcome and should be submitted via email to Dianna Nausley, Headquarters Real Estate Services, at nausled@wsdot.wa.gov.

/s/

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## 1-1 Acronyms

| | |
|---|---|
| AG | Attorney General |
| AGO | Attorney General's Office |
| FHWA | Federal Highways Administration |
| HQ | Headquarters |
| PAS | Property and Acquisition Specialist |
| RCW | Revised Code of Washington |
| RES | Real Estate Services |
| RESM | Region Real Estate Services Manager |
| RESPA | Real Estate Services Program Administrator |
| WFSE | Washington State Federation of State Employees |
| WMS | Washington Management Service |
| WSDOT | Washington State Department of Transportation |

## 1-2 Personal Conduct

### *1-2.1 Code of Ethics*

Real Estate Services (RES) staff shall at all times conduct themselves in an ethical manner (Chapter 42.52 RCW *Ethics in public service*).

### *1-2.2 Political Activity*

The political activities of state employees are directly controlled by various statutes which describe both permitted and prohibited activities.

#### 1-2.2.1 Hatch Act

A. Federal law (the Hatch Act) applies to officers and employees of state and local agencies when such agencies receive federal funds. Washington State Department of Transportation (WSDOT) officers and employees are, therefore, subject to the provisions of the Hatch Act.

B. The Office of the General Counsel, U.S. Civil Service Commission, states that effective January 1, 1975, state and local employees may not:

1. Use their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

2. Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

3. Be a candidate for public or political party elective office in a partisan primary, general, or special election.

### *1-2.3 Sales to Employees Prohibited*

No WSDOT employee is permitted to purchase either at public auction or otherwise any state-owned real property, improvements, or personalty which are under the jurisdiction of WSDOT, except in cases with the specific prior approval of the Secretary of Transportation. Contact Property Management in Headquarters for additional information.

### *1-2.4 Rendering Emergency Assistance*

A. The department encourages its employees to provide emergency assistance to the public if and when the situation arises. Such assistance includes:

1. Aiding stranded motorists.

2. If qualified in First Aid, rendering such assistance at the scene of an accident.

3. Assisting in directing traffic at the scene of an accident under the direction of or until relieved by the Washington State Patrol or other local police officer.

4. Transporting injured persons from the scene of an accident to a hospital or doctor's office.

B. Any person who in good faith and without compensation renders emergency care at the scene of an emergency or who transports there from any injured persons for medical treatment is immune from civil damages arising out of said actions. However, the person rendering such aid or transportation is liable if their actions or omissions constitute gross negligence or willful or wanton misconduct.

## 1-3 Personnel Selection

### *1-3.1 Washington State Civil Service System*

All RES personnel are covered by the Washington State Civil Service System which affords them protection similar to that provided by the Federal Civil Service System. RES is also represented by the International Federation of

Professional and Technical Engineers Local 17 Bargaining Agreement and some of the staff by the Washington State Federation of State Employees (WFSE) Bargaining Agreement.

### 1-3.2 Classification Titles

Job descriptions for the following classification titles are given in the Washington State Department of Personnel classifications and Washington Management Service (WMS) position descriptions.

Property and Acquisition Specialist I (PAS I)
Property and Acquisition Specialist II (PAS II)
Property and Acquisition Specialist III (PAS III)
Property and Acquisition Specialist IV (PAS IV)
Property and Acquisition Specialist V (PAS V)
Property and Acquisition Specialist VI (PAS VI)
Region Real Estate Services Manager (RESM) – WMS
Assistant Region Real Estate Services Manager (Assistant RESM) – WMS
Headquarters Program Manager – WMS
Headquarters Real Estate Services Program Administrator (HQ RESPA) – WMS

### 1-3.3 Function Titles

The function title describes a particular specialty within a classification title. For example: a person holding the classification title of Property and Acquisition Specialist might be assigned any of the following function titles:

Staff Appraiser
Review Appraiser
Acquisition Specialist
Title Examiner
Condemnation Examiner
Property Management Specialist
Relocation Specialist
Relocation Reviewer
Training Coordinator

### 1-3.4 Selection and Assignment

Rules and procedures for the selection and assignment of personnel to classification titles are given in the Merit System Rules.

## 1-4 Training Program

RES employees are encouraged to attend and participate in local chapter meetings of professional society organizations in their respective fields. Membership in such societies is purely voluntary and the department does not require such memberships as a condition of employment.

Employees may be afforded training opportunities to maintain a level of proficiency suitable to the needs of the department. The department is not obligated to offer training and does not require it as a condition of, or for continuation of employment.

The department will offer training opportunities which are potentially capable of increasing employee efficiency, improving job performance, and contributing to the promotional advancement of the participants.

## 1-5 Travel

Rules and procedures governing travel on state business are given in the WSDOT *Accounting Manual* M 13-82 and the Local 17 Bargaining Agreement and the WFSE Bargaining Agreement.

## 1-6 Vehicle Operation

Rules and procedures governing the use of state automobiles are given in the references cited in *Use of State Provided Motor Vehicles* M 53-50.

## 1-7 Highway Location and Design

### *1-7.1 General*

A. Interdisciplinary teams are employed in all stages of transportation planning, location, and design. Both Headquarters and region RES personnel are called upon for their professional expertise.

B. The RESM (or designee) makes project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is given to significant right of way elements involved in the location and design of the project, including possible social, economic, and environmental effects.

C. RES personnel may contribute to the transportation planning team effort in various areas of which the following are examples:

1. Provide and evaluate ownership information.
2. Identify the extent of the impacted area.
3. Estimate costs of acquisition, relocation assistance, and other costs of proposed plans.
4. Identify and evaluate potentials for airspace development.
5. Identify and evaluate opportunities for multiple uses of roadway properties, i.e., accommodation of transportation needs, and nontransportation uses/services through joint development of transportation and utility corridors.
6. Identify historical sites, open space and park lands, recreation areas, and wildlife and waterfowl refuges.

7. Identify the need for local roadway facilities, e.g., frontage service roads.
8. Identify needs for, and feasibility of, functional replacement of publicly-owned real property.
9. Identify and evaluate social, economic, and aesthetic impacts of the proposed project upon adjacent property, the community, and upon the region, including, but not limited to:
   a. Impact of the proposed project on urban planning and existing and future land use development trends.
   b. Impact of the proposed project on community affairs (e.g., effects upon school attendance areas, accessibility of community shopping facilities to residential areas).
10. Identify displacements of people, businesses, farms, and nonprofit organizations; availability of satisfactory replacements and last resort housing needs; and evaluate related costs.

D. The Regional Administrator (or designee) conducts both the location (corridor) public hearing and the design public hearing.

### *1-7.2 Cost Estimates*

A. Upon the request of the Regional Administrator (or designee):
   1. The RESM assigns Staff Appraisers or contracts with fee appraisers to prepare appropriate cost estimates as specified in Chapter 4.
   2. Relocation Specialists are assigned to prepare appropriate relocation plans and relocation cost estimates as specified in Chapter 12.
   3. Upon request, an engineer will accompany the Staff Appraiser and/or the Relocation Specialist on the field inspection to advise on the design and the location details being studied.

B. The RESM (or designee) maintains file copies of all reports. An additional copy is maintained by the Regional Administrator (or designee) on all studies submitted by the region. Such copies are retained for three years from the date of the final voucher for the project.

## 1-8 Right of Way Plans

A. Right of way plans are the official state documents used as the basis to acquire and dispose of real estate and other property rights. The plans are referred to in legal instruments and are permanently filed for public record at the Transportation Headquarters Building.

   It is the responsibility of the region to assemble data and prepare plans for the acquisition of right of way, including easements, permits, and any substantiating documentation necessary for completion of the plans. These activities are further outlined in the *Plans Preparation Manual* M 22-31.

B. The RESM:

1. Assures that right of way data of the types listed in this chapter are made available to the region engineering staff, including assessor's information and title reports as requested.
2. Assists the Regional Administrator (or designee) in identifying and assigning right of way parcel numbers to the affected ownerships shown on the right of way plans.
3. Determines the types and extent of the property and/or property rights required (e.g., fee, easement, temporary easement, permit).
4. Assures that right of way plans are complete to the extent that the necessary data are depicted thereon.

## 1-9 Compliance With FHWA Regulations

### *1-9.1 Right of Way Projects*

Unless specifically noted (e.g., "On nonfederal-aid projects . . .") all operating regulations and procedures in this manual are intended to comply with applicable federal regulations.

## 1-10 Authority to Enter Lands for Surveys, Appraisals, Etc.

"The agency or its duly authorized and acting assistants, agents, or appointees shall have the right to enter upon any land, real estate, or premises in this state, whether public or private, for purposes of making examinations, locations, surveys, and appraisals for highway purposes. The making of such entry for said purposes shall not constitute any trespass by the agency or by its duly authorized and acting assistants, agents, or appointees." (RCW 47.01.170)

Department personnel normally notify the property owner or tenant before entering private lands. (HQ RESPA) Activities requiring excavation or invasive action (drilling, piezometers, test holes, etc.) do not apply to the above RCW, but require a permit or right of entry as outlined in Chapter 6.

## 1-11 Actions Against State Employees

A. **Civil Suits**

1. Private parties may bring suits against employees of the state. The statutes of the state protect its employees in the following circumstances:

   > If an action or proceeding for damages is brought against any department employee based on the employee's acts or omissions while performing, or in good faith purporting to perform, their official duties, the employee may request that the defense of said action or proceeding be conducted by and at the expense of the state. The employee submits a written request to his immediate supervisor detailing the facts in the case and agreeing to cooperate in the defense. The supervisor submits

the request through channels as appropriate. The request is then referred to the Attorney General's Office (AGO). Upon concurrence, an Assistant Attorney General (AG) is assigned to appear and defend the employee at the state's expense. In this situation, if a judgment is rendered against the employee, the State's Tort Claims Revolving Fund will pay any part of the judgment which is not covered by any valid and collectible liability insurance held by the employee or the state.

The employee is liable if the employee's actions or omissions constitute gross negligence or willful misconduct and no presentation will be provided by the AGO.

2. While our employees are covered by the blanket state vehicle liability policy while operating state equipment, this policy does not offer protection when state vehicle operation is not involved.

B. **Administrative Actions by the Department**

1. When a department employee is involved in an accident which results in injury involving an Industrial Insurance claim, bodily injury, or property damage to a member of the general public, or damage to the state's vehicles, machinery, equipment, or property, such an accident is made the subject of consideration by the department's Safety and Health Services Office.

2. An employee who is determined by the safety office to have acted improperly or negligently may be subject to disciplinary action and/or a requirement to reimburse the state in the amount of damages to the state-owned property.

## 1-12 Local Agency Projects

Federally funded project activities of a local agency, such as a county, city or town, are monitored for FHWA by the Highways and Local Programs Division with Real Estate Services monitoring the acquisition and certification of right of way. To qualify to acquire right of way, an agency must submit and have approved right of way procedures prior to starting any acquisition activities, and follow the procedures and guidelines in this manual and in Chapter 25 of the *Local Agency Guidelines* M 36-63.

# Chapter 2 Organization

2-1 Department Organization
2-2 Headquarters Real Estate Services Office Table of Organization
2-3 Region Organization
2-4 Organization of the Attorney General Office

This chapter contains a description of the organizational structure that exists in the Washington State Department of Transportation (WSDOT), promulgated in some cases by other authority. Statements regarding areas of authority and responsibility outside of Engineering and Regional Operations Division are included only to provide continuity of the concepts discussed. In those cases, such statements do not constitute an assignment of authority or responsibility.

## 2-1 Department Organization

Refer to www.wsdot.wa.gov/about/execorgchart.htm to see the Agency Organization Chart.

### *2-1.2 Responsibility and Authority*

#### 2-1.2.1 Washington State Transportation Commission

Refer to www.wstc.wa.gov/ for information about the Washington State Transportation Commission.

#### 2-1.2.2 Executive Officers

The Secretary of Transportation is the chief executive officer for WSDOT and is appointed by the Governor of the state of Washington. The Secretary carries out the Governor's orders, policies, and direction in a manner sensitive to the needs of all Washington State citizens.

The Deputy Secretary is the Chief Operating Officer for WSDOT and assists the Secretary with high-level legislative, legal, policy, and human resources issues, along with high-level engineering, environmental, construction, and planning issues.

## 2-2 Headquarters Real Estate Services Office Table of Organization

### *2-2.1 Headquarters Real Estate Services Program Administrator (HQ RESPA)*

A. Administers statewide the operation of Real Estate Services; manages the Headquarters Real Estate Services Office which is the repository of the official records of all real property functions; is the chief branch policy-maker and coordinator of functions of the seven Region Real Estate Services Managers (RESM) in their relationship with the Federal Highway Administration

(FHWA), Attorney General Office, Public Transportation and Construction Divisions' employees bargaining units, Headquarters offices, and other offices of state government and railroad corporations on all agency real estate matters.

B. Has principal duties consisting of:

1. Maintaining a policy and procedural manual current with state law and federal regulations for compliance by all RES personnel.
2. Advising WSDOT personnel at all levels in RES matters.
3. Monitoring employee performance, recommending training, and/or needed corrective action.
4. Coordinating with the WSDOT Human Resources Director in personnel management and in collective bargaining negotiations.
5. Responding to state and federal audits of RES performance.
6. Providing assurances to FHWA and other offices of government at all levels, of availability of replacement housing for persons displaced by highway construction projects.
7. Obtaining advance approvals of project replacement or individual "housing of last resort" plans, or proposed policy deviation needed from FHWA or other offices of government in relocation assistance, right of way appraisal, acquisition, or property management.
8. Reviewing, deciding on acceptance, oversight, and/or compliance of all acquisition transactions.
9. Reviewing and deciding on the acceptance of surplus property rentals, as recommended by region offices, or sales of surplus property.
10. Deciding on concurrence by the department or making recommendations in pretrial or stipulated settlements proposed by Assistant AG.
11. Administering the functions of the acquisition; Title Condemnation and Records; Property Management; Relocation; and the Local Agency Projects/Special Acquisitions/Certifications Sections.
12. Carrying out other assignments made by the Headquarters Design Office.

### *2-2.2 Property Management Program Manager*

The Property Management Program Manager:

A. Manages the statewide Property Management Program by assuring compliance with departmental operating regulations. The position reports to HQ RESPA.

1. Directing the review and inventory control of all excess property and sundry site (capital plant and materials sites) parcels.

2. Directing the review of property disposition transactions to assure compliance with regulations and the validity of judgmental factors.
3. Providing technical advice on property management matters to others.
4. Directing the statewide promotion and sale of surplus properties including land and improvements by both auction and direct sale.
5. Directing the statewide promotion and operation of rentals, leases, airspace agreements, and joint use.
6. Inspecting and maintaining WSDOT-owned properties other than infrastructure.
7. Developing and implementing discipline-specific training.
8. Other functions as required by the HQ RESPA.

B. Providing coordination with and advice to the Regional Administrators, other Headquarters offices, the Attorney General Office, and FHWA on property management functions.

C. Coordinating with the Regional Administrators on the investigation of citations regarding compliance with operating regulations governing the property management functions.

D. Formulating operating regulations governing the property management functions for approval by higher authority.

### *2-2.3 Relocation Assistance, Program Support, and Local Agency/ Certification Program Manager*

The Relocation Assistance, Program Support, Local Agency/Certification Program Manager reports to the HQ RESPA:

A. Manages the statewide Relocation Assistance Program.

1. Managing the Headquarters Relocation Assistance Section.
2. Reviewing and approving all incoming claims.
3. Maintaining official relocation files.
4. Coordinating and scheduling reconsideration/appeal of determinations and benefits, when necessary.
5. Providing technical advice and guidance on relocation matters to others.
6. Assuring statewide compliance of relocation matters under the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended.

B. Manages the statewide Program Support Program:

1. Managing the Program Support Section.
2. Developing and implementing discipline specific training.
3. Records retention of all Real Estate office official records.
4. Coordinating annual revisions of the *Right of Way Manual*, Real Estate brochures, and forms.
5. Coordinating Public Disclosure Requests (PDR) for the Headquarters Real Estate office.

C. Manages the statewide Local Agency/Certification Program:

1. Managing the Local Agency/Certification Section.
2. Assuring statewide local agency compliance under the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended.
3. Training and monitoring the region local agency coordinators responsible for the acquisition of right of way by local agencies on federally funded projects.
4. Working through Highways and Local Programs to approve and monitor local agency's acquisition procedures and train the agencies in proper use of the procedures. Monitoring and updating Chapter 25 of the *Local Agency Guidelines* M 36-63.
5. Executing WSDOT Right of way Certificate Concurrence Letters for all acquisitions on federally funded projects prior to construction project advertisement. Monitoring and recertifying any projects certified with exceptions (#3 certification).
6. Maintaining permanent files on local agencies to include approved procedures, local agency agreements, and project certifications, etc.

D. Advising the HQ RESPA and regional offices in program matters.

E. Promulgating operating procedures that implement current state law and federal regulations.

F. Other functions as required by the HQ RESPA.

### 2-2.4 Appraisal and Appraisal Review Program Manager

The Appraisal and Appraisal Review Program Manager:

A. Manages the statewide Appraisal and Appraisal Review Program. The position reports to the HQ RESPA. The principal duties of this position are:

1. Managing the Headquarters appraisal office. All review appraisers report to this position. Headquarters staff appraisers report to this position.
2. Assuring that appraisals and reviews are prepared in consistency with current acceptable appraisal standards for eminent domain.
3. Issuing operating procedures that implement current state law and federal regulations.
4. Managing the Approved Fee Appraiser and Review Appraiser List.
5. Developing and implementing discipline specific training.

B. Performs other functions as required by the HQ RESPA.

### 2-2.5 Acquisition and Title, Special Acquisition, and State Project Certification Program Manager

The Acquisition and Title, Special Acquisition, and State Project Certification Section Manager reports to the RESPA:

A. Manages the statewide Acquisition and Title Review functions and the records within Headquarters. The principal duties of this position are:

1. Directing the review, final processing, oversight, and compliance of all real property acquisition and damage claim files. Assures legal sufficiency and compliance with state laws and departmental regulations.
2. Directing the preparation of legal descriptions and exhibit maps and determinations of interested parties for use by the Attorney General Office in eminent domain proceedings.
3. Making recommendations for procedures concerning real property title and document processing functions for approval by higher authority.
4. Preparing affidavits and/or testifying in court as the department's expert witness in real estate matters involving titles and legal descriptions.
5. Performing final review and mapping of surplus property conveyance documents.

B. Manages the statewide Special Acquisition section.

C. Manages the statewide Right of Way Certification section.

1. Reviewing construction project PS&Es to ensure that all necessary rights have been acquired and monitoring and reporting to the region and Headquarters on current status.
2. Executing WSDOT Right of Way Certificate Concurrence Letters for all acquisition on federally funded projects prior to construction project advertisement. Monitoring and recertifying any projects certified with exceptions (#3 certification).

D. Supervises the Real Estate Services administrative activities which include:

1. Maintaining, indexing, and storage of the departments official real property acquisition transaction files.

2. Maintaining, indexing, and storage of the official Real Estate Services ownership maps (transportation project right of way and sundry site plans) depicting property and/or property rights acquired or conveyed by the department.

E. Develops and implements discipline specific training.

F. Performs other functions as required by HQ RESPA.

## 2-3 Region Organization

### *2-3.1 General*

A. The principal satellite offices of WSDOT are known as "region offices."

B. The relationship of the Region Real Estate Services (RRES) offices within WSDOT is shown under Engineering and Regional Operations on the Organization Chart at www.wsdot.wa.gov/about/execorgchart.htm.

C. The geographic boundaries of each region are provided on the WSDOT internet website at www.wsdot.wa.gov. If the limits of a particular highway project extend across the boundaries of a region, the responsibilities are assigned to either of the two regions by working agreement based on a case evaluation.

### *2-3.2 Responsibility and Authority*

#### 2-3.2.1 Regional Administrator

A. The Regional Administrator is responsible to the Assistant Secretary of Engineering and Regional Operations (Chief Engineer).

B. The Regional Administrator has final authority in the region for decisions on highway matters within the framework established by departmental operating regulations in the form of Secretary Executive Orders, Directives, Policy Statements, Instructional Letters, and department manuals.

C. The Regional Administrator exercises administrative and management supervision over the Region RES Office as follows:

1. Furnishes the facilities and supplies, and provides for the staffing required for the effective accomplishment of the Right of Way Program and its related activities.

2. Within the scope of departmental operating regulations, may review and approve transactions or may make recommendations for further actions. ***Note:*** This activity may be subdelegated to the RESM but may not be further subdelegated.

### 2-3.2.2 Region RESM

The RESM:

A. Is responsible to the Regional Administrator for managing the Region RES Office.

B. Is responsible to the Regional Administrator for the following:

1. Supervising and directing the Region RES Office to assure compliance with departmental operating regulations by:

   a. Managing all Region Real Estate Services functions.

   b. Providing technical supervision and in service training in all Region RES program disciplines.

   c. Identifying opportunities for functional replacement of publicly-owned real property. Assures compliance with special requirements for functional replacement.

   d. Providing reports and systematic records on the anticipated costs of proposed right of way acquisitions and related costs.

   e. Assuring the receipt of an appropriate right of way plan and an appropriate Work Order Accounting Plan prior to obligating funds on a project.

   f. Monitoring proposed expenditures to assure their necessity and to assure accurate account coding.

   g. Reporting on the causes for fund adjustments and the amounts of fund adjustments relative to a Work Order Accounting Plan.

   h. Providing for appraisal evidence of the amount of the legally compensable fair market value lost to each separate fee and/or tenant ownership due to acquisition or highway project factors.

   i. Performing the "Project Inspection and Parcel Assignment," and ensuring that all property and/or property rights required for a project are either acquired or are referred for condemnation.

   j. Directing the operation of the Relocation Assistance Program for project displaced persons.

   k. Directing the management of property and/or property rights acquired.

   l. Directing, reviewing, processing, and approving real property acquisition (excluding condemnation files) and damage claim files that pertain to their specific region. Assuring legal sufficiency and compliance with state laws and departmental regulations.

m. Advising and assisting local public agencies (LAs) in completing their right of way acquisition programs when requested. Reviewing LA acquisitions as needed to assure compliance with state and federal requirements.

n. Ensuring the accuracy of records, and the systematic input of project/parcel status information into the computer concurrent with parcel acquisition progress.

2. Coordinating with other staff officers in the region by:

   a. Assuring adequate time allocations for right of way activities in the planning for lead time and scheduling.

   b. Providing for real estate services participation in the interdisciplinary team efforts and project field inspections in location and design as required by the Regional Administrator.

   c. Providing data and/or personnel required to explain the acquisition, relocation assistance, and other related programs at public hearings.

   d. Assisting in the preparation of right of way plans as required.

   e. Taking actions as required in Chapter 6 for the authorization of advance acquisition of projects.

   f. Taking actions as required in Chapter 6 for the authorization of hardship acquisition of parcels.

   g. Recommending appropriate funding for, and directs the operation of, the regions's ongoing property management inventory.

3. Obtaining technical advice from the HQ RESPA (or his designee) on the following:

   a. Technical problems relating to any of Real Estate Services' disciplines.

   b. Training of personnel.

   c. Compliance with guidelines on right of way matters.

# 2-4 Organization of the Attorney General's Office

## 2-4.1 General

The Washington State Office of the Attorney General provides legal services to state agencies.

## 2-4.2 Responsibility and Authority

### 2-4.2.1 Attorney General

A. The chief legal officer for the state of Washington holds the title of Attorney General. Since this is an elective position, the Attorney General is responsible to the voters of the state of Washington for all legal matters concerning the state.

B. WSDOT has a staff of attorneys assigned on a permanent basis to advise and represent the department at the Attorney General's Office. WSDOT reimburses the Office of the Attorney General for salaries, benefits, and case related expenses.

### 2-4.2.2 Chief Counsel

A. The principal Assistant Attorney General in the office of the Attorney General Office holds the title of Chief Counsel.

B. The Chief Counsel is responsible to the Attorney General for all activities of his staff and operates in close coordination with the Secretary of Transportation.

C. The Chief Counsel assures the close coordination of his staff with the Real Estate Services staffs in the regions and Headquarters.

D. An Assistant Attorney General may be assigned to handle land acquisition matters for each region. If the case load in a particular region necessitates it, additional Assistant Attorneys General may be assigned to that region.

E. Only in rare instances (e.g., excessive workloads on regular staff) are the services of a private attorney employed. In these instances, the Chief Counsel contracts with an attorney who has competence, interest, and familiarity with applicable procedures. If federal aid participation in the cost of his services is desired by the state, advance FHWA approval must be obtained to employ special counsel.

3-1 Acronyms
3-2 Glossary
3-3 The Acquisition Process
3-4 Why We Do What We Do
3-5 County Designations
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## 3-1 Acronyms

The following standard abbreviations may be used within the Real Estate Services Office (RES) without further explanation. In correspondence outside RES, abbreviations are not used. When using an abbreviation other than those given below, the abbreviation is defined by showing it in parentheses at the first opportunity in the text, e.g., right of way (R/W).

| | |
|---|---|
| AASHTO | American Association of State Highway and Transportation Officials |
| AAG | Assistant Attorney General |
| AG | Attorney General |
| AGO | Attorney General's Office |
| AIREA | American Institute of Real Estate Appraisers |
| ALTA | American Land Title Association |
| AOS | Administrative Offer Summary |
| BLM | Bureau of Land Management |
| CFR | Code of Federal Regulations |
| CS | Control Section |
| DNR | Department of Natural Resources |
| DSS | Decent, Safe, and Sanitary |
| DV | Determination of Value |
| DCE | Documented Categorical Exclusion |
| ECS | Environmental Classification Summary |
| EIS | Environmental Impact Statement |
| FA No. | Federal Aid Project Number |
| FHA | Federal Housing Administration |
| FHWA | U.S. Department of Transportation, Federal Highway Administration |
| HES | Highway Engineer's Station |
| HQ RESPA | Headquarters Real Estate Services Program Administrator |
| I.C. No. | Inventory Control Number |

| | |
|---|---|
| IRIS | Integrated Realty Information System |
| IR/WA | International Right of Way Association |
| J&D | Judgment and Decree of Appropriation |
| LLC | Limited Liability Company |
| L No. | Location Job Number. An accounting code number with an "L" prefix used in conjunction with Preliminary Engineering |
| NEPA | National Environmental Policy Act |
| OAPU | Order Adjudicating Public Use and Necessity |
| OIPU | Order of Immediate Possession and Use |
| PAS | Property and Acquisition Specialist |
| P&U | Possession and Use Agreement |
| PC | Preliminary Commitment for Title Insurance |
| PFE | Project Funding Estimate |
| PRM | Partial Release of Mortgage |
| QCD | Quitclaim Deed |
| RA | Regional Administrator |
| RCW | Revised Code of Washington |
| RES | Real Estate Services |
| RESM | Real Estate Services Manager |
| ROD | Record of Decision |
| R/W | Right of Way |
| RW No. | Right of Way Job Number |
| R/W Project No. | Right of Way Project Number |
| SEA | Statutory Evaluation Allowance |
| SEPA | State Environmental Policy Act |
| SR | State Route |
| SREA | Society of Real Estate Appraisers |
| STIP. P&U | Stipulated Order of Immediate Possession and Use |
| STR | Supplemental Title Report |
| UAB | Urban Arterial Board |
| USC | United States Code |
| USFS | United States Forest Service |
| WAC | Washington Administrative Code |
| WASHTO | Western Association of State Highway and Transportation Officials |
| WD | Warranty Deed |
| WLTA | Washington Land Title Association |
| WPI | Washington Patten Jury Instructions |
| WSDOT | Washington State Department of Transportation |

## 3-2 Glossary

This glossary defines terms that are used in RES activities. Not included are terms that are defined by RCWs, WACs, AASHTO, FHWA, or a standard dictionary. In correspondence outside RES, it may be necessary to explain special expressions.

**Access Control** – The limiting and regulating of public and private access to Washington State's highways as required by state law.

**Acquired Dwelling Unit** – The portion of the lands acquired for a public works project that includes all improvements of a residential nature serving the displaced person.

**Administrative Offer Summary (AOS)** – The approved form used as a basis for offers on low-value, uncomplicated process. Also referred to as a waiver of an appraisal for such properties.

**Adverse Possession** – A method of acquiring title to the land of another by actual, open, notorious, continuous, hostile, and exclusive holding of the land for a statutory period. An easement acquired by this method is a "prescriptive easement." Title reports are often silent on adverse possession; therefore, these rights are determined by actual inspection of the property. To be compensable these rights must be perfected by a court action.

**Appraisal** – An opinion of value; the act or process of developing an opinion of value.

**Appurtenance** – Something which is joined or attached to property. When an easement benefits a property, it is an "appurtenance". In order to be an appurtenance, an easement must be necessary for the enjoyment of the lands benefitted. A warranty deed conveys the appurtenant easement even if the easement is not mentioned in the deed.

**Assigns** – Those who take from the assignor whether by conveyance, devise, descent, or operation of law.

**Attorney in Fact** – A fiduciary (agent, representative) appointed by and empowered to act for a principal (a person or a corporation). The attorney in fact for a person is empowered by the principals having executed a power of attorney. The power of attorney may be either for a general or for a specific purpose. The attorney in fact may act only while the principal is alive and of sound mind, when the power of attorney permits the act, and provided that the power of attorney has not been superseded or revoked. The Attorney(s) in Fact of a corporation are those officers of the corporation who are empowered by the corporation's articles of incorporation to act for the corporation.

**Call** – A part of a legal description which combines a direction and a distance, e.g., "thence North 0°17' East 506 feet" or "thence along the said easterly boundary to the county road." A series of "calls" locate and enclose a tract in a "metes and bounds" description.

**Color of Title** – An instrument or set of facts that give the appearance of title, but do not prove title.

**Condemnation** – The department's use of eminent domain through court proceedings for lands and/or property rights needed for highway projects.

**Date**

**Clear Date** – Discipline specific dates displayed in the parcel summary in IRIS indicating that the parcel is ready to certify as available for construction.

**Closing Order Date** – The date on which the acquisition instrument(s) and appropriate instructions are sent to the title company for processing and recording.

**Initiation of Negotiations, Date of** – The date on which the state makes the first personal contact with the parcel owner (or his designated representative) where price is discussed. This is also the date of the state's initial Firm Offer Letter. The "date of initiation of negotiations" for a project is the earliest date of initiation of negotiations for any parcel (except advance acquisitions) on the project.

**Payment Available Date** – The estimated date on which the owner receives the state's payment, or the date of payment into the court or out of an escrow closing.

**Property Management Certified Clear Date** – The date upon which no one other than the state has a valid interest in any remaining improvements on the parcel.

**Relocation Certified Clear Date** – The date upon which all displaced persons and/or personalty are off the parcel.

**Deed**

**Bargain and Sale Deed** – A deed in which the grantor makes no warranty. Any title that the grantor has or later acquires passes under this deed to the grantee.

**Sheriff's Deed** – A deed given to the holder of the sheriff's certificate after expiration of the redemption period. The certificate results from the foreclosure of a lien or mortgage.

**Trust Deed** – A deed in which the grantor conveys legal title to property to a trustee and states the authority and conditions binding the trustee in dealing with the property. Similar to a mortgage, this deed secures a debt to real property.

**Egress** – Right to go out or exit.

**Excess Right of Way** – Property acquired as operating right of way (R/W) but no longer needed as such. A plan revision mapping the excess R/W area is necessary prior to disposal.

**Fair Market Value** – The amount in cash which a well-informed buyer, willing but not obligated to buy the property, would pay, and which a well-informed seller, willing but not obligated to sell it, would accept, taking into consideration all uses to which the property is adapted or may be reasonably adaptable. (WPI 150.08)

**Geographic Information System (GIS)** – A system of people, institutions, and information technologies for collection, storage, analysis, transformation, and presentation of geographic information.

**Habitable Floor Space** – That space used for sleeping, living, cooking, or dining purposes. Excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connection corridors, laundries, unfinished attics, foyers, storage spaces, cellars, utility rooms, and similar spaces.

**Highway Engineers Station (HES)** – A precisely located survey point measured in increments of 100 feet. When noted on the map these usually have the station ID plus some distance from that station, for example 63 + 34.21. These are specific to WSDOT.

**Household Income, Gross** – Income from all sources, including amounts paid directly to the family (or individual) through public assistance agencies or programs.

**Ingress** – Right or permission to enter.

**Inner Harbor Line** – A line determined by the State Harbor Line Commission which is located and established in navigable tidal waters between the line of ordinary high tide and the outer harbor line and constituting the inner boundary of the harbor area.

**Interim Use Improvement Value**

1. The difference, if any, between the value of land under a highest and best use premise if vacant and the value of the property under its present use as improved.
2. The amount of value contributed by a building which is an under-improvement by reason of a change in the highest and best use of the land on which it is located.

**Inventory Control Number (IC No.)** – An identification number assigned to each parcel of real property or real property interest owned or controlled by WSDOT entered into the Real Property Inventory.

**Judgment and Decree of Appropriation (J&D)** – A court order setting over to the state of Washington, for the benefit of the public, the title to personal and/or real property or property rights. The State Constitution requires that just compensation must be paid for the acquisition of the property or property right. There are three forms of J&Ds:

**Stipulated** – Following an out-of-court settlement between the condemning agency and the property owner, the court approves the stipulation and the order is entered in accordance with the terms of the stipulation.

**Court** – The order resulting from a nonjury trial in which the judge decides the just compensation.

**Jury** – The order resulting from a jury trial in which the jury decides the just compensation.

**Life Estate** – A freehold, i.e., a real property estate, the duration of which is measured by the life of the person holding it or by the life of some other person.

**Limited Access Highway** – All highways listed as "Established L/A" on the Master Plan for Limited Access Highways only where the rights of direct access to or from abutting lands have been acquired from the abutting landowners. Levels of limited access include: full, partial, modified.

**Local Improvement District (LID)** – A minor governmental subdivision having the power of taxation established to install a public improvement (e.g., water, sewer) in an area. The improvement is funded by assessments against the parcels real property in the LlD's area. These assessments become encumbrances against the respective parcels.

**Managed Access Highways** – Any highway not listed as "Established L/A" on the Master Plan for Limited Access Highways and any highway or portion of a highway designated on the Master Plan as "Established L/A" until such time as the limited access rights are acquired. Under managed access legislation, the property owner's access rights are regulated through an access connection permitting process.

**Meander Line** – A "meander line" is a surveyed line made up of straight segments which theoretically approximate the line ordinary high tide or line of ordinary high water to delineate between uplands and tidelands or shorelands.

**Mortgage Balance** – The amount of the principal balance on the date that the mortgage is paid off by the acquiring agency.

**Nonoperating Property (Utility)** – Property held by a public or private utility by fee title, easement, lease, etc., and which is not presently integrated as a part of a public service network.

**Nonoperating Property (Departmental)** – Waste sites, pits, stockpile sites, maintenance sites, drainage and stream easements, and other such lands or easements required or used in the support of the construction and/or operation of a vehicular public way.

**One Buyer-Seller Concept** – An appraisal theory which holds that the total value of the separated remainders of a severed parcel is limited to the amount which one buyer would pay and one seller would accept, under the market value definition, for all of such remainders in a single transaction. This is distinguished from the sum of the amounts which multiple buyers would pay for the remainders if sold individually.

**Operating Property (Utility)** – Property held by a public or private utility by fee title, easement, lease, etc., and which is presently a part of a functioning public service network, e.g., a railroad or power transmission right of way.

**Operating Property (Departmental)** – The space above, at, or below the grade line of all completed highways, as well as the area alongside the traveled way within the right of way lines.

**Order Adjudicating Public Use and Necessity (OAPU)** – A court order establishing that the property and/or property rights sought are necessary for use by and for the benefit of the general public.

**Order of Immediate Possession and Use (OIPU)** – A court order confirming a written agreement between the condemning agency and the property owner which has been entered in the court. The written agreement stipulates that, upon payment of a specific amount of money into the registry of the court, the condemning agency is entitled to take possession of the property and that the just compensation will be decided by a later court action. Subject to the interests of other interested parties, the property owner is entitled to withdraw the funds from the court. (Also see Possession and Use Agreement.)

**Outer Harbor Line** – A line determined by the State Harbor Line Commission which is located and established in navigable tidal waters beyond which the state shall never sell or lease any rights whatsoever.

**Person** – For the purposes of the Relocation Assistance Program, includes a partnership, company, corporation, or association as well as an individual or family.

**Possession and Use Agreement** – A negotiated instrument in which the state and the property owner agree that, upon payment of a certain amount to the property owner, the state is entitled to immediate (or dated) possession and use of the property and that the final settlement will be decided at a later date.

**Project Number**

> **Construction Project Number** – A seven-digit alphanumeric identifier that correlates the construction project with right of way project.

**Project Title**

**Construction Project Title** – The generic description of the route and termini of a construction project. The specific wording is shown in the title block of the PS&E. Engineering and fiscal considerations often result in a single right of way project being divided into several construction projects. Therefore, it is possible for a parcel to be associated with several construction projects.

**Right of Way Project Title** – The generic description of the route and termini of a right of way project. The specific wording is shown in the title block of the right of way plan and is exactly duplicated whenever used to identify the project.

**Sundry Site Project Title** – Projects involving sundry sites are identified by the name of the county. A materials site for use on a roadway project is identified by two titles: (l) The Sundry Site Plan name and site number; (2) The words "For use on" followed by the official name of the related right of way project, e.g., "Thurston County Sundry Sites, Pit Site No. PS-J-100. For use on SR 5, Lewis County Line to Tumwater."

**Real Property Inventory** – An itemized list or catalog of all real property or real property interests owned or controlled by WSDOT and located outside the operating right of way limits.

**Redemption** – The right given to a judgment debtor (and to certain others) to redeem the property foreclosed within a time period specified by statute. The property is subject to the right of redemption from the time of the sheriff's sale until the sheriff's deed is delivered.

**Reliction** – The uncovering of land formerly covered by water.

**Replacement Housing Payment (RHP)** – Any one or certain combinations of payments authorized to be paid to an eligible displaced persons to enable such displaced persons to obtain replacement housing. There are five types of authorized payments, as follows:

**Incidental Purchase Expense** – The amount necessary to pay or reimburse an eligible displaced persons for certain actual costs incurred incidental to the purchase of an eligible replacement dwelling. These include, but are not limited to, recording fees, escrow fees, title insurance premiums, appraisal fees, credit report fees, home inspection fees, revenue stamps, and transfer taxes. (Does not include prepayment of any expenses.)

**Mortgage Interest Differential Payment (MIDP)** – The amount, as determined by the agency, necessary to compensate an eligible 180-day owner occupant for increased costs required to obtain a replacement mortgage for the purpose of purchasing an eligible replacement dwelling.

**Price Differential** – That amount, in addition to the acquisition cost paid by the acquiring agency, which is necessary to enable an eligible displaced person to purchase an eligible replacement dwelling.

**Rent Supplement** – The amount, determined by the displacing agency, necessary to compensate an eligible displaced person for the increased cost of leasing or renting an eligible replacement dwelling.

**Down Payment Allowance** – The amount, determined by the displacing agency, which is necessary to enable an eligible displaced person to make a down payment (including incidental purchase expenses) on the purchase of an eligible replacement dwelling.

**Satisfaction of Mortgage** – Either an instrument or a marginal notation on the face of the mortgage itself which shows that the mortgage lien has been released.

**Sheriff's Certificate of Sale** – The document given to the purchaser at a sheriff's sale under foreclosure.

**State Highway System** – All roads, streets, and highways designated as state routes in compliance with Chapter 47.17 RCW.

**State Route Mile Post** – A linear referencing system measurement value used to assign a logical number to a given point along a state route.

**Successor** – One who assumes the place of another and fills the role or position.

**Sundry Site** – Any site under the authority of the department which is used (or is intended for use) for pit, quarry, stockpile, common borrow, riprap, maintenance, park and ride, ferry terminals, airports, etc.

**Surplus Property** – Property not acquired as operating right of way (e.g., pit sites, maintenance sites, uneconomic remnants) and is no longer needed. Disposal proceeds without a plan revision, unless part of the surplus area, is to be used as operating right of way.

**Tax Roll** – A record of all taxable property which includes the assessed value, the current milage rate, and the resulting tax.

**Tenancy in Common** – A form of coownership of real or personal property by two or more persons without survivorship and property interests pass by devise and descent to the heirs of a deceased coowner or as directed by the will of the deceased.

**Tenancy, Joint** – A form of coownership of real or personal property by two or more persons permitting the right of survivorship where said property passes to the surviving coowner(s) without probate proceedings.

**Thread of a Stream** – The center of the fastest moving part of the main channel of a stream.

**Tide Lines** – Each day there are two high tides and two low tides. The two low tides are the "short run out" which is called the LOW TIDE, and the "long run out" which is called the LOWER LOW TIDE. By the same token, the two high tides are call HIGH TIDE and the HIGHER HIGH TIDE. The average of all "low" and "lower low" tides is called the MEAN LOW TIDE. The average of

all "lower low" tides is called the MEAN LOWER LOW TIDE. The lowest line on the land reached by a receding tide is called the EXTREME LOW TIDE. Likewise, the MEAN HIGH TIDE is the average of all "high" and "higher high" tides; MEAN HIGHER HIGH TIDE is the average of all "higher high" tides; and EXTREME HIGH TIDE is the highest line on the land reached by an incoming tide.

**Trial Attorney's Certificate** – A statement signed by the Assistant Attorney General who is assigned to the particular case reciting the findings and orders of a court and certifying that the award is due and payable. The certificate is accompanied by a request for a warrant.

**Trial Attorney's Closing Report** – A statement signed by the Assistant Attorney General who is assigned to a particular case, setting forth the circumstances which resulted in the J&D. If the J&D was stipulated, this statement includes the rationale for entering into the stipulation.

**Turnback** – A general term including certifications and relinquishments used to describe the conveyance of real property to local agencies. Property used during construction phase returned to a party after work is complete.

**Uneconomic Remnant** – A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the agency has determined has little or no value or utility to the owner (49 CFR Part 24.2(27)).

**Washington Pattern Jury Instructions (WPI)** – The collection of instructions that are given to a jury by the judge for deliberation during a trial. The instructions are based on case law resulting from civil lawsuits.

**WSDOT Parcel Number** – A number assigned to a parcel geometry. Parcels have a region code (1-6) and then a dash followed by a five digit number.

## 3-3 The Acquisition Process

A. **Project Scoping** – In the early stages, RES personnel may be involved in interdisciplinary teams to identify ownerships and participate in analyses of various routes.

   The first major Region RES involvement is in preparation of the Preliminary Funding Estimate for a project.

B. **Appraisal/Review** – A separation of functions maintains the integrity of the acquiring agency's transactions. Thus, the appraisal, appraisal review, and negotiations for a parcel are performed by three different persons. If two or more appraisals are required for a parcel, only one appraisal is assigned to a staff appraiser from the region in which the parcel is located. The additional appraisals are made by either a staff appraiser from another region or a fee appraiser. Uncomplicated acquisitions of relatively low value (not greater than $25,000) are identified during the Project Funding Estimate process.

Administrative offers are prepared for these parcels and an appraisal is not required unless requested by the property owner or if condemnation is commenced.

All other parcels are assigned by the Real Estate Services Manager (RESM) for appraisal. The RESM determines the type of appraisal report and whether the appraisal is to be done by staff or fee appraisers. Appraisal data are input to the computer and upon satisfactory completion, the parcel goes to appraisal review.

The Review Appraiser on staff examines the appraisal to ensure its adequacy and accuracy. The Review Appraiser prepares a Determination of Value (DV) that establishes the just compensation to be paid by the state for the needed property and property rights. The just compensation includes amounts for the value of the lands and improvements acquired for the project, damages, and deductions for special benefits. DV data are input into the computer; thus, enabling the negotiations process. A DV prepared by a fee Review Appraiser does not authorize just compensation, nor does the fee Review Appraiser declare an uneconomic remnant. Only an employee of the agency can do either of these functions.

C. **Negotiations** – When the approved DV or AOS is available, the RESM assigns the parcel for negotiations. The negotiator works with all parties to achieve a negotiated settlement at just compensation for the needed property and property rights. The negotiator makes the state's offer both orally and in writing to the property owner or his representative. The negotiator keeps a diary of all contacts and events in such detail that he can attest to the facts therein.

Occupants must be given timely written notice of their right to receive relocation assistance. Therefore, the negotiator immediately notifies the RESM of the date of initiation of negotiations on the parcel.

Occasionally, an issue may stand in the way of completing a negotiated settlement. If the appropriate authority gives its prior approval, an administrative settlement may be arranged. The justification for an administrative settlement is documented in the parcel file, computer inputs are made, and the file is transmitted to Headquarters.

Upon conclusion of satisfactory negotiations, the negotiator obtains execution of necessary instruments and vouchers by all interested parties. The parcel file is reviewed in region, computer inputs are made, and the file is transmitted to Headquarters.

D. **Condemnation** – After at least three unsuccessful attempts to reach an amicable settlement, it may become necessary to condemn the parcel. The region prepares the file including names and addresses of all interested parties, makes computer inputs, and transmits the file to Headquarters.

Upon arrival in Headquarters, the parcel file is subjected to review in the Acquisition and Title Section.

When the region submits a parcel for condemnation, the file is reviewed by the Acquisition and Title Section. If two or more parcels are to be condemned on a project, they may be combined into a single "blanket condemnation" proceeding. The Acquisition and Title Section assembles the condemnation package, makes computer inputs and transmits the files to the Office of the Attorney General (AG). Upon receipt, the AG becomes solely responsible for the eminent domain proceeding; however, the AG will often call upon both region and Headquarters personnel for assistance, concurrences, etc. The AG makes computer inputs that indicate the status and disposition of the case.

E. **Closing** – The state's payment becomes available to the property owner by one of the following means:

- Mailing the state's warrant to the property owner.
- Electronic Funds Transfer to property owner.
- Closure in escrow.
- Payment to the registry of the court.

Instruments are recorded or filed with the court and title passes when the money changes hands. The Acquisition and Title Section inputs the "Payment Available Date" into the computer. The "Payment Available Date" triggers the RESM to input property management and relocation assistance information into the computer system for the acquired parcel.

F. **Property Management** – Region property management functions include such activities as rental agreements with occupants, salvage and removal of improvements, and maintenance to avoid the creation of a public nuisance. When no one other than the state has a valid interest in any improvements on the acquired parcel, Region RES inputs the "P/M Certified Clear Date."

G. **Relocation** – Region relocation activities are those related to moving all displaced persons and their personalty from the acquired parcel. Eligible occupants are given written notices of the maximum amounts of their replacement housing payments. Eligible tenants are given written notice that the acquiring agency has acquired the property. When an eligible occupant moves from the acquired parcel, the RESM inputs the "Vacated Date."

H. **Certification** – The final step in the process is to certify the project as clear for construction. This must be done prior to the Contract Ad Date. When all parcels on the project have been acquired, the project can be certified to FHWA as clear for construction. This is done by the normal process. Some projects will be certified with exceptions. Certifications with exceptions should be rare and approved in advance. Certifications with exception must be followed by a "clear" certification when all acquisition is complete.

## 3-4 Why We Do What We Do

### 3-4.1 Revised Code of Washington

Chapters 8.25 and 8.26 RCW are the state laws that control the acquisition process. The intent of these laws is: to assure fair and equitable treatment of displaced persons and to encourage and expedite acquisitions by negotiations. These laws require that Real Estate Services personnel know and do many things:

A. **Appraisal**

1. The real property must be appraised. This includes the land and all improvements on or adversely affected by the acquisition.
2. The property owner must be given an opportunity to accompany at least one of the acquiring agency's appraisers during inspection of the property.
3. Any increase or decrease in value due to the proposed project is ignored in appraising the fair market value of the property.
4. Physical deterioration within the control of the owner is not disregarded.
5. Uneconomic remnants are identified and valued.
6. Since the improvements may belong to a tenant, improvements are valued at both their contribution to the fair market value of the real property and at their fair market value for removal from the real property. This is done because the tenant will be offered the greater of these values for tenant-owned improvements.
7. In the report, the appraiser itemizes the opinion of the fair market value of the land, improvements and uneconomic remnants, and damages and special benefits to the remainder.
8. If the property is improved, the Realty/Personalty Report (RES-217 or RES-218) must be included in the Addenda.
9. If the property is improved, market rent must be included in the report.

B. **Agency Appraisal Review Staff**

1. The acquiring agency establishes the just compensation. The just compensation is not less than the agency's approved appraisal of the fair market value of the property.
2. The written statement of the just compensation itemizes the amounts for the land, improvements, damages, and special benefits. Special benefits are a deduction.
3. The amount shown for tenant-owned improvements is the greater of their contribution to the fair market value of the real property or their fair market value for removal from the real property.

4. The Review Appraiser has the authority to declare uneconomic remnants if warranted, which allows the agency the opportunity to offer to purchase it from the property owner at the property owner's discretion.

C. **Negotiations**

1. The date of initiation of negotiations cannot precede the date of establishing the just compensation. For WSDOT this means that an approved DV or AOS must be available before negotiations can begin.
2. Every reasonable effort is made to acquire real property expeditiously and by negotiations.
3. No coercive action is taken to compel agreement on the price.
4. The acquiring agency promptly offers to acquire the property for the full amount of the just compensation.
5. The acquiring agency provides the property owner with a written statement of the just compensation. This statement itemizes the amounts for the land, improvements and damages, and deductions for special benefits.
6. The acquiring agency offers to purchase any uneconomic remnant.
7. The acquiring agency pays an evaluation allowance (not exceeding $750 per parcel) to defray the actual and reasonable costs of interested parties' evaluation of the agency's offer.
8. The acquiring agency pays the property owner's fair and reasonable expenses for:
   a. Recording fees, transfer taxes, and other expenses incidental to conveying real property.
   b. Penalties for full or partial prepayment of any preexisting mortgage.
   c. The prorated portion of any prepaid real estate taxes that are allocable to the earlier of the date of vesting title in the acquiring agency or the date of the agency's acquiring possession of the property.
9. The owner is not required to surrender possession of real property before the payment is made available or is deposited with the court in condemnation cases.
10. Construction is scheduled so that no occupant is required to move without at least 90 days written assurance of the earliest date they will be required to vacate. If this requires a certification with exceptions to allow a project to go to ad, it should have prior approval from the appropriate authority and the certification should include all necessary justification.

11. No occupant is required to move from a dwelling until the acquiring agency has determined the rents, prices, and availability of qualified replacement housing.

12. Temporary occupancy after acquisition is by rental agreement at market rent.

13. If it becomes necessary to condemn the property, the acquiring agency files the proceedings. The property owner is not forced to file an inverse condemnation.

14. If the tenant owns the improvements:

    a. Payment for the improvements may not result in duplicate payments.

    b. The land owner must disclaim all interest in tenant-owned improvements.

    c. The tenant is offered the greater of the improvement's contribution to the fair market value of the property or the fair market value of the improvements for removal from the real property.

    d. In accepting the offer, the tenant must transfer all rights, title, and interest in the improvements to the acquiring agency.

    e. The tenant is not obligated to accept the acquiring agency's offer.

D. **Property Management** – After payment becomes available to the owner, continued occupancy is through execution of a rental agreement at market rent.

E. **Relocation Assistance**

1. The Relocation Assistance Advisory Program:

    a. Determines the need for relocation assistance by displaced persons.

    b. Provides current information on availability, prices, and rentals of DSS housing and commercial properties.

    c. Assists a displaced resident, business, or farm in obtaining and becoming established in a new location.

    d. Provides other advisory services to minimize hardships on displaced persons.

    e. Coordinates relocation activities with other agencies to assure the compatibility of the relocation concepts, aims, objectives, actual relocations, and land use plans.

2. The acquiring agency must assure that:

   a. Relocation assistance and payments are provided fairly, reasonably, and uniformly.

   b. Eligible displaced persons are paid promptly, or, in hardship cases, in advance.

   c. Prior to displacement, there are enough qualified dwellings available to fill the needs of all displaced persons.

   d. Any aggrieved party may have their case reviewed by the reviewing officer of the acquiring agency once they have followed the correct appeals process.

3. Every eligible displaced person receives a choice of one of the following moving expense payments:

   a. Actual and reasonable expenses for:

      (l) Moving the personal property owned by the displaced person, family members, business, farm, or nonprofit organizations.

      (2) Other related moving costs as described in Chapter 12.

   b. A residential moving expense payment per schedule established by WSDOT of $200 per eligible room, plus a dislocation allowance of $400.

   c. A business or farm may receive a payment equal to its average annual net income over the last two tax years prior to displacement (but not less than $1,000 nor more than $20,000). A business cannot receive this payment unless:

      (l) It cannot be relocated without a substantial loss of patronage.

      (2) The business does not have more than three other establishments engaged in the same business.

      (3) The business has personal property that must be moved.

4. The occupant of a dwelling may receive a replacement housing payment as follows:

   a. If the displaced person has been the owner-occupant for at least 180 days prior to the date of initiation of negotiations and if the displaced person buys and occupies decent, safe, and sanitary (DSS) housing not later than one year from the later of the date on which final payment is received or the date the displaced person moves from the acquired property, the replacement housing payment may include:

      (l) Purchase price differential as determined by WSDOT standards up to a statutory maximum of $22,500.

(2) Mortgage Interest Differential Payment (MIDP) expense.

(3) Title, recording, and certain other closing costs for the replacement housing.

b. If the displaced person has been the legal occupant for at least 90 days prior to the date of initiation of negotiation and if the displaced person rents and occupies DSS housing not later than one year from the date the displaced person moves from the acquired property, the replacement housing may include:

(l) Rent supplement as determined by WSDOT standards up to a statutory maximum of $5,250, or

(2) Down payment to purchase a DSS dwelling; however, the down payment cannot exceed the rent supplement as determined by WSDOT.

5. The payments in 3-4.1.E.3 and 4 are not income for tax purposes, social security eligibility, or welfare eligibility—except that the rent supplement payment may be considered in determining the shelter allowance in the welfare program.

6. If sufficient comparable DSS rentals or sale housing is unavailable, the acquiring agency must provide housing under the provisions of Housing of Last Resort described in Chapter 12.

### *3-4.2 Washington Administrative Code*

Chapter 468-100 WAC contains the administrative regulations pertaining to the acquisition process. WSDOT promulgates these regulations to assure implementation of the RCWs. Their principal impact is on the Relocation Assistance Program.

## 3-5 County Designations

The counties of the state of Washington have been given both letter and number designations. Current WSDOT practice uses only number designations. Examples of the use of these identifiers are as follows:

A. The county number forms the first two digits of the Control Section (CS) number, e.g., CS 0101 identifies: SR 90, Grant Co. Line to Jct. SR 395 S. of Ritzville, SR MP 191.89 to 220.49, Interstate, in Adams County.

B. The county number identifying the county is used in the Real Property Inventory as a part of the Inventory Control Number, e.g., 5-39-00001 identifies the first item in South Central's real property inventory for Yakima County.

C. The county number is used in the identification of certain sundry sites, e.g., PS-01-123 identifies a pit site in Adams County. The three numeric digits are a serial number assigned by the department to the site.

## 3-6 The Property and Acquisition Specialist as a Notary Public

If the Property and Acquisition Specialist's (PAS) duties require the services of a Notary Public, the state will secure the necessary commission and seal. The PAS notifies the supervisor sufficiently in advance of the expiration date to allow the state time to have the seal renewed before it expires.

The jurisdiction of the PAS as a Notary Public extends to all counties of the state of Washington.

The opening statement of each certificate of acknowledgment is "STATE OF WASHINGTON, County of_____," which the acknowledgment is taken.

Beneath the signature of the Notary Public is a space provided for entry of the name of the city, town, or rural community having a post office, which is the place of residence of the Notary Public. Should the Notary Public change the place of residence, he/she must immediately notify the:

Department of Licensing
Notaries Public Unit
PO Box 9048
Olympia, WA 98507-908

Attention: Professional Licensing – Notary Public

Licensing will require the notary's name, former address, new address, and seal number.

Note that the Notary's seal is invalid from the time of any change of place of residence until the time a new place of residence is on file. Therefore, the PAS must make the above notification promptly.

Usually, by the time the transaction has proceeded to the point of the execution of any instruments, the PAS will know the persons signing the instruments sufficiently well to avoid perjury by stating ". . . to me known to be the individuals . . . ." Should the Notary not know any person signing an instrument, they must require proof of identity. If the PAS is not satisfied with the identity of a person, he/she must refuse to take the acknowledgment and seek the services of another qualified officer who does know the person in question. In 84 Wn. 2d 360 (1974), the State Supreme Court held that:

> *The Notaries were responsible for reasonable care in learning the identity of the persons signing the documents. Although a Notary does not insure the identity of a person signing, when a signature proves forged the Notary has the burden of proof that a proper standard of care was used.*

The Notary must be satisfied that each person signing an instrument is sane and knows the consequences of their act.

# Chapter 4 Appraisal

4-1 Policy
4-2 Project Funding Estimates
4-3 Appraisals
4-4 Special Appraisal Situations
4-5 Responsibilities

This chapter outlines typical appraisal tasks and responsibilities. The Washington State Department of Transportation (WSDOT) Appraisal Guide, Appendix 4-1, provides detailed technical requirements for appraisals.

## 4-1 Policy

The Headquarters Real Estate Services Program Administrator (HQ RESPA) establishes WSDOT appraisal policy. This policy assures compliance with state and federal laws and regulations governing real property acquisition under eminent domain.

## 4-2 Project Funding Estimates

A Project Funding Estimate (PFE) is a detailed parcel-by-parcel estimate of total expected right of way acquisition costs. Ideally, it is completed by an appraiser, an appraisal reviewer, and a relocation expert. The PFE is entered into the Integrated Real Estate Information System (IRIS) which produces a summary report. Through IRIS, the region can update the PFE as needed. The PFE is used to obtain authorization and funding for the project.

### *4-2.1 Rules*

A. A PFE is prepared for every WSDOT project in which right of way will be acquired. For local agency projects, the local agency has the option of completing a PFE or a True Cost Estimate following the procedures outlined in Chapter 25 of the *LAG Manual* M 36-63.

B. As a minimum, the PFE contains the following information:

   1. A parcel-by-parcel list of right of way costs.
   2. A notation on every parcel with a listing on the Washington State Department of Ecology's Facility Site HazMat Database (www.ecy.wa.gov/fs). This information is to be included in the appraisal and the Determination of Value.
   3. A total project right of way cost summary.
   4. A project data package including sales, sales map, neighborhood and project description, scope of sales search and, if applicable, damage studies, cost-to-cure documentation, Assumptions and Limiting Conditions, and Acquisition Appraisal Salient Information. The PFE Parcel Work Sheet is included in the data package.

C. The PFE is transmitted by a cover memorandum containing a brief explanation of the material and a request for funding action.

D. Subsequent to funding action (assignment of a right of way number), any supplemental requests for significant fund changes or additions/deletions of parcels are submitted as separate PFEs per Section 4-2.1.A.

E. At a minimum, four complete copies, including data package, shall be distributed as follows:

| | |
|---|---|
| RESM, Region | (1) |
| Appraisal, Region | (1) |
| Negotiation, Region | (1) |
| Headquarters Appraisal | (1) |

F. One (1) copy each of the PFE without the data package shall be transmitted to Headquarters Relocation Assistance and Region Program Management.

G. Exceptions to the PFE procedures may be made with the written concurrence of the Section Manager, Appraisal and Appraisal Review Program.

### *4-2.2 Procedures*

The agent assigned to do the PFE completes the estimate as follows:

A. Inspects the project and becomes familiar with the engineering features of the plan.

B. Views individual parcels to determine the effects of acquisition.

C. Prepares a neighborhood and project description which defines existing uses, zoning, trends, transportation and utilities, economic influences, a synopsis of the project and its effect on parcels, and any changes in the aforementioned likely to be caused by the project.

D. Gathers sufficient comparable land sales, listings, and/or assessment information for the various types of parcels and remainders within the project.

E. Prepares project vicinity map.

F. Prepares PFE Parcel Work Sheet (RES-215) for each parcel on the project.

G. Includes any applicable damage studies.

H. Includes cost-to-cure documentation for estimates and/or bids.

## 4-3 Appraisals

This section outlines typical appraisal administration and responsibilities.

### *4-3.1 Appraisals, Authorization*

WSDOT may authorize acquisition appraisals after the following:

A. **Normal Approval**

1. The corridor hearing has been held.
2. The final environmental approval has been obtained.

3. The right of way plan showing the parcels to be appraised has been submitted.

B. **Special Approval** – Early appraisals may be completed on a parcel-by-parcel basis if "Hardship Acquisition" or "Protective Buying" has been authorized.

Appraisals may be completed prior to final plan and/or environmental approval if the circumstances warrant this action. Discretion is advised as this may have an impact on federal funding, if any.

### *4-3.2 Number of Appraisals*

A. **Acquisition Appraisals**

1. Each parcel to be acquired by negotiation must have at least one appraisal except as provided under Section 4-3.3. Additional appraisals may be required due to the complexity of the appraisal problem. It is the responsibility of the Review Appraiser to determine if more than one appraisal will be required. This should be done early in the acquisition process, preferably during the PFE.
2. Each parcel to be acquired by donation need not have an appraisal if the donor waives it.
3. Regardless of estimated just compensation amount, each parcel submitted to Headquarters for condemnation will be appraised. A Determination of Value (DV) prepared by a review appraiser must be transmitted with the parcel.

B. **Surplus Property Appraisals**

1. All surplus real property and/or real property rights with an estimated value in excess of $10,000 must have at least one appraisal prior to disposal by sale or trade. The Review Appraiser may require additional appraisals due to the complexity of the appraisal problem.
2. All surplus real property and/or real property rights with an estimated value of $10,000 or less can be reported as such using a memorandum form. Requirements are found in Chapter 11.
3. WSDOT-owned real property and/or real property rights to be rented or leased may have fair market rent supported by memorandum with supporting data attached as necessary. It is the responsibility of the Section Manager, Appraisal and Appraisal Review Program, or the Region Appraisal Supervisor to determine whether the complexity of the appraisal problem requires a formal appraisal in such instances.

### 4-3.3 Waiver of Appraisal

A. **Rules**

1. The department, at the discretion of the RESM, may elect to waive the requirement for an appraisal if the valuation problem is uncomplicated and the compensation estimate indicated on the PFE is $25,000 or less, inclusive of cost-to-cure items.
2. Special care should be taken in the preparation of this form. Because no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.

B. **Rules**

1. Just Compensation must be $25,000 <u>or less, inclusive of cost-to-cure items</u>.
2. Definition of "Uncomplicated" is as follows:
   - No change of Highest and Best Use.
   - No Damages other than "Cost to Cure."
   - Cost or Income approach to value not required to estimate value.

C. **Procedures**

1. An Administrative Offer Summary (AOS) (RES-216) is prepared using data from the project data file or other appraisals of comparable properties.
2. The AOS is submitted to the RESM or the Region Appraisal Supervisor for approval.
3. The RESM or Region Appraisal Supervisor signs the AOS authorizing a first offer to the property owner(s).
4. The original AOS is forwarded to the Section Manager, Appraisal and Appraisal Review Program. A copy is sent to the Region Negotiation Supervisor for preparation of the offer.

### 4-3.4 Appraisal Assignment

The Region assigns/contracts for appraisal and specialist reports. Staff appraiser assignments are made using the Staff Appraiser Assignment (RES-203). Fee appraisers and specialists are contracted using the personal services contract. For personal service contracting procedures and administration, see Chapter 300, of the *Consultant Services Manual* M 27-50.

A. The assigned appraisal form must match the complexity of the appraisal problem.

B. Appraisal assignment/contract data is entered into IRIS.

C. Qualified state staff, when available, must be utilized before private consultants can be contracted.

### 4-3.5 Distribution of Appraisal Reports

A. WSDOT may share the appraisal reports with the property owners.

When this occurs, the appraiser submits one original report, which is given to the Review Appraiser.

B. After the report is reviewed and found acceptable, an original and three copies of the appraisal reports are submitted to the Senior Appraiser with a fourth copy retained by the appraiser. The Region Appraisal Supervisor:

1. Stamps each appraisal with the date it was received in region.
2. Updates IRIS as necessary.
3. Distributes the reports as follows:
   a. Original to the Acquisition Supervisor, for inclusion in the Headquarters parcel file.
   b. One copy to the region parcel file.
   c. One copy to the review appraiser.
   d. One copy for the negotiator.

## 4-4 Special Appraisal Situations

### 4-4.1 Plan Revisions

When a right of way plan revision occurs, a new appraisal and/or new DV may be required.

A. If the parcel has not been acquired, the Appraisal Supervisor contacts the Review Appraiser to determine if a new or revised parcel appraisal is required.

1. If a new or revised appraisal is not required, the Review Appraiser will write a new DV based on the new map and the previous appraisal. (See Chapter 5, Review.)
2. If a new or revised appraisal is required by the Review Appraiser, the Appraisal Supervisor assigns and/or contracts accordingly.

B. If a plan change requires the acquisition of additional rights from a parcel that the department has already completed an acquisition on, then a new parcel number, PFE, and appraisal are required.

### 4-4.2 Damage Claims

The Region Appraisal Supervisor assigns or contracts the appraisal of damage claims (e.g., inverse condemnations) upon authorization by the HQ RESPA.

### 4-4.3 Advertising Signs

A. Tenant-owned signs (realty) in the acquisition are appraised as tenant-owned improvements. The appraisal shall report the following:

1. The contribution value of the sign.
2. The orderly liquidation (salvage) value of the sign.
3. The cost to move the sign onto the remainder (if a partial taking).

B. Fee-owner signs (realty) located in the acquisition are evaluated as fixtures. The appraisal shall report the contribution value of the sign and the cost to move the sign onto the remainder (if a partial taking).

C. Signs that are located outside the right of way are appraised only as authorized by the HQ RESPA or the Section Manager, Appraisal and Appraisal Review Program.

### 4-4.4 Other Types of Appraisal Problems

A. The following are examples of when the HQ RESPA should be consulted for direction:

1. Railroad properties.
2. Properties owned by a public agency.
3. Aquatic lands or wetlands.
4. City street rights of way.

B. **Private Access Easement for Transfer** – 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 condemn to provide private access to a third party because this situation is not a public use, as defined in RCW 8.04.070.

1. 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" is with the easement from Owner A.

C. **Well and Septic System Agreements** – When a portion of a well, well radius, or septic system falls within the proposed R/W acquisition, it may be appropriate for the RESM to allow the use of an agreement to replace the private utility rather than obtain a cost to cure.

The appraiser who prepares the appraisal, should first determine the feasibility of the replacement. An investigation should be made for adequate areas, setback requirements, soil conditions, etc.

If the system is not feasible, then other avenues of solution must be taken.

If there are public or community utilities within the area, the cost of the hookup to that utility should be investigated as a possible alternative.

D. **Asbestos** – When buildings to be totally or partially acquired are suspected to contain asbestos, the Region Appraisal Supervisor:

1. Requests that the region project engineer contract for asbestos sampling and testing of such buildings per these priorities:

   a. **High Priority** – All buildings designed/constructed for human occupancy/use, except single-family dwellings. Asbestos sampling/testing reports on these buildings are provided to the parcel appraiser for consideration during the appraisal process (see Section 4-4.4.D.2).

   b. **Low Priority** – All single-family residences. Asbestos sampling/testing reports on these need not be considered by the parcel appraiser during the appraisal process unless the typical market would do so.

2. Positive asbestos sampling/testing reports on high priority buildings require the services of a specialist (Industrial Hygienist) for an estimate of the cost of mitigation. The mitigation estimates needed are:

   a. For affected buildings lying totally within the right of way or likely to be totally acquired, the costs needed are:

      (l) Removal of the asbestos from the entire building.

      (2) Encapsulation of the asbestos for the entire building.

   b. For affected buildings lying partially within the right of way and which will likely be rehabilitated in place, the costs needed are:

      (l) Removal of asbestos that will be disturbed during rehabilitation.

      (2) Encapsulation of asbestos that will be disturbed during rehabilitation.

3. Positive asbestos sampling/testing reports on low priority buildings do not require mitigation cost estimates. However, such positive reports are to be provided to the Region Negotiation Section and Property Management Section prior to the occurrence of any of the following:

   a. Offering owner the option to retain the building for salvage.

   b. Rental of the building to the owner, occupant, or any tenant after acquisition.

   c. Any sale that includes ownership of the building.

   d. Demolition of the building.

4. The Region Appraisal Supervisor assures that copies of all positive asbestos sampling/testing reports are available to the project engineer.

E. **Toxic/Hazardous Waste Situations** – The Region Appraisal Supervisor consults the project environmental impact statement and/or the project design report for information. If toxic/hazardous waste is present in the project alignment, it should be tested and mitigation costs estimated prior to the PFE. The Region Appraisal Supervisor assures that any positive testing and mitigation cost estimates are forwarded to the parcel appraisers for consideration during the project funding and/or appraisal processes.

1. Lacking definite information on hazardous/toxic waste contamination from the project design report or the EIS, the appraiser is vigilant during field inspection of parcels or owner contacts for indications of possible contamination such as:

   a. Evidence of spillage.

   b. Odd odors or soil colors.

   c. Evidence of burial.

   d. Discolored, missing, or dead vegetation.

   e. Dead animals or birds.

   f. Suspicious drums, tanks, or containers.

   g. Any above or underground storage tanks.

2. If the appraiser suspects the presence of hazardous/toxic waste on a parcel, the following actions are taken:

   a. The appraiser reports suspicions in writing through the Region Appraisal Supervisor to the Region Environmental Unit.

   b. The Section Manager, Appraisal and Appraisal Review Program, is consulted on how to proceed with the appraisal.

   c. If waste is found, the cleanup costs reported by the environmental unit are considered by the appraiser during the appraisal process.

F. **Mobile Homes** – As described in Title 49, Code of Federal Regulations, Mobile Homes may be determined to be either real property or personal property. The appraisal procedures will be different depending on this determination.

It is recognized that personal services contracting expertise lies with the Region Appraisal Supervisor. The Region Appraisal Supervisor will contract with a mobile home specialist to explore whether each mobile home is real estate or personal property. As part of the contract, the mobile home specialist will also determine the salvage value of the mobile home (if real estate) and the depreciated value and cost to move the mobile home (if personal property), as described below.

The final decision as to whether the mobile home is real estate or personal property will be made by the Region Real Estate Services Manager, or designee, and will be based on the following criteria:

**Real Property** – Not licensed by Department of Licensing, Motor Vehicle division.

**Personal Property** – Title is licensed by Department of Licensing, Motor Vehicle division.

1. If the mobile home is determined to be real estate, then it is appraised at its contribution value as real estate in the appraisal report, and a salvage value will be provided. The mobile home specialist will provide the salvage value as part of the contract referenced above.
2. If the mobile home is determined to be personal property, then these procedures are followed:
   a. The Region Appraisal Supervisor will set up a contract with a mobile home specialist to provide the following information:
      (1) Cost to move, including code modifications and necessary upgrades.
      (2) Current depreciated value.
   b. The appraiser includes these costs in the appraisal report, but does not add them to the value of the real property:
      (1) A statement will be inserted in the appraisal acknowledging that the mobile home is personal property and what the conclusions of the specialist report are.
      (2) A copy of the specialist's report will be attached to the appraisal.
   c. The Review Appraiser includes a statement in the Determination of Value.
      (1) The statement will acknowledge that the mobile home is personal property and will state the conclusions of the specialist report. This information is not added to the value of the real property.
3. If the mobile home is determined to be personal property, but cannot be moved as described in Chapter 12, Relocation Assistance, then the RESM may authorize the purchase of the mobile home.
4. When acquired, the clearing of the title to the mobile home will be handled through escrow as described in Chapter 6, Acquisition.

## 4-5 Responsibilities

### *4-5.1 Region Appraisal Supervisor*

The Region Appraisal Supervisor's responsibilities include the following:

A. Obtain estimates, specialist's reports, and appraisals in advance of negotiations by making staff assignments or contracting private consultants.

B. Provide the appraiser with: identification of real property and fixtures to be appraised; engineering data; specialist reports; information from the environmental impact statement (EIS); and/or project design report regarding hazardous/toxic waste and/or asbestos.

C. Update projects, parcels, Project Funding Estimates, appraisal assignments, and appraisal completions in the IRIS computer system.

D. Supervise appraisal staff.

E. Negotiate contracts with fee appraisers and specialists and oversee their completion.

F. Act as liaison between Review Appraiser and appraiser regarding review and/or rejection of appraisal reports.

G. Act as liaison between the Attorney General's Office and staff appraisers.

### 4-5.2 Appraiser

The appraiser's responsibilities include the following:

A. Appraising items of property that have been identified as real estate fixtures. The appraiser itemizes and considers the fixtures in the report. The appraiser identifies the ownership of real property improvements and personal property. This should be done taking in to consideration the definitions of "Real Estate" and "Personal Property" available in the appendix. Consideration must be given to the method of attachment for each item as well as market customs and the intent of the parties. Items meeting the definition of real estate under these conditions shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant of the lands, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his or her term. See RCW 8.26.190)

B. Performing and reporting in conformance with:

   1. Either the Staff Appraiser Assignment Form (RES-203) or the personal services contract.

   2. The Certificate of Appraiser (RES-205).

   3. Instructions peculiar to the specific assignment.

C. Providing acceptable written appraisals or estimates in accordance with the Appraisal Guide (Appendix 4-1).

D. Providing appraisal revision and corrective action as requested by the Review Appraiser.

E. Coordinating appraisal matters with legal staff at pretrial conferences.

F. Appearing as an expert witness for WSDOT.

G. May act as negotiator as well as appraiser on parcels with $10,000 or less just compensation.

## Part I Evaluation Guidelines

A. **Departmental Standards**

1. An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. The format and level of documentation for an appraisal are dependent on the complexity of the appraisal problem to be solved. An acceptable appraisal report is one which fulfills all the requirements of this Appraisal Report Guide and contains factual support and sound reasoning for conclusions drawn. An appraisal may fulfill all requirements of the Appraisal Report Guide as to data contained, etc., and not be acceptable because of inadequate investigation or interpretation of market facts and/or unreasonable judgment of such facts.

2. Except as provided in RCW 8.26.180(2) and 49 CFR Part 24.102(c), the Real Estate Services Office shall appraise all properties affected by WSDOT highway projects prior to negotiations for purchase of property rights required for highway purposes. Appraisals shall be made to determine the value of the property rights sought by the state, basing such determination on the legally compensable amount of the fair market value lost to each separate ownership by virtue of WSDOT's highway project plan. All policy in this connection is governed by a constitutional provision of the Washington State Constitution; specifically, Amendment 9, Art. 1, Section 16, Eminent Domain, which reads in part: "No private property shall be taken, or damaged for public or private use without just compensation having been first made, or paid into court for the owner, . . . ."

3. The policy designed to carry out the requirement for the payment of just compensation is not personal in its context. It is not a limitation on the person whose property may be acquired, but a limitation on property acquired for public use. The sole restriction or limitation is to preserve for the owner a right to "just compensation." It is for the property acquired and not to the person whose property is acquired. Evaluation in both the before and after instances is to be based on "fair market value" and not "value in use," i.e., ordinary value of the real estate in the open market to people generally and not special value to a particular owner or special value to a particular operation due to some individualistic peculiarity of the operation. "Fair market value" is the amount in cash which a well-informed buyer, willing but not obliged to buy the property, would pay, and which a well-informed seller, willing but not obligated to sell it would accept, taking into consideration all uses to which the property is adapted or may be reasonably adaptable. The mathematical difference between

the two values (market value "before" minus market value "after") is the just compensation after adjusting for items that are not compensable under the law. The "after value" is based on the value of the remainder property assuming that the actual construction of the proposed project will not be completed until an estimated future date. Any temporary inconvenience during or caused by, the actual construction of the project is not considered in the appraisal. Fair market value shall normally be that of fee simple title.

4. The public, which must bear the burden of these public projects designed to safeguard and protect the private property of all, should be assured that the compensation awarded shall be just and not generous; shall be adequate but not a windfall; and shall approximate what it can reasonably be assumed the property would bring in cash, in an open market exchange to a willing seller and under normal bargaining procedure.

5. The property owner has the legal right to inspect the property with the appraiser. Every effort must be made to ensure that the property owner has been extended that opportunity for a joint inspection.

B. **Total Acquisition** – When WSDOT's highway project plans necessitate acquisition by WSDOT of an entire ownership, just compensation is the fair market value of the property, taking into consideration as part of the property such improvements that have been determined to be real property, evaluated as of the date of appraisal.

If a tenancy is involved, the tenant-owned real property improvements are evaluated as of the date of the appraisal and as they contribute to the market value of the property or their value for removal, whichever is greater.

C. **Partial Acquisition**

1. **General** – When WSDOT's highway project plans necessitate acquisition by the state of less than a total ownership, just compensation for the rights to be acquired is the difference between the fair market value of the entire ownership prior to the acquisition and the fair market value of any portion thereof not required by the state's highway project plans after adjusting for items that are not compensable under the law.

   a. Both evaluations ("before" and "after") are based on fair market value as of the date of appraisal by the state. Before and after values reflect the amount that one buyer would pay and that one seller would accept under the value definition.

   b. If the market evidence reveals no difference between the value before and the value after the acquisition, the Appraiser reports the facts dictated by the market. The Appraiser is not obligated to report a difference when none exists in fact. The Appraiser is obligated to report only the facts and conclusions based purely on appraisal considerations.

c. If a tenancy is involved, the tenant owned real property improvements are evaluated as of the date of the appraisal and as they contribute to the market value of the property or their value for removal, whichever is greater.

2. **Benefits** – In Washington State, there are three concepts where value may be created by a pending highway improvement. It is necessary to differentiate between these concepts and understand them in order to properly treat them in right of way acquisition. The three concepts are defined as follows:

   a. **Enhancement** – Increases in real estate values in advance of right of way acquisition created by knowledge of a pending highway improvement.

   b. **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 although other owners on the facility receive similar benefits.

   c. **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.

   Appraisers' market studies must be sufficiently encompassing to enable them to detect both adverse and beneficial effects on property values in the path of prospective highway improvements. They need to be able to demonstrate and evaluate such effects, thereby avoiding a reporting of value conclusions that would tend to penalize a property owner where values were depressed or to penalize the general public where values were enhanced by knowledge of a pending highway improvement. However, maintenance within the control of the owner or tenant must be considered in estimating the market value of a property.

   Appraisers' market studies must also enable them to detect special and general benefits to remainders and to differentiate where special benefits are present and to explain their reasoning.

3. **Damages**

   a. **General**

      (1) Damage is the mathematical difference between the value of the remainder after the acquisition and the value of the remainder as a part of the whole prior to the acquisition if no benefits are found to exist.

      (2) The Appraiser is required to fully explain the physical facts which cause the remainder to suffer a loss in value (damages) and the market facts that justify such a conclusion.

b. **Mitigation of Damages**

(1) WSDOT may negotiate for the purchase of property outside the right of way for the purpose of mitigating a portion or all of the damage to remainders in various circumstances when such mitigation can be shown to create a saving to the state. The amounts of such savings are determined by appraisal techniques and documented by confirmed factual cost data secured by the department.

(2) Certain types of mitigation may not be allowed in legal actions. The Region Appraisal Supervisor consults with the Attorney General's Office when in doubt.

(3) An improvement lying partially within the right of way to be acquired is considered as acquired in total unless it is found that such improvement may be rehabilitated in place and thereby preserve its utility. In the latter case, there must be a showing that: (a) from the standpoint of the prudent person, such rehabilitation would be the typical action; and (b) such rehabilitation is economically justified. A two-premise appraisal is necessary showing compensation (a) assuming no rehabilitation, and (b) assuming rehabilitation has been accomplished. The Region Appraisal Supervisor secures bid(s) from reliable contractor(s) indicating the cost of rehabilitation.

c. **Modification of Project Plans** – The Appraiser, or Region Appraisal Supervisor, reports in writing to the Region RESM any justified construction items that would mitigate damages.

d. **Uneconomic Remnants** – An uneconomic remnant is a remaining portion of a property in which an owner is left with an interest that WSDOT determines has little or no utility or value to the owner.

WSDOT has a concern for those owners who are at risk and must sell such a remnant to a third party in order to break even or who must undertake a totally new business in order to take advantage of a changed highest and best use. The determination of such remnants is the responsibility of the Review Appraiser (see Chapter 5).

e. **Damage Items Not Compensable** – There are certain items that are not compensable under the law. Approved just compensation and appraisal reports secured by the department exclude compensation for damage items not compensable under state law. Following is a list of some of the noncompensable items.

(l) Annoyance and inconvenience suffered by the public in common.

(2) Injury to business.

(a) Generally including loss of profits due to necessity of removing the business to some other location and loss of profits due to interruption of business by reason of and during the course of construction of the public improvement.

(b) Where the type of business is an integral part of or closely related to the land itself, the nature and amount of business and the income there from may be admissible as bearing directly upon the value of the land.

(c) Chapter 8.26 RCW authorizes the Transportation Commission to make specified payments for displacement and relocation. Such payments are not part of just compensation and are not to be considered during the appraisal process.

(3) Expenses for moving private and business personal property or for damages arising from the owner's inability to locate an acceptable substitute location are not a part of just compensation (27 Am. Jur. 2d Eminent Domain Sec. 293).

(4) While an abutting owner has a right to ingress and egress, the loss of which will be compensated where there is either a physical injury to the property or impairment of the access. There will not be compensation when the state, by proper exercise of its police power, installs traffic control devices and there results:

(a) A rerouting or diversion of traffic.

(b) A decrease in the amount of traffic on the highway.

(c) Circuity or impairment of travel caused by a divided highway.

(5) In general, all those types of damages such as can be considered potential, speculative, and remote, being uncertain and difficult to ascertain, are not to be considered.

f. **Damages or Benefits to Property Before Acquisition** – Any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. (RCW 8.26.180)

## Part II Specifications

A. **General** – In the appraisal of real estate for the purpose of acquiring right of way, the considerations are generally confined to estimating fair market value.

B. **Rules for Form Choice**

1. **The Region Appraisal Supervisor**

   a. Preferably at the project funding stage, but prior to parcel appraisal assignment, and in conjunction with the Review Appraiser and property owner:

      (1) Identifies any real estate specialty items such as trade fixtures and/or equipment. These are to be evaluated as to their fair market value contribution to the whole property. For complex items an expert is contracted to do a specialist's report. Such a specialist's report is provided to the appraiser of the parcel for consideration in the appraisal.

      (2) In the case of tenancy, identifies any tenant-owned real property improvements. If a condemnation clause appears in the lease, the Region RESM is notified and requested for advice on how to proceed. If the items are compensable (no condemnation clause), they are to be evaluated under the following two premises, disregarding any right or duty to remove them by the tenant:

         (a) The Fair market value which such item(s) contribute to the Fair Market Value of the whole property;

         (b) The fair market value of the item(s) for removal (salvage value).

         If the tenant-owned real property improvements are of a complex nature they are usually evaluated by an expert in a specialist's report. The Appraiser of the parcel must consider their fair market value contribution to the whole property based on the higher of the above two premises.

   b. Obtains any needed legal opinions or appraisal instructions.

   c. Obtains any other needed specialist reports (e.g., timber cruises, costs to cure).

   d. Reviews and approves (for contract compliance) the specialist's report by signing and dating a Certificate of Specialist in the blank provided.

e. Provides (as appropriate) to the Appraiser:

(1) Either Staff Appraiser Assignment Form (RES-203) or appraisal contract.

(2) Right of way plans, profiles, and cross sections.

(3) Any specialist's reports, legal opinions, and/or special instructions that may be necessary.

(4) Title report(s).

(5) Necessary printed report forms.

(6) Appraisal Report Guide (Appendix 4-1).

2. All reports are printed or typewritten. Title reports, Staff Appraiser Assignment Form, and/or copy of appraisal contracts are attached only to the copy given to the Review Appraiser. All other materials are submitted in the Addenda

3. Each item in the appraisal report is numbered and contains the information called for by the similarly numbered item in this appendix and Chapter 4.

4. Beginning with page 2, the following are either typewritten or printed at the bottom of each page of the report:

   a. Appraiser's/Specialist's name.

   b. Consecutive page numbering.

   c. Parcel number or numbers of the ownership.

5. The Appraiser includes an analysis of the specialist's report within the text of the appraisal report. Items or amounts shown by the specialist are not arbitrarily adopted by the Appraiser, but are considered as to their possible contribution to or diminution of the subject property's value. The specialist's report is included in the Addenda of the appraisal report regardless of the extent to which the data are used.

6. The Appraiser offers the property owner the opportunity of accompaniment at the time of the property inspection. A Report of Contact With Owner (RES-204) is completed, reporting such contact and inspection, and is included in the Addenda of each appraisal report.

7. Appraisal and specialist reports are assembled as shown in Appendix 4-1, Tabs A through F. The completed report is stapled in the upper left-hand corner only. The report is not placed in a folder.

8. The original and the number of copies agreed to by the contract are signed and submitted to the assigning Region Appraisal Supervisor. Unless otherwise specified, an original and three copies of each report are required.

C. **Deciding Which is the Correct Type of Appraisal Form**

The acquiring agency must base its appraisal form choice on the magnitude of the appraisal problem. All forms are found at the website for WSDOT Real Estate Services at www.wsdot.wa.gov/realestate. The quick-reference chart below outlines the choice requirements:

| Form | Conditions | Requirements |
|---|---|---|
| (None) | No appraisal is required if released by the property owner when a donation situation. | Owner must be informed of the right to receive just compensation based on an appraisal. |
| (None)<br>Administrative Offer Summary | Simple acquisition where total just compensation is $25,000 or less. | Value finding evidence contained in the Project Funding Estimate or other explanation needed. Property owner must be informed of the right to an appraisal. |
| Abbreviated Appraisal Report | Simple acquisition where damages are measured by cost to cure. | See Tab D (below) for requirements. |
| Narrative Appraisal Form | Whole or partial acquisitions. When the property's present use is its highest and best use and that use is the same before and after acquisition, only the Sales Comparison Approach is usually applicable. | See Tab C (below) for requirements. |

D. **Report Preparation** – The format, rules, and procedures for the various types of reports are given in the following tabs:

1. Specialist's Report
2. Surplus Property Form
3. Narrative Appraisal Form
4. Abbreviated Appraisal Report
5. Strip Appraisal Procedures

# Tab A Specialist's Report

## I. Rules

A. A specialist's report evaluates a special and/or cost-to-cure item, e.g., a timber cruise, well drilling, facade rehabilitation, and specialty real estate equipment.

B. The specialist's report is a written document that contains the following (where applicable):

1. A Certificate of Specialist.
2. Statement of the purpose of the report and definition of the value(s) or cost(s) reported, i.e., reproduction cost less depreciation, salvage value, cost to cure.
3. Identification of the property, its ownership, and location, i.e., a complete listing of all items, each described to the extent that it may be valued and located and identified in the field.
4. Statement of appropriate contingent and limiting conditions, if any.
5. Statement of the problem to be solved by the specialist.
6. The estimate of value(s) or cost(s) as of a specific date.
7. The specialist's report provides a breakdown of the total estimate showing individual amounts for each item, such as: material, labor, profit, and sales tax.
8. The data and analysis to explain, substantiate, and thereby document the estimate of value(s) or cost(s).
9. Descriptive material, i.e., special instructions, maps, charts, plans, photographs.

C. Upon review and approval by the Region Appraisal Supervisor, the specialist's report is submitted to the Appraiser for consideration within the appraisal and for inclusion in the Addenda of the appraisal report.

## II. Procedures

A. The specialist completes the report as follows:

1. PAGE 1 – CERTIFICATE OF SPECIALIST

   Page 1 of the specialist's report and includes the following:

   a. **Right of Way Plan Identification** – The purpose of the block in the upper right-hand corner is to identify the specialist's report with the particular highway plan upon which the parcel is shown as of the date of the evaluation. A subsequent revision of the right of way plan (shown by the "Last Revision" date) could nullify the validity of an earlier evaluation. The specialist's report is, therefore, identified with the plan currently furnished by the department.

The specialist refers to the Agreement for Services for the parcel numbers, federal aid number (if any), and correct project number and title. The project title is the same as the plan title found in the lower right-hand comer of the Department's approved right of way and/or sundry site plan sheet.

In the case of a common borrow site, the project title also includes the name of the highway project for which the common borrow site is intended to be used. The pertinent—"for use on"—information is shown on the sundry site plan within the block which shows the particular site involved.

A specialist's report may NOT include any conclusion based upon an expectation of a future plan revision without written instructions. A copy of any such instructions is included in the Addenda of the specialist's report. If the current right of way plan does not reflect current conditions, such fact is made known to the Region Appraisal Supervisor who will seek correction of the plan prior to permitting the evaluation to be continued. Any necessary revision of the specialist's contracted due date is executed by a new personal services contract. Special authorization is secured by the Region Appraisal Supervisor if the best interest of the state will be achieved by continuing the evaluation in spite of plan inaccuracies or omissions. If the plan is in error on the location of improvements, staking on the ground is considered to override and supersede plan information.

Include in the statement contingent and limiting conditions, reference to any special instructions received from the Region Appraisal Supervisor, and the specialist's specific findings in any case of plan error.

b. **Certificate of Specialist** – The wording of the certificate has been authored by the department to serve specific requirements. The specialist is expected to be fully aware of the language of this certificate. The specialist is to show all dates that the property being evaluated was inspected in the first paragraph.

c. The "date of evaluation" is the most recent date of property inspection by the specialist. It is inserted in the blank in the eighth paragraph.

d. The "Date of Contract" is the date on which the contract was approved by HQ RESM. Dates of approval of any and all contract revisions are listed in order by date under the original contract date.

e. The specialist completes the certificate by inserting the firm name, signing, and dating the form with the date being that on which signed.

f. "DO NOT WRITE BELOW THIS LINE" – This space is for Region use only. The only marks in this space are the date of receipt of the report in the region, and the signature and date of approval of the report by the Region Appraisal Supervisor. Date stamping in this space

is accomplished by WSDOT personnel to show the actual date of receipt by WSDOT.

2. PAGE 2 et seq. – NARRATIVE SECTION OF THE SPECIALIST'S REPORT

   In this section, the specialist presents a narrative report which covers (in the order listed) the items in Appendix 4-1, Page A-l, Parts iB2 through iB7.

3. ADDENDA

   In this section, the specialist includes all pertinent supporting data as indicated in Appendix 4-1, Page A-l, Parts iB8 and iB9.

B. **The Region Appraisal Supervisor**

1. Assures that the specialist's report has been date-stamped in the region.
2. Reviews the report (for contract compliance) and:
   a. Obtains any necessary corrective action or approves the report by signing and dating a Certificate of Specialist and submits the approved report to the Appraiser.
   b. Assures that the Appraiser incorporates the specialist's report as provided in Appendix 4-1, Tab A.

## Tab B Surplus Property Report

### *I. Rules*

A. Simple disposals with values at less than $10,000 may be handled with a "value memorandum" citing the rationale and evidence obtained for the conclusion of value. This memorandum is generally prepared by the Property Management agent rather than an appraiser. See Chapter 11 for the specifics required in the memorandum.

B. Complex surplus parcels are to be appraised using the Surplus Property Report form. Federal law under 23 CFR 710.403 and Washington State law under RCW 7.12.063 require that properties or property rights to be sold are to be sold at fair market value. The National Highway Institute has provided these guidelines for valuing properties and/or rights which an agency wishes to dispose of.

C. **Value Method Defined** – This is a common area of confusion. What value is being estimated? It is not as simple as developing a single estimate of Market Value or just compensation. The Appraisal Supervisor will make the assignment considering one or more of the following:

1. Fair Market Value of the property standing alone in the market place. This approach may be used for determining a minimum bid for properties to be sold at public auction. This approach may be used for selling developable properties to a public agency

2. Value to adjoining property owner using an "across the fence" approach. The method would involve an appraisal of the area being disposed of using values similar to the value of the adjoining property. This method would be applied for each adjoining property when there is more than one abutter and there is no value enhancement to any abutter.
3. Value enhancement to the adjoining owner. The method is a reverse "before" and "after" when an assemblage of WSDOT property allows an abutting property to gain a benefit. The difference between the two values is the enhancement. Changes in limited access automatically fall into this category. Another example is a development density gain that is disproportionate to the size of the surplus. Where the adjoining owner initiates a request to buy excess property, the enhancement method should be the starting point for negotiations in order to recognize the greatest net return to the project.

## Tab C Narrative Appraisal Report Form

WSDOT has a policy of providing a copy of the appraisal to the property owner. This format is intended to be flexible in providing the appraiser the ability to address problems that range from simple to complex in a format that will be easily understood by the intended users of the report.

### *Rules*

The Narrative Appraisal Report replaces the WSDOT Standard Narrative Report and the Short Form Narrative Report. This format is intended to be flexible in that the approaches to value to be employed are determined and specified by the particular written assignment/contract. The written assignment/contract is crucial in determining the appraiser's Scope of Work. It is anticipated that for most noncomplex assignments the Sales Comparison approach will be the only approach requested.

Page 2 of the report contains the Assignment Scope of Work. WSDOT is required under 49 CFR Part 24 to take an active role in developing the Scope of Work. The purpose of the Assignment Scope of Work is to inform the user of the report of the Scope of Work that is expected from the appraiser. The appraiser's Scope of Work is included in Item 5 of the report.

All WSDOT Narrative Appraisal Report assignments must be submitted on the Narrative Appraisal Report Template provided by WSDOT. Deviation from the template is permitted only when specific exemption or deviation is included in the written assignment.

The WSDOT Narrative Appraisal Report is a self-contained report. All reasoning, supporting documentation and data must be included in the report. When applicable, reference to significant policy interpretation and the source of the interpretation must also be included in the report. State and federal standards require eminent domain appraisals to be self-contained. Reports identified as "Summary Report" will not be accepted.

In instances of total acquisition of a single family residence where the improvements make up a significant portion of the overall value, a total property to total property comparison is acceptable (if permitted in the assignment) without the inclusion of comparable sales in support of the breakout of land value. It is incumbent upon the Appraiser to be sufficiently familiar with land values in order to make a reasonable allocation of value between land and improvements with supporting documentation in the appraisal file. A reasonable allocation to the land value must still be made in the Summary of Conclusions (Section 12). This exception must be specified in the written assignment.

The Narrative Appraisal Report is organized according to the following format and procedures:

### *Certificate of Appraiser*

This printed form is the first page of the appraisal report and includes the following:

Parcel Number and Owner's Name: This identifies the property that is being appraised.

A. **Right of Way Plan Identification** – The purpose of the block in the upper right-hand corner is to identify the appraisal report with the particular highway plan upon which the parcel is shown as of the date of the appraisal. A subsequent revision of the right of way plan (shown by "Last Revision" date) could nullify the validity of an earlier evaluation. The appraisal report is, therefore, identified with the most current map available and obtained from WSDOT.

   The Appraiser refers to the personal services contract, Task Assignment or Staff Assignment Form for the parcel numbers, federal-aid numbers (if any), and correct project number and title. The R/W plan title is the same as the plan title found in the lower right-hand corner of WSDOT approved right of way and/or sundry site plan sheet.

   An appraisal report may NOT include any conclusion based upon an expectation of a future plan revision without written instructions. A copy of any such instructions is included in the Addenda of the appraisal report. If the current right of way plan does not reflect current conditions, the Region Appraisal Supervisor seeks correction of the plan prior to permitting the appraisal to be continued. Any necessary revision of the Appraiser's contracted due date is executed by a new personal services contract, Task Assignment or Staff Assignment Form. Special authorization is secured by the Region Appraisal Supervisor if the best interest of the state will be achieved by continuing the appraisal in spite of plan inaccuracies or omissions. If the plan is in error on location of improvements, staking on the ground is considered to override and supersede plan information.

B. **Certificate of Appraiser** – The wording of the certificate has been authored by WSDOT to serve specific requirements. The Appraiser is expected to be fully aware of the language of this certificate.

C. **Encumbrances**

1. The paragraph on page 1 beginning, "This property has been appraised for its fair market value . . . ." is designed to provide ready identification of a parcel which cannot be marketed in fee simple due to the existence of outstanding dominant interests. Basic ground rules of appraising property for WSDOT require the evaluation of all rights of fee ownership because WSDOT assumes the responsibility of clearing all interests presuming the market value of the fee to be equal to the sum of all partial interests. The appraiser inserts the date of the title report here.

2. WSDOT recognizes easements of material duration, perpetual easements (including electrical transmission power lines), deed or title restrictions (including access limitations and use restrictions imposed on the title) as having possible adverse effects on market value. In the event of the existence of such an encumbrance in a particular case, the Appraiser discusses their effect in the narrative report. In these cases, the evaluation reflects the value of the property as encumbered.

D. The paragraph on page 1 beginning, "The opinion of value expressed below . . . . " requires that the Appraiser show the total number of pages in his report in order to avoid inadvertent loss of pages or the possibility of any fractional use of the report. The number of pages shown here is the total page count of the appraisal report, including the Addenda, but excluding the Reviewer's copy of the Title Report and appraisal assignment/contract/task order.

E. The paragraph on page 1 beginning, "I made a personal inspection . . . ." requires the appraiser to list all dates on which the subject property was inspected.

F. The paragraph on Page 1 beginning, "The Date of Value for this property . . . ." requires the appraiser to insert the Date of Value. The Date of Value is the most recent date of property inspection by the appraiser.

G. The paragraph on page 1 beginning, "Per the Fair Market Value definition . . . . " is designed to display the final conclusion of the Appraiser. In the case of a total acquisition, the words "total acquisition" are inserted in lieu of a remainder value, and the third blank line is ignored. If a two-premise appraisal is required, insert the conclusions for "Premise 2" immediately to the right of those for "Premise 1," and label both appropriately; or include two Page 1s, one labeled Premise 1 and the other labeled Premise 2.

H. The "Date of Contract" is the date on which the contract or task assignment was approved by WSDOT. Dates of approval of any and all assignment or contract revisions are listed in order by date under the original contract date. Staff Appraisers use the date of assignment.

I. Appraisers complete the certificate by inserting their name and Washington State appraisal certification number and signing and dating the form.

J. "DO NOT WRITE BELOW THIS LINE." – This space is for region and Headquarters use only. The only marks in this space are the date of receipt of the appraisal in Region and in headquarters. Date stamping in this space is

accomplished by department personnel to show the actual dates of receipt by WSDOT.

### Page 2 – Assignment Scope of Work/Eminent Domain Appraisal Information and Definitions

Under 49 CFR Part 24, WSDOT is required to take an active role in developing the scope of work expected. This page outlines the Scope of Work required in the report as prescribed by state and federal standards. Also included are eminent domain appraisal definitions and special assumptions. The purpose of this page is to inform the user of the report of the Scope of Work expected from the appraiser. It is the responsibility of the appraiser to develop a complete Scope of Work and produce a credible appraisal report. The appraiser's Scope of Work is included in Section 5 of the report.

### Page 3 – Assumptions and Limiting Conditions

This information is generally standard and has been created to fit specific WSDOT requirements but should be revised to fit the particular appraisal problem or assignment.

### Subject Plot Plan and Photos (RES-207)

This printed form includes the following:

A. **Sketch** – A plot plan sketch of the whole subject property is required. The sketch should assist the reader in visualizing the parcel and the scope of the related appraisal considerations. The minimum pictorial requirements itemized on the form require showing the entire subject, including perimeter dimensions and parcel area. All street frontages are identified. All pertinent improvements and other significant features of the property are shown in their approximate locations, including alleys, roadways, and easements. The dimensions of the improvements are shown. The geographic orientation of the property is identified by means of a north directional arrow.

   The sketch may be drawn electronically. However, a copy of a "reduced print" size of the right of way map clearly depicting the subject and surrounding properties may be used.

   The location from which each subject photograph was taken is identified along with the photo number and the direction the camera lens was pointing. In the case of a partial acquisition, the limits of the proposed right of way are shown. The remainder dimensions and area are shown. Any restriction of access is shown by pictures. If road approaches are to be permitted, they are shown in their approximate locations. More than one sketch may be required for clarity in some situations. Where this is necessary, a sketch of each major building/improvement, with dimensions, lying in the acquisition area is required. Additional sketches may show the remainder details or an enlargement of a portion of the total parcel. All sketches shall carry sufficient identification to pictorially indicate the relationship of the sketches to each other. When an alternate remainder evaluation is required, a sketch of the remainder is included in the Addenda of the report.

B. **Photographs** – Each appraisal report includes a sufficient number of photographs, properly identified and taken at various angles to show significant features of the property, especially the improvements, and the acquisition area.

## Narrative Appraisal Report

### *Item 1 – Owner*

The names of all current owners are shown. Where certain parties are contract purchasers, life estate owners, tenants, etc., so indicate.

### *Item 2 – Address (or Location) of Subject Property*

The address of the property is shown, or if an address is nonexistent or does not readily reveal a specific geographical location (as in the case of a rural postal route and box number), the location of the property is described by reference to names of streets, roads, highways, and distances from describable landmarks.

### *Item 3 – Legal Description*

Insert legal description provided in the title report. If the legal description is lengthy, the appraiser indicates so and includes the entire legal description in the Addenda of the report.

### *Item 4 – Delineation of Title*

All transfers of the property occurring within the previous five years are reported in this section. Each transfer is tabulated in order of occurrence showing the grantor, grantee, date of sale, Auditor's volume and page, confirmee, and the sale price as follows:

FROM TO DATE BOOK/PAGE CONFIRMEE CONSIDERATION

Following each sale, state an opinion on whether the sale can be considered as evidence of value. If it can, the sale information and the Appraiser's analysis thereof are reported on the Market Data form (RES-210 and RES-210B) and included in the report. If the sale cannot be considered, the Appraiser explains why in detail.

### *Item 5 – The Appraisal Problem and Appraisers Scope of Work*

The purpose of all appraisals is to estimate the "fair market value" which is defined on Page 2. In the case of a "total acquisition," the purpose of the appraisal is to estimate the market value of the entire ownership. In the case of a "partial acquisition," the purpose of the appraisal is to first estimate the market value of the entire ownership and second to estimate the market value of the remainder. The difference between the two values is then to be analyzed (by the Appraiser) as to the allocation of the value differential to real property acquired and damages or special benefits to the remaining real property and property rights.

The Appraiser states any extraordinary assumptions and limiting conditions that are necessary to the background of the evaluation of the whole ownership before acquisition. Special legal opinions are secured from WSDOT or instructions furnished by WSDOT are mentioned here.

Encumbrances shown on the title report which have an effect on market value are listed by encumbrance number as shown on the title report.

### *Item 6 – Property Rights to Be Acquired and Effects of Acquisition/ Project*

The purpose of this item is to explain the principal problems presented by the particular parcel in estimating market value and, in the case of a partial acquisition, to explain the principal differences in character and amenity between the parcel before the acquisition and the portion remaining after the acquisition.

The Appraiser begins by explaining what property and rights are to be acquired. This is done in very general terms because the description of the before situation in Section 7 and the description of the remainder in Section 10 and the itemization of rights being acquired in the summary of conclusions are to be very comprehensive on this point. By the Appraiser's first explaining the significance of the differences between the before and the remainder circumstances, he can more effectively focus the reader's mind on the more important value considerations. The areas in acres or square feet of both the before and remainder are noted. If the acquisition will include the acquisition by the state of easement rights, the area, type, and effect of such easement are stated and taken into consideration in the evaluation of the remainder. If more than one value premise is necessary, an explanation of each premise is given here. If it is determined that items such as trade fixtures, machines, equipment, or other items of a more or less personal nature are to be included in the evaluation of a property, those items should be listed on the Personalty Realty report in section 14 of the appraisal. If said items are tenant owned, they are evaluated separately as to both the fair market value which said item(s) contribute to the fair market value of the whole property and the value of the item(s) for removal (salvage value). A specialist report may be required to provide this value.

### *Item 7 – Description of Subject Property*

Under this heading, a description of the neighborhood and economic influences in force are given. The economic position of the appraised property relative to the neighborhood is explained.

A. **Present Use** – The use or uses the property is presently serving are stated.

B. **Accessibility and Road Frontage** – Existing road or street patterns serving the property, existing property frontages, road approaches, grade differentials between the property and road frontages, existing access restrictions imposed by deed, title, police power, or nature are described.

C. **Land Contour and Elevations** – A word picture of the "lay of the land" is given here.

D. **Land Area** – Total ownership area in acres or square feet as noted within the ownership block on the plan sheet. The appraiser must reference any area differences between the R/W plans and recorded plats, surveys, assessor's data, owner information, etc.

E. **Land Shape** – The general shape and dimensions of the ownership are included.

F. **Utilities** – Public and/or private utilities (sewer, water, gas, electric power, etc.) available to the property, their locations, and quantities are included.

G. **Present Zoning** – The zoning and jurisdiction as of the date of appraisal is stated in words, not codes, for example: "Multi-residential, minimum area 7,200 square feet, Pierce County." Also, any restrictions on the use of the property are explained, e.g., setback requirements, and minimum on site parking requirements.

H. **Highest and Best Use of Land If Vacant** – In determining highest and the best use of the land, the Appraiser assumes the land to be vacant and available for its highest and best use even though it may not be actually vacant. He tells what use is the best for the land, ignoring any improvements, and why that use is the highest and best for this particular tract. The four tests of the highest and best use analysis are employed and discussed, with a reasonable conclusion supported by the analysis. Some parcels require value studies under more than one use assumption in order to support the conclusion. Any such study is explained in this paragraph. When the most logical use is not allowed under existing zoning, the Appraiser determines the reasonable probability of securing a zoning change.

I. **Improvements** – If the subject is improved, each of the improvements is named and identified on the sketch of the report. Each improvement is described, including age, construction, and general condition.

J. **Specialty Items** – These are items identified prior to appraisal as real estate equipment, real estate trade fixtures, crops, etc., and are to be identified in this section and in the Personalty Realty Report in section 14. The owner(s) of the item(s) must be identified here also. In most cases, a specialist's report evaluating the items is provided to the Appraiser at the time of assignment. The value of a specialty item is not arbitrarily added to the valuation of the other realty but is considered as any other basic data by the Appraiser in estimating the fair market value of the whole property.

K. **Real Estate Tax** – The dollar amount of the real estate tax is shown as well as the assessed value and current tax rate.

L. **Assessments** – The dollar amount of any assessments against the property at time of appraisal and pending assessments are indicated.

M. **Existing Lease or Rental Data** – If the property is under a lease or rental agreement, the Appraiser investigates and reports the details of the encumbrance. Whenever possible, the Appraiser also obtains owner-tenant agreement copies and includes them in the Addenda. In the case of residential property where improvements are acquired or damaged, the Appraiser estimates economic rent for the property and what the rent includes.

N. **Highest and Best Use of the Whole Property as Improved**

1. If the property is improved, the current highest and best use of the parcel is stated and explained. If it appears that the land is not developed to its highest and best use because of the improvements thereon, the Appraiser bases his decision on highest and best use for the total property on whether the value of the property as improved is greater than the value of the land if vacant. It may be necessary to prove highest and best use through appraisal techniques which reflect comparisons of values from alternate use premises. Interim use is to be noted and discussed.
2. If the property is vacant (unimproved), "Vacant" is stated under this heading. (See paragraph H of this item)
3. Evaluation of private property does not include value derived from the illegal use of state highway right of way for the conduct of adjacent businesses or any other illegal use.

### *Item 8 – Approaches to Value*

In this section the appraiser explains why the specific approaches to value were used or not used.

### *Item 9 – Property Valuation Before*

A. **Site Analysis and Evaluation**

***Rules***

The most reliable evidence of the value of the site is recent sales of similar sites. Since no two tracts are identical, adjustments to the sale price of comparable tracts may be required to develop an indication of value for the appraised site. An analysis of each comparable sale is required to reasonably develop and explain an indication of value for the subject based on the attributes. The evidence of any necessity to adjust is present in the market and is illustrated in the appraisal report.

The employment of the hypothetical subdivision to develop raw land value may be introduced to support the market data and to illustrate the amount of money a prudent purchaser would likely pay for raw subdivision land. However, due to the many variables and speculative elements, the estimate of value is never based solely upon such a hypothesis.

The comparative approach is based on the principle of substitution. Each comparable sale used in this approach must be sufficiently similar to the property to be considered as a substitute property or to bracket the value of the subject property.

The validity of the value conclusion drawn from this approach is in direct relation to the sufficiency and comparability of the data. Sales data must be of sufficient quantity and quality to give the value conclusion a solid base. To the extent that adjustments are needed in the sales analysis, the validity of the entire approach is brought into question.

***Procedures***

1. **Sales Comparison Approach, Site Evaluation**

   a. **Scope of Data Search** – Discuss the Data Search, including the specific time periods and geographical or neighborhood parameters utilized to research market data. Identify the sources and/or data bases utilized and the interviews or discussions employed to ascertain subject property details or market data.

   b. **General Discussion** – Here the Appraiser lays the groundwork for the comparative analysis by a statement of the extent of his search, the sufficiency and comparability of existing data, and the general value bracket within which subject will fall.

   Sales that are comparable are listed, identifying each by the sale number of the pertinent Market Data forms (RES-210 and RES 210B) in the Addenda. A format similar to the following is used at this point in the report:

| SALES NUMBER | GRANTOR/ GRANTEE | LAND AREA | SALE DATE | SALE PRICE |
|---|---|---|---|---|

   c. **Comparative Analysis** – Ideally, sales used are so closely comparable as to make adjustments unnecessary when equating them to the property being appraised. However, because such close comparability rarely exists, a narrative comparative analysis of each comparable sale is made explaining how the sale relates to the subject with regard to those features that tend to influence market value. It is recognized that within comparable properties there may exist many items of dissimilarity to which the market does not react and for which adjustments are not attempted.

   If market investigation shows an adjustment to be necessary, then each significant element of difference between the comparable and the subject is explained separately on its own particular merits, with an indication as to its value differential made either on a dollar or percentage basis. When there is a lack of market support for adjustments, sound and consistent reasoning in the comparison of each item of difference may be acceptable. In this latter instance, a greater number of sales should be used in order to bracket the subject characteristics and broaden the scope of value evidence. When adjustments are made:

   As the number of adjustments or size of any single adjustment increases, the validity of the sale as a “comparable” is reduced.

   Although a comparative analysis chart or “grid” may be an aid to the Appraiser and a help to the reader, a complete narrative comparative analysis of each sale is required.

d. **Correlation and Conclusion of Land Value by Sales Comparison Approach** – The several comparisons should result in close indications of the value of the property being appraised. In this section these indications are correlated into a single indication of value of the site by the comparative approach.

2. **Income Approach, Site Evaluation** – Certain types of land do not lend themselves to the use of the income approach because such land is not typically leased or rented.

   When sufficient rental and/or leasing data are available with which to establish a sound basis for the income approach, the Appraiser analyzes and processes such data here.

3. **Correlation and Final Conclusion, Land Value** – The appraisal report now explains how the Appraiser has weighed the indications of value, what specific value the total of the market data tends to indicate to the subject, and why the market data indicates said specific value.

B. **Approaches to Value, Whole Property**

***Rules***

If the site is improved, the value of the affected improvement is based upon its contribution to the value of the whole property (except for tenant-owned realty items). All three commonly accepted approaches to the estimate of value, including supporting units of comparison, are employed as applicable. If one or more approaches to the estimate of value are omitted, the Appraiser states the reason for each omission.

The sales comparison method of presenting market value evidence is the method most acceptable to WSDOT and to the courts and juries. The greatest reliance is usually placed upon market comparison. Sufficient highly comparable data is analyzed to provide a sound basis for the conclusion drawn from this approach. The authenticity of the entire approach is directly proportional to the sufficiency and comparability of the data obtained and the accuracy with which it is analyzed.

There may be situations where the improvements on the subject property are not affected in any manner by the acquisition. A specific instruction from the Region Appraisal Supervisor is required when such improvements do not need to be appraised. A copy of those instructions is to be placed in the Addenda to the report.

***Procedures***

1. **Sales Comparison Approach**

   a. **General Discussion** – The Appraiser lays the groundwork for the comparative analysis by a statement of the extent of his search, the sufficiency and comparability of existing data, and the general value bracket within which subject will fall.

Sales and offerings that are comparable are listed, identifying each by the sale number of the pertinent Market Data forms (RES-210 and RES 210B) in the Addenda. A format similar to the following is used at this point in the report:

| SALES NUMBER | GRANTOR/ GRANTEE | LAND AREA | SALE DATE | SALE PRICE |
|---|---|---|---|---|

b. **Comparative Analysis** – Ideally, sales used are so closely comparable as to make adjustments unnecessary when equating them to the property being appraised. However, because such close comparability rarely exists, a narrative comparative analysis of each comparable sale is made explaining how the sale relates to the subject with regard to those features that tend to influence market value. It is recognized that within comparable properties there may exist many items of dissimilarity to which the market does not react and for which adjustments are not attempted.

If market investigation shows adjustment to be necessary, then each significant element of difference between the comparable and the subject is explained separately on its own particular merits, with an indication as to its value differential made either on a dollar or percentage basis. When there is a lack of market support for adjustments, sound and consistent reasoning in the comparison of each item of difference may be acceptable. In this latter instance, a greater number of sales should be used in order to broaden the scope of value evidence. When adjustments are made:

- As the number of adjustments or size of any single adjustment increases, the validity of the sale as a "comparable" is reduced.
- Although a comparative analysis chart or "grid" may be an aid to the Appraiser and a help to the reader, a complete narrative comparative analysis of each sale is required.

c. **Correlation and Conclusion by Sales Comparison Approach** – The Appraiser explains how he has weighed the various indications of value, what conclusion of value has been reached, and why the evidence supports such conclusion.

2. **Income Approach** – Value conclusions reached through the income approach are valid only in direct relationship to the sufficiency and comparability of the data available and the accuracy and care with which such data are analyzed and processed. The Appraiser properly analyzes sufficient comparable data to provide a sound basis for the conclusion drawn.

   Economic rent and expenses, as well as interest and capitalization rates, are supported by market evidence adequately portrayed in the report.

3. **Cost Approach** – The cost approach reflects either the depreciated replacement cost new or the depreciated reproduction cost new of the subject structure. The Appraiser gives the reason for his particular selection.

**Cost New** – In condemnation appraisals in Washington State, cost new is generally expected to be reproduction cost rather than replacement cost. While cost service manuals, cost estimators, or contractors may serve in support of an Appraiser's estimate of costs, most valid evidence lies in the market facts of known costs of construction of like or similar structures within the subject or competing areas.

**Accrued Depreciation** – The department will accept either of two methods of measuring accrued depreciation (a) the breakdown method, and (b) the market method. Of the two, the market method is preferred whenever its use is possible.

The Appraiser includes his analysis and explanation of accrued depreciation.

C. **Correlation of Value Indications From All Approaches** – The three approaches should produce indications of value within a reasonably narrow range.

In the correlation, the Appraiser explains why and how he arrived at the final estimate of value. The values that have been indicated by each approach and the reliability and relative merits of each are explained.

### *Item 10 – Remainder Evaluation*

A. **Assumptions and Limiting Conditions** – The Appraiser assumes that the highway facility will be constructed in accordance with the present highway plan within the reasonable future. This is a hypothetical assumption under USPAP. Any assumptions applicable to the remainder are stated.

Legal opinions and special instructions that are applicable are stated, including a statement explaining the basic premise being employed. All title encumbrances that will pertain to the remainder are stated and whether or not and why each such encumbrance has an influence on the market value of that remainder. Any access restrictions to be imposed by the state are explained. Note whether and where road approaches are to be constructed by WSDOT. Highway engineer's station numbers are used on the right of way plan to locate permitted road approaches.

B. **Neighborhood Factors** – State the environmental conditions which will be significant to the remaining property. Describe and explain what trends will probably influence the future of the property being appraised. Describe the new highway facility in relation to the property.

C. **Description of Subject Remainder** – The remainder (that portion of the property remaining after acquisition of the right of way or materials site) is viewed as an entirely new property to be appraised. The types of data required to describe the remainder property are similar to that outlined in the "before" appraisal. Of particular importance to the department is (1) the presence and/or availability to the property of typical and any special utilities, and (2) the highest and best use of the remainder.

Improvements remaining in whole or in part on the remainder are noted. Improvements remaining in part are assumed to be either rehabilitated in place or removed, whichever is feasible.

Note: An exception to requirements stated herein may be made when any item of the remainder is identical to that already described in the before situation. In such event, the Appraiser states: "as previously reported and described on page . . . ."

D. **Valuation of Property Remaining** – As stated in Item 3, the valuation of the remainder is a new appraisal. In those cases where the portion acquired was of little significance to the total property, the remainder may be so nearly like the "before" situation that the same basic sales, income, and cost data are referenced and employed in new comparative, income, and cost approaches.

On the other hand, if there is a change in the basic physical and economic nature of the remainder, including a change of highest and best use, or any variety of circumstances creating damages or benefits to such remainder, new supporting data and explanations of evaluations are introduced.

WSDOT normally acquires improvements which straddle the right of way line and may sell the salvage rights thereto or may remove the improvements leaving the remainder in a neat and orderly condition.

To support a rehabilitation hypothesis, in the case of an alternate remainder evaluation, the Appraiser will include in the Addenda a plot plan of the remainder, showing the rehabilitated improvements in sufficient detail to enable the reader to visualize the Appraiser's specifications. The specifications must reflect those of a prudent person and need not include total replacement of all the features present in the "before" instance. In evaluating a remainder under this premise, the highest and best use of the land will have a significant bearing on the feasibility of assuming rehabilitation.

If a permanent easement or temporary easement is imposed on the remainder by WSDOT, its terms are supplied to the Appraiser by the Region's Appraisal Supervisor. This information will consist of the area involved, the duration of the encumbrance, and the type of encumbrance. The value of the remainder is then estimated and reported, as encumbered, by the Appraiser. Market data is not always available with which to evaluate property subject to a particular type of encumbrance; however, this fact does not relieve the Appraiser from the obligation of making a search for supporting data. All available data is analyzed and reported together with the reasoning that led to the conclusions reached.

The three approaches to value support the final conclusion of value. If an approach is not applicable, the narrative explains why it is not applicable. The valuation follows the same format as required in the "before" situation. If the same market data used for the "after" valuation were used for the "before" valuation, the appraiser explains and supports any different adjustments.

***Note:*** A breakdown of the indicated value of the remainder is required in Section 12, Summary of Conclusions, regardless of the appraisal methods employed. If an easement is being acquired, the area and resultant unit and total value is set out on this form.

E. **Recapitulation**

1. A breakdown is required of each of the following: the value before acquisition, the value of the remainder, and a breakdown of the difference between the "before" and "after" values. On total acquisitions, only a breakdown of "before" value is required. (This page is for a tabulation of certain specific data for WSDOT use and does not necessarily represent the methods of appraisal or the techniques employed.)

2 If more than one value premise is necessary, a separate Summary of Conclusions is inserted for each premise. They are respectively labeled "Premise 1," "Premise 2," etc., in the lower right-hand corner above the parcel number.

The following statements are completed as worded:

a. Value of property "before" acquisition $_____

b. Value of property "after" acquisition $_____

c. Difference between "before" and "after" values $_____ (Subtract b. from a.)

***Note:*** The difference between the "before" and "after" values is set forth in Section 12, Summary of Conclusions, and broken down into the types of information required by the form.

### *Item 11 – Explanation, Measurement, Supporting Data, and Allocation of Damages Cost to Cures and Special Benefits*

Damages as such are not appraised. The Appraiser appraises the property before acquisition and again as it will exist after the acquisition. The conclusions reached are fully documented and supported. An explanation and comparative analysis is made of the difference between "before" and "after" values, isolating and properly allocating any dollar difference to the value of the part acquired and the compensable damages and benefits.

When it is found that damages may be mitigated in whole or in part by a cost-to-cure item, it must be demonstrated that the cost-to-cure item is economically justified. The cost to cure cannot exceed the amount of damage which would accrue without such cure. In the event that firm bids for cost-to-cure items are needed, the Region's Appraisal Supervisor secures such bids and furnishes them to the Appraiser for his analysis and inclusion within the appraisal report. As a minimum all cost-to-cure estimates must be supported with market data, costs from local suppliers, or cost estimates from a recognized cost estimating service.

**Explanation of Special Benefits**

Under this heading a narrative explanation brings out why and how the property enjoys special benefits. The amount of benefits are to be shown in terms of dollars or the narrative explains that there is no special benefit. In Washington State, any special benefit that accrues to the remaining property by virtue of the state's highway improvements is offset against both damages and the value of the property acquired.

### *Item 12 – Summary of Conclusions*

**Summary of Conclusions (RES-206)**

A. A breakdown is required of each of the following: the value before acquisition, the value of the remainder and a breakdown of the difference between the "before" and "after" values. On total acquisitions, only a breakdown of "before" value is required. (This page is for a tabulation of certain specific data for WSDOT use and does not necessarily represent the methods of appraisal or the techniques employed.)

B. If more than one value premise is necessary, a separate Summary of Conclusions is inserted for each premise. They are respectively labeled "Premise 1," "Premise 2," etc., in the lower right-hand corner above the parcel number.

### *Item 13 – Report of Contact With Owner*

**Report of Contact With Owner (RES-204)**

As required by RCW 8.26.180(2) and 49 CFR Part 24.102(C)(3)(f) every property owner or his designated representative shall be given the opportunity to inspect the subject property with the appraiser. Every effort must be made to assure that the property owner has this opportunity. A joint inspection may answer many questions for the appraiser such as the location of utilities, the owner's concerns about the project, etc. The appraiser should be flexible in his or her schedule in order to accommodate the property owner. If contact cannot be made by telephone, the appraiser may send a letter explaining the need for the inspection and inviting the owner to join in the inspection. The letter shall be sent "Return Receipt" in order to document the attempt for contact.

Where the acquisition affects major improvements or businesses, the appraiser is required to include the review appraiser and a relocation assistance agent in the joint inspection.

If the acquisition includes improvements, the appraiser completes the Realty/ Personal Property Checklist Report, based on identification of such items with the property owner, relocation assistance agent, and the review appraiser. This Checklist also allocates the ownership of the items mentioned.

This form provides a record of contact and/or attempts to contact the owner(s) of the property. Under "comments" the Appraiser mentions any salient features of the property and any special concerns voiced by the owner at the time of joint inspection. Such factors may or may not influence property value; however, prior knowledge of the owner's concerns may be of aid to the acquisition agent.

The following information should be obtained during the owner interview (as applicable) and reported on the owner contact form.

- Establish/Verify ownership of the property.
- Ask about most recent property purchase/history/price.
- Identify and establish ownership of items of realty and personalty.
- What improvements have been made to the subject since the purchase?
- Is there a tenant? What are the terms of the lease?
- Ascertain if the plat of the whole property is correct.
- Ask permission to measure improvements.
- Ask permission to photograph.
- Inventory items in the acquisition area.
- Ask if owner knows of other comparables in the area.
- Ask if the owner understands the nature of the acquisition.
- What are concerns that the owner has regarding the project and acquisition?

### *Item 14 – Personalty Realty Report*

**Improved Property Checklist** – If improvements are being acquired, the appraiser attaches a copy of the appropriate Realty/Personalty Checklist. If the property is residential, then the Residential Realty/Personal Property Checklist is attached (RES-217). If the property is Industrial or Commercial, then the Commercial/Industrial Checklist is attached (RES-218). These forms are available on the WSDOT Real Estate website at www.wsdot.wa.gov/realestate.

### *Item 15 – Addenda*

**Market Data Map** – Each appraisal report contains a map of suitable scale on which is shown (by sale number) the location of each "Market Data" cited in the report. The location of the subject property and north arrow are also shown. Note the sales map must be of a scale and quality that the sales can be located on the ground by the user of this report.

**Market Data (RES-210 and RES-210B)**

All recent sales and offerings of nearby properties are studied and considered. Sufficient sales evidence (market data) is included in the report to provide a sound basis for evaluation of both the "before" and "after" situations of the property. WSDOT considers three sales as the minimum market evidence to support the least complicated bare land evaluation. The amount of data needed is in direct proportion to the number of property elements for which market analysis is required.

Market data may be offered to the Appraiser by the department in connection with an appraisal assignment without obligation on the part of WSDOT and without absolving the Appraiser from the professional responsibility for verification and further independent analysis of any and all pertinent data. WSDOT data is furnished without an analysis in order to avoid any action that might reduce the independence of an appraisal estimate.

The proper reporting and analysis of sales data is the foundation of a properly documented appraisal report. Appraisals made for WSDOT must contain sales data of adequate quality and quantity to demonstrate that the Appraiser has arrived at the conclusion of value as the direct result of a careful analysis of the current market. WSDOT holds that where market data is weak in comparability a greater than usual volume of data must be analyzed.

***Procedures***

A. Complete the Market Data forms (RES-210 and RES-210B) as follows:

**Item 1 – Address or Location**
The house number, street, and city are shown; or if none, the county is named with an explanation of how to locate the property by road names, directions, and distances from cities and crossroads or other conventional landmark references.

**Item 2 – Photograph and Sketch**
Digital photographs of each sale property are inserted electronically on the second page of the Market Data form. If nondigital photographs are used, they are securely attached to the second page of the Market Data form. This provides the reader with a clear picture of the property. This requirement applies to both vacant and improved properties. Suitable print sizes should be obtained or prints should be trimmed to fit the space on the form.

The name of the photographer and the date taken are filled in on the form in the spaces provided.

A small-scale plot-plan sketch of the property should be shown in the space under the photograph. Dimensions of the site, road or street frontages, improvement location, alleys, easements, north arrow, photo directional arrow, and any other relevant information are included on the sketch. If insufficient space is provided on the form for an understandable sketch, the Appraiser places the sketch on an additional page with consecutive numbering, and inserts “see next page” on the Market Data form. The additional sketch page is also identified by the number of the comparable sale, parcel number, and the Appraiser’s name.

**Item 3**
All data is reported as it pertains to the property at the time of the sale. Changes that have occurred since the sale are described under ITEM (5).

**Item 3a – Access**
Examples: “Unrestricted,” “Restricted direct to frontage road only,” etc. This point may require clarification under ITEM (5).

**Item 3b – Present Use**
Examples: “Vacant,” “Industrial,” “Commercial,” “Business,” etc., (at time of sale).

**Item 3c – Highest and Best Use**
Examples: "Residential," "Multifamily," "Commercial," "Industry," etc.

**Item 3d – Zoning**
Zoning on the date of sale is stated in words, not codes, including jurisdiction. Example: "Multiresidential, Minimum 7,200 square feet, Pierce County" specifying special requirements such as setback, etc.

**Item 3e – Dimensions**
Dimensions of the land sold are shown. Example: "Irregular, 1,320 feet frontage x 1,900 feet average depth."

**Item 3f – Area**
Square footage or acreage of the sale property are indicated.

**Item 3g – Sale Date**
The date of closure of a closed sale; the date of acceptance of an earnest money datum; and the dates of exposure on the market for an offering.

**Item 3h – Price**
This is the actual confirmed price at which the property sold. Nonrealty included in the sale price is explained under ITEM (5) and the substantiated dollar amount broken down in ITEM (6) with explanation of the source and reliability of the value information on which the breakdown was made.

**Item 3i – Instrument**
The type or kind of conveyance is identified (e.g., Warranty Deed, Real Estate Contract).

**Item 3j – Terms**
Any sale terms which were a matter of the seller's consideration and his acceptance are reported. If the transaction was for all cash (full selling price) to the seller, the word "Cash" is inserted. If the sale was not all cash to the seller, the details are explained. When the market exhibits a cash equivalency adjustment, it is properly discussed in ITEMS (5) and (7).

If additional space is required to report and explain the terms of the sale, it is reported under ITEM (5) of the market data sheet or on a supplemental page following. Such a supplemental page is identified by the number of the comparable sale, parcel number, Appraiser's name, and consecutive page number.

**Item 3k – Excise Tax Number**
The serial number of the Excise Tax Affidavit is inserted here.

**Item 31 and m – Grantor/Grantee**
Names of buyer and seller are shown the same as they appear on the instrument which gives evidence of the transaction. If insufficient room exists on the form because of an extremely long name, it may be placed under Item 5.

**Item 3n – Confirmed With (Names/Dates)**
Whenever possible, all information concerning a comparable sale is confirmed by personal interview with both the buyer and the seller. The first and last names of the confirmees, phone number of confirmee, and the date of confirmation are shown. If the comparable sale is to be accepted as valid evidence of value, it is essential that it be confirmed by interview with either the grantee or grantor. If an unconfirmed sale is used, there must be a full explanation of the attempts to confirm. In this case the Appraiser should at least talk to the broker. In all contacts face-to-face conferences should hold precedence over telephone confirmation.

**Item 3o – Confirmed By**
The name of the individual who confirmed the sale is inserted.

**Item 3p – Date Inspected**
The date the sale was inspected is inserted.

**Item 4 – Legal Description**
In cases of very lengthy legal descriptions, the legal description used in the county tax rolls may be shown. Tax lot numbers are acceptable.

**Item 5 – Property Description**
The property is described as it was at the time of the sale, with notations of changes that have taken place since the sale.

**Item 6 – Analysis**
The sale property is analyzed and the sale price of the real property is broken down into all of the elements.

The purpose of extraction is to inventory the physical items included in the sale and allocate to them the portion of the sale price attributable to each item.

C. **Special Instructions, Charts, and Illustrations**

1. When the Appraiser has received special instructions from the Appraisal Supervisor, a copy of such instructions is inserted.
2. A copy of any specialist's report, legal opinion, etc., is inserted.
3. At the Appraiser's option, or as required by WSDOT, other maps, charts, or illustrations relevant to an understanding of the appraised property and the evaluation are inserted.
4. The Appraiser lists the names of all supporting Appraisers and makes a statement of the extent of their assistance in the appraisal and report.
5. A complete copy of the Title Report and the Staff Appraiser Assignment Form/personal services contract/task order is included in the Reviewer's copy of the appraisal report only.

## *Tab D Abbreviated Appraisal Report*

i. **Rules** – The Abbreviated Appraisal Report (RES-213) is authorized for simple acquisition. This format will only be assigned for appraisals of a less complex and straightforward nature. Appraisals involving severance damages, special benefits, proximity damages, and other complex issues will not use this format. The brevity of this format does not relieve the Appraiser from the responsibility for researching the market and developing sound value conclusions; nor does it diminish the need for building an adequate file of information and market data that might become essential in a future action such as condemnation.

ii. **Procedures**

A. Certificate of Appraiser (RES-205) is completed in accordance with Appendix 4-1, Tab C, Section 1.B, Page 2 is completed as follows:

**Item 1** – Owners name is inserted.

**Item 2** – Location of the property is shown by street address or described by reference to streets, roads, highways, and/or distances to landmarks.

**Item 3** – Before and after areas from the right of way plan are inserted.

**Item 4** – Amount of acquisition area is inserted and if an easement is to be acquired the type of easement is inserted along with the area of the easement.

**Item 5** – The current use, zoning (spelled out, no abbreviations), and highest and best use are inserted.

**Item 6** – A brief description of the scope of work and the appraisal problem along with the effects of the acquisition are entered.

**Item 7** – Specific sales relied upon are listed here and the date of the sales data package is entered.

**Item 8** – Indicate whether the subject has sold within the last five years and if it is included in the data package.

**Item 9** – The various components of the acquisition are itemized under Acquisition Compensation along with the estimated value for each.

**Item 10** – The parcel number is inserted in the space provided.

B. Page 3 is completed as follows:

**Item 1** – A sketch of the entire property is placed here. The sketch is to show the dimensions of the property and the acquisition area, camera location for each picture, frontages, accesses, North arrow, and approximate location of any improvements.

**Item 2** – A minimum of two photos are included showing the acquisition area and the whole property. The photos are numbered to correspond to the sketch's camera location.

**Item 3** – The parcel number is inserted in the space provided.

C. Page 4 is completed as follows:

**Item 1** – Briefly describe the property's physical features including all elements that might relate to marketability (e.g., access, size, utilities, location, and economic factors), any improvements, and an explanation if highest and best use is different from the zoning or current use.

**Item 2** – Briefly analyze the sales used as they relate to the subject comparing the factors that influence value. Correlate the sales into a final conclusion of value.

**Item 3** – Include any cost-to-cure items in this space and indicate what the support was used for the cost. A short statement on the financial feasibility of the cost should also be included.

**Item 4** – The owner contact section is filled out and any relevant comments made by the owner are included.

**Item 5** – The parcel number is inserted in the space provided.

D. Page 5 is a copy of the contract or appraisal assignment form.

### *Tab E Project and Strip Appraisal Procedures*

I. **Project Appraisals**

i. **Rules** – A Project Appraisal is a process which consolidates a related group of individual parcel appraisals in order to prevent duplicating Addenda items such as Market Data (RES-210 and RES-210B), sales maps, neighborhood descriptions, general exhibits, assignments (RES-204) and/or contracts, trend studies, etc. Use of this method also promotes consistency and efficiency. The format used in project appraisals can be either the Narrative Appraisal Form Report (RES-208) or the Abbreviated Appraisal Report (RES-213) as long as each parcel is separately appraised and the procedures required for each form is followed. This procedure must be authorized on the assignment (RES-203) which will be included as a part of the Project Appraisal Addenda.

ii. **Procedures**

a. The Appraiser conducts a market investigation and prepares Market Data (RES-210 and RES-210B) as described in Appendix 4-1, page C-18, Section V. These data will be referred to by number, as applicable, in formulating the indications of value in each parcel's appraisal report.

b. The Appraiser prepares a vicinity map showing the locations of all the data as well as the project.

c. The Appraiser prepares a narrative neighborhood description discussing its uses and trends, economic factors, the proposed project, and the general effects of the acquisitions, etc.

d. The Appraiser completes an appraisal of each parcel as required in either Tab C (Narrative Appraisal Form Report) or Tab D (Minimal Value Appraisal Report) of Appendix 4-1. For those parcels using the Narrative Appraisal Form format, comparative analyses and correlation of the sales cited are included in the body of each report.

e. The Appraiser completes any trends, damage, or cost studies needed for use on any of the appraisals in the Project Appraisal.

f. The completed project appraisal report is assembled as follows:

1. Each parcel's individual appraisal report includes Certificate of Appraiser (RES-205), page 1, etc., and those items required for each respective appraisal format.

2. The general addenda attached to the appraisal packet.

II. **Strip Appraisals**

i. **Rules** – Occasionally, strip acquisitions for road widenings will occur where no major improvements are affected and there are no complex severance damages nor any special benefits to the remainder parcels. In these cases the acquisitions may be appraised as a pro-rata portion of the "before" land value rather than complete "before" and "after" evaluations; these appraisals are termed "Strip Appraisals." The format used may be either the Narrative Appraisal Form or the Abbreviated Form. The only instances of damage that allow use of the strip appraisal method are:

a. Simple cost-to-cure damages such as fence or driveway replacement, etc.

b. Simple damages due to loss of utility when the acquisition is a permanent easement.

c. Simple damages due to temporary loss of utility when the acquisition is a temporary construction permit or trespass.

Use of the Strip Appraisal does not relieve the Appraiser from the responsibility for thoroughly researching and analyzing the market in developing value conclusions. Neither does it diminish the need for building an adequate file of information and market data which might become essential in future actions such as condemnation. Nor does it allow the Appraiser to neglect data comparison of the subject to the "larger parcel."

ii. **Procedures**

a. **Narrative Appraisal Form Format**

1. Page 1, Certificate of Appraiser (RES-205) is completed per Appendix 4-1, Tab C; except that the "before" and "after" values are left blank and "Strip Appraisal" is inserted after the "VALUE DIFFERENCE" amount.

2. Summary of Conclusions (RES-206) needs only to be completed in the "acquisition section" and the "damages" section (when appropriate).
3. Photographs of All Principal Improvements and/or Features Affecting Value (RES-207) is completed per Appendix 4-1, Tab C.
4. Narrative Appraisal Report Form (RES-208) is completed per Appendix 4-1, Tab C, with the additional information added to Item 5c that states the appraisal problem is a strip taking, necessitating a strip appraisal. Only the affected improvements are evaluated per their contributory value in Item 5d. Any damage items are discussed and supported in Item 6.
5. Report of Contact with Owner (RES-204) and all Addenda items required per Appendix 4-1, Tab C, Items F through K are attached.

b. **Abbreviated Appraisal Report Format**

1. Page 1, Certificate of Appraiser (RES-205) is completed per Appendix 4-1, Tab C, except that the "before" and "after" values are left blank and "Strip Appraisal" is inserted after the "VALUE DIFFERENCE" amount.
2. The rest of the report uses the Abbreviated Appraisal Report (Form RES-213) as per Appendix 4-1, Tab D, Items B through F; with the additional statement in "Appraisal Problem" on said form explaining the appraisal and method as a strip evaluation.

## Part III Revision of Appraisal Reports

A. **Rules**

1. The HQ RESM retains a complete appraisal report concerning each parcel being appraised for the acquisition of right of way. All corrections or revisions to an appraisal are made by correction pages or supplemental sheets. All replaced pages from the original appraisal are retained in both Headquarters and Region parcel files. Replaced pages are removed from the Appraisal, marked VOID and fastened to the back of the revised appraisal report.
2. The Region Appraisal Supervisor requests a revision by letter for the purpose of:

   a. Reconciling the date of evaluation to the date of acquisition in the following circumstances:

      (1) Delayed negotiations, when Region Real Estate Services Manager (Region RESM) has reason to believe the previous evaluation does not reflect just compensation at the time of negotiations.

      (2) Trial in Superior or Federal courts.

   b. Obtaining correction to a previous evaluation, necessary because of Appraiser's errors, omissions, or oversights.

3. The Region Appraisal Supervisor prepares a new personal services contract or staff assignment form when:
   a. Revised right of way plans nullify the previously reported value evidence.
   b. Legal instructions from the Attorney General Division nullify previous value evidence.
   c. There is a new evaluation premise.
   d. There are additional appraisal requirements.
4. A revision or correction of an appraisal report is made only by the Appraiser who developed the initial report.
5. In condemnation cases, when the court has set a definite date for trial, notice of the trial date is furnished by the Attorney General's Office to the region and to Headquarters. The assigned Appraiser(s) whose appraisal(s) has been approved for negotiations is directed by assignment or contract to update the appraisal and submit the revision to the Region Appraisal Supervisor no later than 45 days prior to the scheduled trial date.
6. All revisions for trial purposes are date stamped upon receipt in region, and the original is immediately transmitted to Headquarters.
7. All written requests for a revision should give the reasons for the revision. A copy of the request is immediately forwarded to Headquarters.
8. The due date of a revised appraisal is set out in the contract or letter.
9. The Appraiser delivers the original and the number or copies specified by the contract or staff assignment form of a revised appraisal report or correction or supplemental sheets to the Region.
10. A revised appraisal report nullifies the evaluation of the initial report and all prior revisions.
11. Compensation for the revision requested by the department is set forth in the personal services contract.
12. WSDOT is not obligated to pay for a revision to an appraisal which has not been authorized by contract.

B. **Procedures**

1. Upon receiving an assignment to update or revise, the Appraiser:
   a. Contacts the Region Appraisal Supervisor to achieve a mutual understanding of the necessity to update and/or revise the prior appraisal report.
   b. Acquires the current information concerning the right of way plan, construction features, title information, appraisal premise, and legal opinions pertinent to the appraisal.

c. Reexamines the market for all sales, rents, leases, costs, or other information that may be pertinent to the current evaluation.

d. Reexamines the parcel being appraised to ascertain current physical property conditions, fee interests, and property rights.

2. If investigation produces market data that changes the prior evaluation, the Appraiser submits the pertinent information in accordance with this Appraisal Report Guide (Appendix 4-1), either as a completely new appraisal or as correction and supplemental sheets to be incorporated into the prior appraisal. The Appraiser sets forth the reasons for the revision in "Purpose of Appraisal."

3. Revisions made by corrections or supplemental sheets may use any and all sheets of the previous appraisal that remain pertinent to the appraisal. All correction and supplemental sheets are identified by showing the revision number in conjunction with the page number. For example, Certificate of Appraiser (RES-205) would always require a corrected page. The correction would be indicated after the page number by typing "Revised" and the date of the revision. The same procedure is required on all corrected and supplemental pages.

4. Appraisal revisions submitted as a completely new appraisal report do not require the notation "Revision" to be typed after the page number since the prior appraisal report will be stamped "See Revision Dated . . . ." to indicate there is a revised appraisal report.

5. Where the examination of the market indicates that no change of the previous evaluation is evident, the Appraiser informs the department of findings by letter addressed to the Region Appraisal Supervisor. The date of evaluation then becomes the date of the validating letter. The validating letter will be attached to a revised Certificate of Appraiser (RES-205).

6. Upon receipt of a revised report, correction pages, supplemental pages, or updating letter, the Region immediately date stamps the report and submits the original to Headquarters.

# Chapter 5 Appraisal Review

5-1 General
5-2 Responsibilities
5-3 Preliminary Procedures
5-4 Analysis of Appraisal Reports
5-5 Determination of Value (DV) – Preparation/Distribution
5-6 Appraisal Review for Other Public Agencies

## 5-1 General

Appraisal review is performed by designated Review Appraisers. The Washington State Department of Transportation (WSDOT) may employ Review Appraisers in either Headquarters, the region, or by personal services contracts. For personal service contracting procedures and administration, see Chapter 1, Section 22.

When available qualified state staff must be utilized before private consultants can be contracted.

A qualified Review Appraiser reviews all appraisals of real property and property rights to be acquired for or sold by WSDOT before negotiations are started.

## 5-2 Responsibilities

### *5-2.1 Section Manager, Appraisal and Appraisal Review Program*

The Section Manager, Appraisal and Appraisal Review Program, responsibilities include:

A. Assignment of appraisal reviews to designated HQ Review Appraisers.

B. Resolving controversial appraisal review problems. Exception: The manager may not intercede in, or alter a Determination of Value (DV) (RES-214) made by a Review Appraiser.

C. Monitoring designated Review Appraisers to ensure the uniformity and quality of appraisal reviews. This is done through spot check field and procedural reviews; also, by obtaining corrected, missing, and/or additional data and requesting corrective action on DVs.

D. Interpreting the intent and meaning of the appraisal review requirements when questions arise.

E. Determining and approving “just compensation” for those parcels on which the manager acts as Review Appraiser.

### 5-2.2 Region Real Estate Services Manager

The Region Real Estate Services Manager responsibilities include:

A. Assignment of appraisal reviews to designated Region Review Appraisers.

B. Setting just compensation when the Review Appraiser is a fee consultant.

C. Declaring and authorizing the purchase of uneconomic remnants when the Review Appraiser is a fee consultant.

### 5-2.3 Review Appraiser

The Review Appraiser regards an acceptable appraisal as an important consideration in the completion of the DV and the appraiser as a consultant and market analyst. The review process establishes the approved "just compensation" (see Section 5-5.1.C.11).

A. All appraisals are reviewed to:

   1. Ensure that appraisal reports contain or reference sufficient information (e.g., studies or other previously submitted appraisals) to support the conclusions of the report; also, that appraisal reports conform to established appraisal practices and WSDOT requirements as described in the Appraisal Report Guide (Appendix 4-1).

   2. Ensure that the appraisal is equitable and that the property owner will be receiving "fair and just" compensation in accordance with the Real Property Acquisition Act (Chapter 8.26 RCW), the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended, and current eminent domain law.

B. The Review Appraiser may use a method of review that takes into consideration valuations of other properties on the project.

C. The WSDOT staff Review Appraiser establishes the "just compensation" (usually fair market value) of the property and/or property rights and reports the compensation on a DV. The DV may be revised anytime prior to final settlement to reflect later evaluation evidence, a property owner's appraisal, or highway plan revisions. All DVs are documented with the original retained in Headquarters and a copy retained in region.

D. A fee Review Appraiser may not establish "just compensation" for WSDOT.

## 5-3 Preliminary Procedures

### 5-3.1 Preliminary Review

It is recommended that all projects consisting of significant numbers of parcels and/or complexity be inspected and reviewed prior to submitting project funding estimates for authorization and funding. This is done to save time and effort in the appraisal and negotiation stages. An inspection team consisting of a region appraisal representative (supervisor, senior appraiser, or staff journeyman appraiser), a review appraiser, and a relocation agent (when applicable) identifies the following:

A. Special types of appraisals and the need for specialists or consultants.

B. Environmental and shoreline management problems.

C. Public or semipublic agency parcels and railroads.

D. A need for legal opinions.

E. A need for plan modifications and revisions to avoid or mitigate damages.

F. "Uneconomic remnants" and possible trade or exchanges for surplus properties or excess right of way.

G. A need for copies of leases for appraisal and acquisition purposes that would establish the ownership of buildings, structures, and other improvements as real property.

H. Items that will be appraised and acquired as realty fixtures.

I. Items that are determined to be personalty for relocation assistance purposes.

### 5-3.2 Joint Inspection With Owner

For all properties where improvements will be acquired, the review appraiser and a relocation agent are required to attend the appraisers joint inspection with the property owner and tenant, if any. This is for purposes of clarifying and identifying realty vs. personalty items as well as to ascertain ownership rights.

### 5-3.3 Desk Review

The Review Appraiser "desk reviews" all appraisals of each parcel to assure proper project and parcel identification, adequate response to the assignment, application of proper technique, completeness, and mathematical accuracy. The Review Appraiser is provided with their own copy of the appraisal report.

### 5-3.4 Field Review

The Review Appraiser examines the subject property in the field and the market facts on which conclusions of value depend. Appropriate sources (buyers, seller, brokers, public records) may be contacted to verify statements of fact, the adequacy of the market search, and the appraiser's understanding of the impact of the WSDOT plan on the subject property. The Review Appraiser may contact other sources of information to establish parameters of value or to determine whether additional expertise is required to assist the appraiser in completing an acceptable report.

## 5-4 Analysis of Appraisal Reports

### 5-4.1 Requirements

The Review Appraiser analyzes the appraisal report to assure that the report:

A. Conforms to the requirements of:

   1. The Appraisal Report Guide (Chapter 4, Appendix 4-1).
   2. The appraisal contract or the Staff Appraiser Assignment form (RES-203).
   3. Any special instructions.

B. Clearly states the appraisal problem as influenced by WSDOT's project.

C. Incorporates specialists' opinions (e.g., value of timber, fixtures) as they contribute to the value of the whole property, rather than as arbitrary additions to the value of the real property.

D. In the case of tenant-owned real estate (buildings, structures, and/or other improvements), the specialists' opinions of value are to reflect two premises: (l) Contribution value to the whole property, and (2) Value for removal (salvage). Just compensation for tenant-owned improvements is the greater amount.

E. Clearly presents:

   1. An explanation of the appropriate evaluation principles.
   2. The market evidence and/or other supporting evidence.
   3. A list of items considered part of the realty as well as further comments on items that might be in a "grey" area, e.g., drapes, dishwashers, stoves, special light fixtures, when applicable; or buildings, structures, or other improvements to be added to the appraisal.
   4. The value estimate.

F. Excludes non-compensable items.

G. Neither omits nor contradicts any factual data that was available to the appraiser.

H. Contains no conflicting statements or erroneous conclusions.

### 5-4.2 Minor Deficiencies

In the case of minor deficiencies in the appraisal report, the Review Appraiser:

A. Does not delay arriving at a DV.

B. Makes notation of the following types of errors on a memorandum, sends the memorandum to the Region Real Estate Services Manager (RESM) (or Appraiser Supervisor) and on the DV notes: "See Memorandum dated _____."

1. Mathematical errors.
2. Project identification data.
3. Parcel numbers.
4. Owner's name.
5. Parties to the transaction, excise tax number, and date of purchase for either sales of the subject property or comparable sales.
6. Location, zoning, or present use of either the subject property or of comparable sales.
7. Nonconformance with the Appraisal Report Guide (Appendix 4-1) and/or departmental standards.

### 5-4.3 Major Deficiencies

A. Major deficiencies are usually found in the following areas: analysis, reasoning, and conclusions. When the Review Appraiser finds that the appraisal report needs clarification or contains substantive errors, the following actions are taken:

1. Prepares a memorandum stating the critical deficiencies or the need for clarification.
2. Transmits the original of the memorandum to the RESM and sends a copy to the Section Manager, Appraisal and Appraisal Review Program. Retains the review copy of the appraisal pending receipt of corrections or revisions.
3. Attends appraisal conferences as necessary and/or advises the Region Appraisal Supervisor.

B. After examination of the memorandum and a file copy of the appraisal report, the RESM:

1. Confers with the Review Appraiser, the Region Appraisal Supervisor and/or other affected personnel as needed.

2. Forwards the appraisal report by memorandum to the staff appraiser or by letter to the fee appraiser with directions necessary to produce an acceptable appraisal report.

### 5-4.4 Unacceptable Appraisals

A. If after taking the actions specified in Section 5-4.3 an acceptable report is still not obtained, the Review Appraiser prepares a memorandum citing the reasons for the lack of acceptance. The memorandum is submitted to the Section Manager, Appraisal and Appraisal Review Program.

B. The Section Manager reviews the appraisal report and the memorandum. The Section Manager either:

1. Upon concurrence:

a. Signs and dates the memorandum.

b. Attaches the original of the memorandum to the original of the unacceptable appraisal report and places them in the Headquarters parcel file.

c. Sends copies of the memorandum to the RESM and the Region Appraisal Supervisor.

2. Upon nonconcurrence, returns the memorandum to the Review Appraiser stating the actions to be taken or becomes the Review Appraiser and prepares a DV.

C. The RESM (or Region Appraisal Supervisor) reviews the memorandum and:

1. Attaches a copy of the memorandum to the unacceptable appraisal report in the parcel file.

2. Gives a copy of the memorandum to the appraiser.

3. Initiates action to secure an acceptable appraisal report from a different appraiser.

### 5-4.5 Owner's Appraisal Report

A. If the property owner submits an appraisal report—whether self-made or from any other source—the Review Appraiser reviews it disregarding the report's format and takes the following actions as appropriate:

1. If the owner's appraisal report or any part thereof presents useful value information:

   a. A new DV is prepared using the procedures specified in Section 5-5.

   b. Copies of the owner's appraisal report are distributed in the same manner as if the report had been prepared by or for WSDOT.

2. If the owner's appraisal report does not present significant new value information:

   a. The Review Appraiser makes a copy of the owner's appraisal report to be retained by the reviewer in accordance with the *Uniform Standards of Professional Appraisal Practice*.

      The Review Appraiser returns the owner's original appraisal report to the RESM together with a memorandum identifying the parcel and the project (number and title) and stating:

      (1) The appraiser's name.

      (2) The date of the owner's appraisal report.

      (3) The value reported.

      (4) The reasons for not preparing a new DV based on the owner's appraisal report. The Review Appraiser must state the specific reasons for rejecting the owner's appraisal report so the owner will know why the appraisal was rejected.

   b. The RESM assures that the owner's appraisal report is returned to the owner through the Region Real Estate Services Acquisition Agent. The RESM includes a letter which clearly states the reasons the owner's report was unacceptable as a basis for a revised offer.

## 5-5 Determination of Value (DV) – Preparation/Distribution

### *5-5.1 Normal Preparation/Distribution*

A. The Review Appraiser prepares the DV upon receipt of the copy of the appraisal report. This appraisal report must contain an unbiased evaluation of all available market value evidence and includes:

   1. A desk review as specified in Section 5-3.3.

   2. A field review as specified in Section 5-3.4.

   3. One acceptable appraisal report. More than one acceptable appraisal report may be required by the Review Appraiser prior to the review if the proposed acquisition is complicated, or of a controversial value nature.

   4. A comparison of values to guarantee consistent value patterns between similar parcels on the project.

B. The Review Appraiser fills in the following data on the DV:

1. The number of the DV for this parcel (e.g., 1, 2).
2. The Review Appraiser's name.
3. The project and parcel identification data taken from the right of way plan. When a prior acquisition from the same property has been completed, the parcel number(s) of the prior acquisition is inserted on the DV above the new parcel number by adding the following text:

   "Prior Acquisition Parcel No._____."

4. The appraisal history which includes all appraisals made for WSDOT and all appraisals submitted by the owners that have been used as a basis for value determination.
5. The appraisal review history which includes all prior DVs.

C. In the center section of DV #1, the Review Appraiser includes a narrative stating:

1. The extent of the Review Appraiser's inspection of property and sales, including confirmations.
2. Any information with regard to hazardous materials as contained in the Washington State Department of Ecology's Facility/Site HazMat Database.
3. The adequacy of the property description in both the "before" and "after" situations.
4. The differences between appraisals, if more than one appraiser was used, or if there is an appreciable change in value between an original appraisal and a later updating.
5. A range of market evidence and whether the appraiser's conclusions fall within the range.
6. A statement of concurrence with the application of market evidence and final conclusions.
7. Whether the appraisal follows special instructions and whether it contains any required copies of specialists' reports.
8. "Before" and "after" values except for noted minimal and strip appraisals.
9. An allocation of the value for the subject land and the improvements is shown or referenced to an appraisal report sheet. Both the "before" and "after" situations are described.
   - Totals of "before" and "after" values are rounded to be consistent with normal real estate transactions.

- The difference between the "before" and "after" values equals just compensation except when the special benefits exceed the acquisition plus damages.
- Identify acquired buildings individually.
- Identify fixtures appraised as real estate.
- Designate buildings, structures, signs, and other improvements owned by tenant/lessees.
- Just compensation due the tenant/lessee for said items is determined by the WSDOT staff Review Appraiser at the higher of the two valuation premises, as defined in Section 5-4.1.D.

10. If the appraisal and DV cover two or more parcels, an allocation of the just compensation is made on an attached exhibit to the DV covering each parcel.

11. If an "uneconomic remnant" is involved, see Section 5-5.2 below.

12. Just compensation based on the appraisal(s). Allocation of this just compensation is made to acquisition, damage items, and benefits. If the Review Appraiser is satisfied with the appraisal but comes to different conclusions, the differences are explained and any new supporting evidence is attached to the DV.

13. The amount of the approved just compensation that is eligible for federal participation. If the right of way project does not have federal funds participation, the last sentence on the DV beginning "I further certify . . . ." is crossed out.

14. The date of the approved just compensation, which is the date of the last inspection by either the appraiser or the reviewer. The signature date is the date the Review Appraiser signs the DV and does not precede the date of just compensation.

15. Only a WSDOT official may declare just compensation. A fee Review Appraiser may only recommend just compensation. When a fee Review Appraiser is hired, the DV must include a Statement at the bottom of the document for concurrence by the appropriate official of WSDOT.

D.

1. If the Review Appraiser is not satisfied with the appraisal or corrections, a second appraisal may be requested in a memorandum addressed to the RESM. The memorandum should include the reasons why the corrections or second appraisal are needed.

2. If the review appraiser is unable to approve an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the review appraiser may present and analyze market information to support an approved value. In this instance:

   a. The Review Appraiser becomes the "appraiser of record"

   b. The Review Appraiser prepares a memo explaining the reasons for any discrepancies between the appraisal and the DV. This memo will be delivered to the property owner with the offer to purchase.

3. If a new DV is prepared, the Review Appraiser:

   a. Numbers each DV for a parcel in sequential order, e.g., DV #2, DV #3.

   b. Fills in the appraisal and review history.

   c. Evaluates all the latest appraisal evidence or map change information.

   d. Gives the justification for the changes on the new DV and references those items which appeared on the previous DV which still pertain to the current DV.

   e. Completes the DV in the usual manner.

E. **Private Access Easements for Transfer** – 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 condemn to provide private access to a third party because this situation is not a public use, as defined in RCW 8.04.070.

   1. The Review Appraiser prepares a two-premise DV 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" is with the easement from Owner A.

F. The Section Manager, Appraisal and Appraisal Review Program, routes the original of all DVs to the permanent file.

G. The Region Appraisal Supervisor:

1. Forwards one copy of the DV to the RESM.
2. Forwards one copy of the DV to the Region Acquisition Supervisor.
3. Enters DV data into the computer system.

### 5-5.2 Uneconomic Remnant

A. On behalf of WSDOT, the Review Appraiser on Staff determines whether a remainder (or any part thereof) qualifies as an "uneconomic remnant" based upon the following guidelines:

1. An "uneconomic remnant" is a remainder which has little or no utility or value to the owner.
2. Even though a parcel may be considered to have little or no value or utility in the "before" situation, when the acquisition leaves a remainder, that remainder should be declared an "uneconomic remnant."

B. The final paragraph on the DV shall clearly identify the "uneconomic remnant," support its declaration as such, and state its value. This paragraph is underlined or typed in italics.

***Note:*** The DV is the acquisition agent's authority to offer to purchase an "uneconomic remnant."

C. A Review Appraiser on contract with WSDOT may recommend whether a remainder (or any part thereof) qualifies as an "uneconomic remnant" based upon those guidelines above.

### 5-5.3 Surplus Property

When it has been determined that a state-owned real property or property right (including any improvements thereon) has become surplus to WSDOT's needs, an appraisal is prepared as specified in Appendix 4-1. The Review Appraiser:

A. Reviews the appraisal as specified in Section 5-4.

B. Completes a DV for Surplus Property.

C. Returns the completed DV to the Section Manager, Appraisal and Appraisal Review Program. The Review Appraiser:

a. May include data and explanations if data is weak or insufficient.
b. May set an indication of a value range rather than a specific value.
c. May recommend the means of disposal.

D. Access modifications shall be appraised on a "before and after" premise. If the appraised surplus property right is an access modification, establishes the value of the access rights to be conveyed at no less than $1,500 per WSDOT's policy for access conveyances in Section 1420.09(2)(c) of the *Design Manual* M 22-01.

### 5-5.4 Minimum Payment Policy

It is the policy of WSDOT that an acquisition DV will not be prepared for less than $500 for real estate except in the event of special benefits in which case the minimum amount of the DV is zero.

## 5-6 Appraisal Review for Other Public Agencies

Appraisal reports from local public agencies and other state agencies are reviewed for conformance to federal standards and WSDOT operating requirements for validity and support of value conclusions. (See Appendix 4-1, Appraisal Report Guide.) This necessitates that the reports be accompanied by a copy of the appraiser's contract and a determination that the report has complied with the agency's appraisal contract. The agency will attach a letter requesting the review, along with:

A. A dated map showing the parcel boundary.

B. The before, after, and/or acquisition areas.

C. Sufficient engineering data to show the effect of the project on remainder properties.

The submitting agency is responsible for obtaining necessary replacements for unacceptable appraisal reports and for obtaining any substantive revisions of inadequate reports furnished to WSDOT by the agency. Requests for appraisal review service of less than WSDOT standards (such as field inspection and independent value conclusions) may be refused and returned to the agency.

Typically, WSDOT Review Appraiser is not authorized to set just compensation for local agencies. This authority is given to an official within the agency.

The Review Appraiser prepares a "Certificate of Value," in accordance with the *Local Agency Guidelines* M 36-63. The Certificate of Value includes a Statement at the bottom of the document for concurrence by the appropriate official of the local agency.

# Chapter 6 Acquisition

6-1 General Requirements
6-2 Standard Acquisition Process
6-3 Early Acquisitions
6-4 Normal Preparation
6-5 Acquisition of Property and/or Property Rights by WSDOT
6-6 Identity of Parties
6-7 Acquisition Party Types
6-8 Property and Acquisition Specialist's Actions Prior to Contact With the Owner
6-9 Relocation Assistance Program
6-10 Property and Acquisition Specialist's Contact With the Owner
6-11 Remainders
6-12 Administrative Settlement
6-13 Payment of Rent Prior to the Acquisition of the Property
6-14 Special Benefits
6-15 Toxic/Hazardous Waste Situations
6-16 Property Rights Acquired and Occupancy by WSDOT
6-17 Miscellaneous
6-18 Trades and Exchanges
6-19 Construction Items
6-20 Road Approaches
6-21 Salvage of Improvements
6-22 Acquisition Transmittal
6-23 Right of Way Parcel Transmittal (RES-353)
6-24 Condemnation, State
6-25 Condemnation, Federal
6-26 Damage Claims

## 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 approved AOS including the appropriate supporting documentation, 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) funds are 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 said 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 the PAS prepared, or assisted in the preparation of, an appraisal, Determination of Value (DV), or appraisal waiver valuation, resulting in an offer greater than $10,000.
2. If the PAS is 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. If acceptance would result in a 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 the 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 Manager) 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 pro-cess 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 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 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 sign-off) will rarely be used.

## 6-4 Typical Pre-Acquisition 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. Exceptions to this policy exist, such as governmental entities, railroads, tribal lands, etc. Contact the Acquisition Program Manager or designee for guidance.
   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. <u>If there is a change of grade that requires compensation, a TCE or a Consent to Grade Change will be used.</u>
   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.

D. A Right of Entry may be used in very limited circumstances to allow a project to proceed to construction. This is allowed when WSDOT is acquiring property from governmental agencies that have agreed to the transaction, but the governmental agencies disposition processes are not yet complete, or they cannot be completed until after construction is finalized.

### 6-5.3.5 Emergency Permit and Right of Entry

**DEFINITIONS:**

Emergency Repair Work – Per 23 CFR 668.103, the term emergency repair is defined as "Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of (1) Minimizing the extent of the damage, (2) Protecting remaining facilities, or (3) Restoring essential traffic."

***Emergency Relief Procedures Manual***
It provides the legal and procedural guidelines for WSDOT employees to prepare all necessary documentation to respond to, and recover from, emergencies and disasters that affect the operations of the department.

The use of the Emergency Permit and Right of Entry shall be restricted to circumstances which are exceptional or emergency in nature. Approval by the Director & State Design Engineer/Development Division or his designee shall be obtained in writing prior to using this document. Typically, the Emergency Permit and Right of Entry is obtained prior to the valuation process and initiation of negotiations and ordinarily, will not dislocate people or impact improvements of a significant nature. When federal aid is involved, written approval must be received from FHWA.

The following procedures listed below will be followed by the region's Real Estate Services Office:

a. Comply with procedures and requirements outlined in the *Emergency Relief Procedures Manual.*

b. Search the county records for ownership documents and obtain proof of signing authority.

c. Locate property on an assessor's map.

d. Prepares and obtains an Emergency Permit and Right of Entry from Property Owner(s).

   1. A consideration of five hundred dollar ($500.00) can be paid under the WSDOT's minimal payment policy, at the discretion of the RESM, and will be deducted from the final settlement amount.

   2. Obtains a map showing the area, including access, to the area or a legal description.

   3. At the discretion of the RESM, the Emergency Permit and Right of Entry may be recorded to provide constructive notice to subsequent owners and lenders.

e. Prepares and submits the Right of Way Parcel Transmittal to the Headquarters Real Estate Services Office as outlined in Chapter 6.

f. As soon as possible after obtaining the Emergency Permit and Right of Entry, follows through with the normal appraisal and acquisition process as outlined in Chapters 4, 5 and 6 for the necessary rights for the project.

### *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.

## *6-5.7 Inventory Control Numbers*

In coordination with Property Management, any property right acquired shall be assigned an Inventory Control Number (ICN). Even if no parcel number has been assigned, an ICN must be assigned if WSDOT has acquired a property right. This also includes all right of way obtained from local agencies. A separate ICN shall be assigned to each type of property right acquired for the parcel, i.e. fee, easement, temporary right, etc.

## 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-382). 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 other highway/project related use not yet mapped.

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 a memo 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).

   ***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. Condemnation <u>and trial risks</u>.

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.**

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.

| | WSDOT Appraisal | Proposed Settlement | Difference |
|---|---|---|---|
| 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).
7. Term of payment shall be 1 year or less.

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 0P 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*

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).

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).
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. **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.
4. **Map Sheet** – Inserts appropriate map sheet number (e.g., 13 of 47).
5. **From** – Inserts closing right of way agent's name.

6. **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. **Property Management** – Places an "X" in the appropriate box for the property and/or improvements acquired. Inserts the Inventory Control Number or Numbers as appropriate for the acquisition.
4. **Agent's Signature** – The acquisition agent prints and signs the transmittal in the blanks provided.
5. **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-382) 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 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 (Good Luck)

## 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.

   ***Note:*** The use of Federal Condemnation is very rare and requires the early involvement of both FHWA and the Office of the Attorney General.

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 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 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*

   _____

   *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.

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
PO Box 47338
Olympia, WA 98504-7338

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE

**Document Title: Quitclaim Deed (Access Use Rights Only)**
**Reference Number of Related Documents:**
**Grantor(s): John Smith and Mary Smith, husband and wife**
**Grantee(s): State of Washington, Department of Transportation**
**Legal Description:**
**Additional Legal Description is on Page of Document.**
**Assessor's Tax Parcel Number:**

**QUITCLAIM DEED**
**(ACCESS USE RIGHTS ONLY)**

State Route 502, N.E. 21st Ct. to N.E. 102nd Ave.

The Grantor(s), **John Smith and Mary Smith, husband and wife**, their heirs, successors or assigns, as owner(s) of the following described Tract "Y" (Dominant Estate) for and in consideration of the sum of TEN AND 00/100 ($10.00) Dollars, and other valuable consideration, hereby convey and quitclaim to the **State of Washington, acting by and through its Department of Transportation**, Grantee, all Grantor's easement rights, to use the access approach belonging to the hereinafter described Tract "X" (Servient Estate), as granted by that certain easement recorded under Clark County Auditor's No. 4224209, for ingress and egress to, from and between SR 502 and the remainder of said Tract "Y", and any after acquired interest therein, situated in Clark County, Washington, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain.

EXCEPT that the State shall reconstruct on its right of way a Type "C" off and on approach for the remainder of Tract "X" (Servient Estate), not to exceed 30 feet in width for the sole purpose of serving a single family residence, on the easterly side, at or near Highway Engineer's Station 400+10, as shown on Sheet 5 of 18 Sheet of the hereinafter map of definite location.

FA No.
Project No.
Parcel No.

RES-356
Revised 6/12

Page 1 of ( ) Pages

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

**QUITCLAIM DEED**

The Grantors, as holders of an easement to cross the remainder of Tract "X", their heirs successors or assigns, shall have the right to use this Type "C" off and on approach onto SR 502 only for such time as the easement across Tract "X" remains in effect. This approach is to be used to serve both the Dominant and Servient estates.

Tract "X" (Servient Estate: Real property easement or use is imposed upon)

Lot 2 as shown on the plat of Running Hills per plat thereof recorded in Volume 30 of Plats, pages 6-9, records of Clark County, Washington

Tract "Y" (Dominant Estate: Real property benefiting from the easement)

Lot 3 as shown on the plat of Running Hills per plat thereof recorded in Volume 30 of Plats, pages 6-9, records of Clark County, Washington

The specific details all of which are to be found on Sheet 5 of that certain plan entitled SR 502, N.E. 21st Ct. to N.E. 102nd Ave., now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval December 17, 2009, revised June 2, 2011.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, by and through its Department of Transportation, by its authorized agent.

Dated: _____, _____

_____
Name

_____
Name

RES-356 Page 2 of ( ) Pages Parcel No.

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

**QUITCLAIM DEED**

Accepted and Approved

STATE OF WASHINGTON
Department of Transportation

By: _____
Title
Authorized Agent

Date: _____

Acknowledgment

RES-356 Page 3 of ( ) Pages Parcel No.

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

**QUITCLAIM DEED**

EXHIBIT A

Parcel 1:

All that portion of the easement rights, held by the Grantor(s) as the benefitted property hereinafter described as Parcel 2, over and across the hereinafter described Tract "X"

_____

Tract "X"
(Servient Estate)

Parcel 2:
(Dominant Estate)

Insert "specific details" to extinguish said easement

Grantor's Initials

RES-356 Page 4 of ( ) Pages Parcel No.

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

7-1 General
7-2 Title Functions – Region
7-3 Title Functions – Headquarters

## 7-1 General

A. Evidence of the ownership or of an interest in the title to real property is found in the records of the county in which the property is located. Public records affecting title are maintained by the county's assessor, auditor, clerk, registrar, and treasurer. Ownership records are also maintained by all title insurance company offices in each county.

B. Generally the state requires fee simple title to lands acquired for right of way purposes. Grantor's retention of reversionary rights is not acceptable in most cases.

C. Although the "Contracts for Title Evidence" vary somewhat as to fees, delivery schedules, etc., each provides that the state receive Preliminary Commitments for Title Insurance (PC) and any necessary Supplemental (SPC) for its acquisition information needs, and an ALTA owner's Standard Form Policy of Title Insurance insuring the state of Washington, Department of Transportation's acquisition. For specific provisions, refer to the appropriate title contract.

D. Since it is less expensive to obtain insured titles from the local title industry than it is to use staff personnel to conduct title searches, the Washington State Department of Transportation (WSDOT) uses the services of the title insurance companies almost exclusively. Only in an emergency situation are staff personnel used to conduct title searches. One provision of the contracts is that WSDOT may secure sundry title services such as copies of maps, copies of instruments, ownership information, etc., for a specified charge that, along with other charges, will be billed to WSDOT.

E. In Headquarters title work is performed under the supervision of the Acquisition and Title Section Manager. In the larger regions, title work is performed under the supervision of the Region Real Estate Services Manager (RESM) and when necessary is assisted by the Acquisition and Title Section Manager.

## 7-2 Title Functions – Region

### 7-2.1 General

The following sections describe title functions which are normally performed in the region.

The Region RESM is responsible for the performance of these title functions and may delegate these duties to members of their staff as appropriate.

The Region RESM coordinates with the Acquisition and Title Section Manager on any special problems.

### 7-2.2 Title Commitments (Reports)

The Region RESM or designee:

A. Upon receipt of maps or property descriptions from the Region Right of Way Plans Section, places an order for title reports.

   1. The order is placed with a title company insuring in the county in which the project is located.

   2. Title orders are normally placed with the title company on a rotational basis; however, this is balanced against the company's ability to deliver to the department's time requirements and company's ability to deliver accurate work.

      At times of large orders (20 or more parcels), it may be necessary to balance the orders between several title companies.

   3. Upon assurance that the title company is prepared to meet the project's time schedule, places the order as provided in the contract.

B. Upon receipt of title reports, determines whether all properties within the limits of the proposed project have been covered.

   1. Contacts the title company to correct any duplications, omissions, or discrepancies.

   2. Examines the title reports for access easements and road maintenance agreements. Reviews access easements and/or agreements to determine effect on parcel and identifies the ownership(s) benefitted by the easement. Physically inspects the property(ies) to identify parties in possession, width of easement. On limited access projects, the benefitted parcel(s) shall be identified as a separate parcel. On managed access projects, determines if the benefitted parcel should be identified as a separate parcel. Also coordinates with region access staff and the Acquisition and Title Section Manager, as needed.

3. When the field survey (by the Region Right of Way Plans Section) does not agree with the descriptions on the title reports, coordinates with the project engineer and contacts the title company and/or the county or city engineer's office to determine the legal status of the questioned property.

   Advises the Region Right of Way Plans Section on problems concerning the legal status of vacated streets or other questioned property.

4. Acts as liaison between the Region Right of Way Plans Section and the title company.

C. Confirms that the title company's bill is for the services provided, assures it meets contract requirements, and prepares voucher for payment.

D. Coordinates with the project manager on real estate matters bearing on interdisciplinary team activities, such as: ownership, contiguous properties, taxing districts, assessing districts, water rights, mineral rights, timber cruises, public recreation sites, and access, etc.

### 7-2.3 Right of Way Plans – Special Distribution

The Region RESM or designee:

A. At the time negotiations are to begin, furnishes informational copies (paper or electronic) of the approved right of way plans to:

   1. The title company or companies that provided the reports.

   2. The county assessor.

B. Distributes any subsequent map revisions resulting in a change to parcel definition as in 7-2.3A.

### 7-2.4 Acquisition and Condemnation

The Region RESM or designee:

A. Maintains and updates title commitments (reports).

B. Reviews the title reports with the Acquisition Specialist as required and advises the Acquisition Specialist on techniques for clearing encumbrances.

C. Orders Supplemental Title Reports (STRs) as specified in Chapter 6.

D. Drafts acquisition legal descriptions and/or assists the Acquisition Specialist in drafting them.

E. Reviews or drafts legal documents (deeds, easements, etc.) and/or assists the Acquisition Specialist.

F. Coordinates with the Acquisition and Title Section Manager or designee on *Right of Way Manual* interpretations as needed.

G. Conducts examination of all acquisition transmittals and negotiator's reports.

   1. Assures that transmittal package includes all items and is in order as specified in Chapter 6.

   2. Assures that encumbrances are clear in accordance with Chapter 8.

   3. Assures that instruments were prepared and executed in accordance with Chapter 9.

   4. Assures that vouchers were prepared and executed in accordance with Chapter 10.

   5. Conducts final review and processing of acquisition transactions (excluding condemnation).

   6. Assures that required data is entered in the computer database.

H. Assures that the title company's bills for supplemental fees, recording fees, and full value title policies meet the requirements of the contract and prepares voucher for payment.

   As to those acquisitions which are to be closed in escrow, verifies that the correct escrow fee plus sales tax and fees have been added to the acquisition voucher or will be paid by separate voucher.

   The bill is verified for correctness and paid as specified in Chapter 10.

### *7-2.5 Assistant Attorney General, Department of Transportation – Liaison*

The Region RESM, or designee:

A. Using the procedures specified in the appropriate contract, obtains title evidence for the use of the Assistant Attorney General, WSDOT, in inverse condemnation proceedings and on damage claims in accordance with Chapter 6.

B. When (on interstate projects only) condemnation proceedings are to be filed in the federal court, obtains federal form certificates as specified in the contracts.

C. Compiles data on legal descriptions and parties defendant as requested by the Assistant Attorney General, WSDOT.

D. Makes specific note of any toxic/hazardous situations that will need to be addressed by the Attorney General's Office (AGO).

E. Submits requests for any needed legal opinion to the Headquarters Real Estate Services Manager, for coordination with the Assistant Attorney General, WSDOT, and other regions.

## 7-3 Title Functions – Headquarters

### *7-3.1 Acquisition*

The Acquisition and Title Section Manager or designee:

A. Compliance Review

1. Reviews a minimum of 25 percent of a project's acquisition files for compliance with state laws and WSDOT policies and procedures including:

   a. Conveyance documents with emphasis on identification of correct parties, signatures, notaries, and legal descriptions.

   b. Clearance of title and encumbrances with emphasis on compliance with Chapter 8 and documentation of risk analysis.

   c. That administrative settlements are justified in compliance with current WSDOT policy, documentation, and justification procedures.

2. Sends a copy of the compliance review to the appropriate region personnel.

3. Coordinates corrective action, if necessary, with RESM or designee and documents file accordingly.

4. Posts documents to the appropriate Real Estate Services ownership maps.

5 Inputs required data into the computer database.

6. The acquisition file is retained in the appropriate location pursuant to the records retention schedule.

### 7-3.2 Condemnation

The Acquisition and Title Section Manager or designee:

A. Using the procedures specified in Chapter 6 prepares the information for the AGO.

B. Reviews AGO documents and processes payments.

C. Provides expert advice and testimony when requested.

### 7-3.3 Conveyances of Excess and/or Surplus Property

The Acquisition and Title Section Manager or designee:

A. **Title Checks** – Performs a preliminary title check to determine what interest WSDOT holds in subject property and those exceptions and/or reservations which must be made in any proposed conveyance.

B. **Descriptions** – Reviews descriptions submitted by property management or writes and reviews descriptions of property being conveyed.

C. **Conveyance Documents** – Reviews documents of conveyance for completeness and accuracy prior to final execution.

D. **Posting** – Posts completed conveyance to Real Estate Services maps.

### 7-3.4 Records

The Acquisition and Title Section Manager or designee:

A. **Real Estate Services Maps** – Maintains maps including entry of new right of way plans, entry and reposting of plan revisions.

B. **Real Estate Services Sundry Site Maps** – Maintains pit and stockpile record books and maps.

C. **Advise Others** – Advises and assists others on matters involving right of way acquisitions and plans including, but not limited to, retrieval of data from archives and interpretation of evidence.

D. Review and provide records as required under public disclosure.

E. Maintains all paper and electronic systems.

F. Assures that records are retained and submitted for retention according to the Real Estate Services Records Retention Schedule.

# Chapter 8 Encumbrances

8-1 General
8-2 Clearance of Encumbrances
8-3 Lien Encumbrances
8-4 Property Rights Encumbrances
8-5 Personal Rights Encumbrances

## 8-1 General

This chapter is concerned with encumbrances and the procedures for clearing them. Techniques include: escrowing the transaction, withholding a performance bond, or clearing the encumbrance prior to transmitting the parcel to Headquarters. The method used to clear each encumbrance is noted in the Encumbrance Report.

The Headquarters Real Estate Services Program Administrator (RESPA) determines the acceptable title risk in each state acquisition. A title report, consisting of a "Commitment for Title Insurance" plus any "Supplemental Title Reports" (STRs), is obtained for each parcel. The title report lists the recorded encumbrances affecting the title. In addition, the Property and Acquisition Specialist (PAS) may discover other encumbrances (e.g., unrecorded leases).

The following sections discuss techniques for general clearance of encumbrances and procedures for clearance of individual encumbrances.

In some situations it may be difficult to clear encumbrances in the prescribed manner. In some cases, check with the title company to see what they will require to clear the encumbrance.

## 8-2 Clearance of Encumbrances

### *8-2.1 General Technique*

#### 8-2.1.1 Rules

A. The state clears each encumbrance affecting its acquisitions unless otherwise specified in this manual. Any deviations from the manual must be authorized and approved on a case by case basis. The Region Real Estate Services Manager will analyze and document the risk associated with the deviation. All deviations must be approved by the Acquisition and Title Section Manager.

B. Clearance of encumbrances is normally accomplished by the region office in non judicial acquisitions.

C. Under conditions specified in Section 8-2.2 et seq., the state may obtain clearance of encumbrances involving the payment of money through the escrow services of the title company issuing the commitment on the respective parcel.

D. If any interest cannot be acquired by negotiations, the entire acquisition is achieved through eminent domain proceedings.

E. Each transaction package includes documentation on the clearance of all encumbrances against the property being acquired including approvals for any deviation.

#### 8-2.1.2 Procedures

A. The Region RESM, or designee:

1. Investigates each encumbrance listed on the commitment and any supplementals and all other questions of title which appear during the acquisition process.

2. Resolves all title questions in accordance with Sections 8-2.1.1 and 8-3 et seq., or obtains execution of an appropriate Escrow Agreement (RES-337) in accordance with Section 8-2.2.

B. The PAS:

1. Includes the Encumbrance Report on the Right of Way Acquisition Transmittal (RES-353), explaining the effect of each encumbrance on the state's acquisition and the method employed to clear each encumbrance.

2. If unable to negotiate a settlement of any interest, reports the facts to the Region RESM and makes the appropriate note in the Diary of Right of Way Activities (RES-301) in accordance with Chapter 6.

### *8-2.2 Escrow Technique*

#### 8-2.2.1 Rules

A. Transactions are closed in escrow if:

1. The Region RESM feels an escrow is required to protect the state's or the property owners' interests; or

2. Acquisitions involving payoff of monetary encumbrances. (e.g., Deeds of Trust, Judgments, Taxes); or

3. The owners insist upon it.

B. Transactions are not normally closed in escrow when:

1. The amount necessary to clear an encumbrance is subject to negotiation.

2. A condition precedent to final closing involves the escrow agent in a determination of a performance other than the payment of money (e.g., removal of improvements).

#### 8-2.2.2 Procedures

When in compliance with Section 8-2.2.1 it is necessary to close a transaction in escrow, the PAS:

A. Clears all encumbrances of nonmonetary nature (easements, etc.) and documents the clearance of these encumbrances on the Encumbrance Report.

B. Provides, for the benefit of the escrow agent, names, addresses, and telephone numbers of parties in interest, including institutions collecting contract or mortgage payments, judgment creditors, etc.

C. Completes all appropriate instruments involving conveyance to the state and obtains execution thereof.

D. Completes the Escrow Agreement (RES-337).

E. Provides an executed copy of the completed Escrow Agreement to the grantors and transmits the executed original with the Right of Way Acquisition Transmittal.

F. Prepares the Real Property Voucher (RES-321) as specified in Chapter 10. The voucher(s) is(are) to be signed by the grantor(s) (claimants) and directs that the funds be made payable to the escrow agency.

## 8-3 Lien Encumbrances

### *8-3.1 Real Property Taxes*

#### 8-3.1.1 General

Real property taxes are payable when the treasurer of each county completes the tax roll and provides notification of said completion each year. The entire year's taxes become delinquent if the first half taxes are not paid on or before April 30. The second half taxes become delinquent if not paid on or before October 31.

#### 8-3.1.2 Rules

A. Any real property tax lien (current year and prior years) is an encumbrance which is cleared on acquisitions of fee title and on most acquisitions of less than fee title (see Chapter 6).

B. The effect of the current year's real property tax lien depends upon the date that the transaction is accepted and approved by WSDOT's authorized agent. If the approval date is between:

1. **January 1 and Notification of the Completed Tax Roll** – The region will have to determine the tax payable date for each county.

2. **January 1 through June 15** – At least the first half real property tax must be cleared.

3. **After June 15** – The lien of the entire year's tax must be cleared.

C. Persons who have paid the real property tax for the current year may be entitled to a tax refund. Such refund, if any, is based upon that portion of the taxes paid that relate to the property acquired by the state, but only on a pro rata basis for that portion of the year following the state's acquisition. This is not an encumbrance and reimbursement is obtained directly from the county.

### 8-3.1.3 Procedures

#### *8-3.1.3.1 Payment of Current Year's Tax*

A. For either a total or a partial acquisition, the PAS, or at the owner's discretion:

1. Allows the owner to pay the tax lien. The PAS includes proof of the payment with the Right of Way Acquisition Transmittal.

2. Pays the tax lien by a separate Real Property Voucher (RES-321) made payable to the appropriate county treasurer. The amount of this voucher is shown as a deduction on the "principal" Real Property Voucher.

3. If the mortgagee is holding reserves to pay the real property taxes, obtains a "tax payoff" letter from the mortgagee. The PAS requests that this letter be prepared and signed by the appropriate official of the mortgage company guaranteeing payment of the real property taxes. The PAS includes this letter in the data package transmitted with the Right of Way Acquisition Transmittal.

B. If the transaction is to be closed in escrow, includes instructions to pay the real property tax in the escrow agreement.

#### *8-3.1.3.2 Payment of Delinquent Taxes*

The PAS clears the lien of delinquent taxes by using the procedures of Section 8-3.1.3.1. If a separate voucher is written for the payment, the PAS has the county treasurer compute the interest to be charged allowing sufficient lead time (approximately 60 days) to enable payment to be received by the county treasurer. If desired, a statement may accompany the voucher.

#### *8-3.1.3.3 Payment by Tax Segregation*

On a partial acquisition, the PAS or the owner may request that the county assessor segregate both the assessed valuation and the real property taxes between the property acquired by the state and the remainder. Then the taxes are paid on at least the portion acquired by the state (RCW 84.60.070) using the procedures in Sections 8-3.1.3.2 and 8-3.1.3.3.

#### *8-3.1.3.4 Clearance by Tax Set Over*

On a partial acquisition, if the assessed valuation of the remainder exceeds the total amount of all current and delinquent taxes, the amount of the real property tax applicable to the state's acquisition may be "set over" to the remainder thus avoiding the necessity of making a tax payment prior to closing. The Tax Set

Over Letter may be prepared by the PAS, is signed by the owners and is approved by the county assessor and the county treasurer. The PAS includes the Tax Set Over Letter (RES-334) in the data package transmitted with the Right of Way Acquisition Transmittal.

Also, on a partial acquisition, the taxes may be set over to the remainder by inserting in the Warranty Deed the following paragraph:

> "Also, the Grantor(s) request the Assessor and Treasurer of said County to set over to the remainder of the hereinafter described Parcel "A", the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided for by RCW 84.60.070."

***Note:*** This procedure does not apply to total acquisitions

## *8-3.2 Personal Property Taxes*

### 8-3.2.1 General

Personal property taxes are subject to the same levy rate as real property taxes. Personal property includes machinery, equipment, furniture, and supplies of businesses and farmers. It also includes any improvements made to land leased from the government (leasehold improvements).

Property taxes are due on April 30 and October 31. The owner of the property on January 1 of the assessment year owes the tax due the following year. The tax is due even if the business closes, or the property is sold or transferred before the end of the year.

***Note:*** If WSDOT is acquiring a mobile home, personal property taxes must be paid in full.

### 8-3.2.2 Rules

Any personal property tax lien (current year and prior years) is an encumbrance which is cleared on acquisition of the personal property as a result of the state's project.

### 8-3.2.3 Procedures

A. The PAS at the owner's election or tenant's election, if tenant owned:

   1. Allows the owner (tenant) to pay the tax lien. The PAS includes proof of payment with the Right of Way Acquisition Transmittal

   2. Pays the tax lien by a separate Real Property Voucher made payable to the appropriate county. The amount of this voucher is shown as a deduction on the "primary" Real Property Voucher.

B. If the transaction is to be closed in escrow, includes instructions to pay the personal property tax in the escrow agreement.

### 8-3.3 Assessments

#### 8-3.3.1 General

A. There are two basic types of assessments:

1. An amount levied against real property by an assessing district, e.g., Local Improvement district (LID), to accomplish a public improvement, e.g., water, sewers. Most of these assessments are lump sum levies (which usually are payable over a number of years).

2. When the operation is continuous, e.g., a drainage district, diking district, surface water management, fire district, an assessment is usually levied annually and thereby become a recurring lien in the same sense as real estate taxes on private property.

B. The taxing district per RCW 84.56.035 may contract with the county treasurer to collect the special assessments.

C. Assessments cannot be set over to the remainder property unlike property taxes.

***Note:*** The Acquisition Specialist should notify the Property Management Section of any ongoing assessments by Memorandum or email.

#### 8-3.3.2 Rules

A. The lien of current and delinquent assessment is cleared:

1. On all acquisitions of fee title.

2. On those acquisitions of less than fee title for projects which would restrict the operation, maintenance, or other functional interest of the assessing district.

B. Irrigation districts are cleared per RCW 87.03.810 and RCW 87.03.815.

#### 8-3.3.3 Procedures – Irrigation Districts

A. If the Regional Administrator determines the department-controlled lands or highways will remain in irrigable status, the annual assessments are handled by the Property Management Program as specified in Chapter 11.

B. If the Regional Administrator determines that the department-controlled lands or highways should be removed from an irrigable status. Per RCW 87.03.810 and RCW 87.03.815, the Region RESM determines a lump sum payment for lands that are to be removed from irrigable status in coordination with the irrigation district as follows:

1. A sum sufficient to pay the pro rata share of the irrigation district's bonded indebtedness; and

2. A sum sufficient to pay the deferred installments of any LID against such lands, if any; and

3. A sum sufficient, if invested at an annual rate of interest equivalent to that set forth in the current tables issued by the State Insurance Commissioner, to produce a sum of money equal to the annual increase in the operation and maintenance costs against the remaining lands in the irrigation district resulting from the severance from the irrigation district of the lands acquired by WSDOT.

C. The Region RESM:

1. Prepares a resolution for action by the Board of Directors of the irrigation district.
2. Prepares a Real Property Voucher (RES-321) as specified in Chapter 10.
3. Transmits the voucher and resolution through channels to the irrigation district for approval and execution.
4. Upon receipt of the executed resolution and voucher from the irrigation district:
   a. Inputs pertinent data into the computer system.
   b. Transmits the resolution and Real Property Voucher together with the determination of the sum due to the Region RESM as a separate acquisition using the procedures set forth in Chapter 6 for approval.

### 8-3.3.4 Procedures – All Other Assessing Districts

A. The Region RESM, or designee:

1. Identifies from the title reports, and any other appropriate source, all:
   a. Lump sum levies by special districts for capital improvements.
   b. Recurring assessment liens by junior assessing districts for performed services, e.g., fire patrol, diking.
   c. Assessing officials (or bodies) affected by the highway project.
2. Assures that the DV (RES-214) reflects any market value added by the improvement for which the assessment was levied.
3. On acquisitions of less than fee title: coordinates with the Region RESM to determine the required actions.
4. Instructs the PAS on the appropriate steps to be taken to clear, assessments, and any amounts to be deducted from the "principal" Real Property Voucher (RES-321) because of any separate clearance of assessment liens.

B. The PAS:

1. Clears assessment liens as instructed by the Region RESM by adapting the procedures given in Section 8-3.1.3, except that:

a. It is not possible to arrange payment of an assessment from the reserves held by the mortgagee.

b. The request for an assessment segregation is directed to the proper assessing district officials. (***Note:*** Set overs of assessments are *not* authorized by law but may be arranged at the discretion of the assessing district involved.)

c. The amount of all assessments to be paid is shown as "Deductions" on the principal Real Property Voucher (RES-321).

2. Shows the method for clearance on the Encumbrance Report.

## *8-3.4 Deeds of Trust and Mortgages*

### 8-3.4.1 General

Deeds of trust and mortgages are discussed together. For the purpose of this section, both are encumbrances cleared with either a reconveyance document or a satisfaction of mortgage, respectively, and may require payment of funds.

Most deeds of trust and mortgages contain a condemnation/eminent domain or an acceleration clause, if all or a portion of the property is sold, calling for all proceeds to be applied to the unpaid balance; if proceeds are not applied to the unpaid balance, the lender can call all amounts immediately due and payable.

In the following discussion, the language appropriate to a deed of trust is shown first, with the language appropriate to a mortgage shown in parentheses. The term "trustee" is appropriate only to deed of trust and is used only in that context.

### 8-3.4.2 Rules

A. A full reconveyance (satisfaction of mortgage) is required to clear a deed of trust (mortgage) in the case of any total acquisition.

B. A partial reconveyance (partial release of mortgage) is not required on partial acquisitions when the dollar amount of compensation is under $10,000 (including damages, but exclusive of cost to cure/cost to move damages and compensation paid to replace or move a well or septic system) and there are no appreciable improvements (building, garage/sheds, outbuildings, etc.) in the area being acquired.

   If the compensation is between $10,000 and $25,000 (including damages, but exclusive of cost to cure/cost to move damages and compensation paid to replace or move a well or septic system) and there are no appreciable improvements (building, garages/sheds, outbuildings, etc.) in the area being acquired, the risk of assuming this additional liability must be made by the RESM.

   Over $25,000 is reviewed on a case by case basis and requires approval by the Region RESM and the Regional Administrator (or delegate).

C. In the case of partial acquisition of fee and an easement, the following clause should be added to the partial reconveyance (partial release of mortgage) "The Beneficiary (Mortgagee) herein consents to an easement for the purposes of ____over the following described property_____"

*Note:* The Request for Partial Reconveyance should also recite this clause.

D. In the case of an easement only acquisition, the beneficiary (mortgagee) should also execute the document consenting to the easement.

E. For the acquisition of temporary rights. Based upon the length of time involved, the compensation, the degree of interference, and size of the easement, consider having the beneficiary (mortgagee) execute the document

F. In accordance with Chapter 6, certain "incidental expenses" incurred in transferring property to the state are payable by the department including reasonable fees for processing and reconveyance fees.

### 8-3.4.3 Procedures

The PAS determines the identity of the "servicing agent" by asking the grantor where the deed of trust (mortgage) payments are made. The servicing agent is the initial point of contact for dealing with the beneficiary (mortgagee).

#### *8-3.4.3.1 Total Acquisition*

A. **Instruments Obtained** – If the beneficiary (mortgagee) is willing to deliver a full reconveyance (satisfaction of mortgage) without funds in hand, the PAS:

1. Obtains the signatures of both the trustor (grantor) and the beneficiary (mortgagee) on the Real Property Voucher (RES-321) using the mailing address of the beneficiary (mortgagee) as the address of the "claimant."

   *Note:* As an alternate, the amount to be paid to the beneficiary (mortgagee) may be paid by a separate Real Property Voucher (RES-321) made payable to the beneficiary (mortgagee) and deducted from the principal Real Property Voucher if both parties are agreeable to the amount.

2. On the strength of the state's promise to pay the voucher, requests that the beneficiary (mortgagee) take all necessary steps to file a full reconveyance (satisfaction of mortgage) with the county auditor/recorder where the property is located.

3. Obtains the recording data of the full reconveyance (satisfaction of mortgage) and recites same in his Encumbrance Report (RES-353, Right of Way Acquisition Transmittal) as reference for the clearance of the encumbrance.

B. **Instruments Guaranteed** – If the beneficiary (mortgagee) is unwilling to deliver a request of full reconveyance (satisfaction of mortgage) without funds in hand (beneficiary cannot deliver a reconveyance, the reconveyance is prepared by a trustee), the PAS:

1. Requests a letter of guarantee in lieu of the full reconveyance (satisfaction of mortgage) if the beneficiary (mortgagee) is an established lending firm. This is a letter signed by an appropriate officer of the beneficiary (mortgagee) that states they will request a full reconveyance (satisfy the mortgage) upon receipt of the funds for the same.

2. Submits the transaction to escrow if the beneficiary (mortgagee) is an individual or is unwilling to deliver a reconveyance (satisfaction of mortgage) prior to delivery of funds.

#### *8-3.4.3.2 Partial Acquisition*

A. Where a partial reconveyance (partial release of mortgage) is not required the following procedures apply:

1. Under $10,000:

   The PAS informs the property owner of any condemnation, due on sale, or acceleration clauses and associated risk and so notes in the activities diary. The response of the owner should also be clearly noted. The PAS also notes in the encumbrance report on the Right of Way Parcel Transmittal Sheet that the property is being acquired subject to the lien.

2. Between $10,000 and $25,000:

   a. The PAS completes the Request to Accept Encumbrance (RES-333) and submits it prior to transmittal to the Region RESM for consideration.

   b. The Region RESM evaluates the request based on the following criteria:

      (1) Age of lien and current status of payment.

      (2) Amount of lien and risk of being called due.

      (3) Equity (market value of remaining lands less balance of lien).

      (4) Evaluation of all liens, including taxes and assessments, as noted on the title report.

      (5) Evaluation of any other unrecorded interests.

   c. If approved by the Region RESM, the PAS obtains written permission from the property owner that they have been informed of any condemnation, due on sale, or acceleration clauses and associated risk.

   d. The owners signed statement and Request to Accept Encumbrance form are included with the transmittal package.

   e. If RESM's review determines unacceptable risk, the RESM rejects the request and the PAS clears the encumbrance, per normal procedure.

3. Over $25,000:

   The procedure outlined above for $10,000 to $25,000 applies. However, the Request to Accept Encumbrance form must be approved by the Regional Administrator (or delegate) prior to submittal of transmittal.

B. When a partial reconveyance (partial release of mortgage) is required, the PAS determines, by coordinating with the beneficiary (mortgagee) and the grantor, any necessity to make payment of money to the beneficiary (mortgagee). This is decided by the parties and is normally based on the value of the remaining real property in relation to the balance owed on the deed of trust (mortgage).

   1. Some payment of money to the beneficiary (mortgagee) required by the parties: There is a divergence of procedures between mortgages and deeds of trust in this instance; therefore, each is discussed separately.

      a. Partial Release of Mortgage (PRM): PAS obtains execution of a Real Property Voucher and submits for mortgagee's signature a Partial Release of Mortgage (RES-308 and RES-309).

      b. Partial Reconveyance: PAS obtains execution of a Real Property Voucher and prepares Request for Partial Reconveyance (RES-310) and Partial Reconveyance (RES-311). The Request for Partial Reconveyance is signed by the beneficiary, requesting the trustee to execute the partial reconveyance. The PAS, using the "Request" as his authority, obtains execution of the Partial Reconveyance from the trustee.

   2. If no payment of money to the beneficiary (mortgagee) is required by the parties: the PAS proceeds as in Section 8-3.4.3.1.A except in this instance the trustor (grantor) is the payee and the beneficiary (mortgagee) does not join in execution of the Real Property Voucher.

      The PAS:

      a. Includes in the partial reconveyance (partial release of mortgage) the appropriate clause (see Chapter 9) authorizing full payment to the grantor, and

      b. Includes in the request for partial reconveyance the appropriate clause (see Chapter 9) authorizing full payment to the grantor.

### *8-3.4.3.3 Security Instruments That Include an Assignment of Rents*

#### *8-3.4.3.3.1 General*

Certain loans may secure payment of a debt and be a lien on commercial property that is occupied by tenant(s). The PAS, with the assistance of the region title examiner, needs to be familiar with the provisions in the loan documents and understand how to remove any Assignment of Rents.

#### *8-3.4.3.3.2 Procedures*

There are many different types of security instruments. Each must be read for how to obtain a release of the Assignment of Rents. Some provide that the Release of Assignment of Rents must be executed solely by the lender and others consider the Assignment of Rents to be released upon the execution of the reconveyance.

#### *8-3.4.3.3.4 Mortgage Electronic Registration Systems (MERS) Reserved*

### *8-3.5 Judgments*

#### 8-3.5.1 General

A. A judgment is a lien on all the real and personal property of the debtor and is similar to the lien of a mortgage. If no action is taken to collect or to renew the lien of a judgment within ten years of the date of its entry, the judgment will expire. It is often advantageous to the debtor to ignore the judgment if the time for levy by the creditor has almost expired.

   Judgments for child support extinguish ten years after the youngest child reaches the age of 18.

B. A judgment is an effective lien on the following:

   1. All properties owned by the debtor in the county in which the judgment is entered on the date of filing the judgment.
   2. All properties to which the debtor acquires ownership or a contract purchaser's interest during the life of the judgment.
   3. All properties owned by the debtor in all other counties in Washington provided an Abstract of Judgment has been recorded in the county in question.

#### 8-3.5.2 Rules

A. Judgments are cleared by payment, partial payment, and/or release of the property being acquired.

B. On partial acquisition or acquisition of easements, the Region RESM may acquire subject to the judgment with appropriate documentation.

C. ***Except* that all child support judgments shall be cleared.**

D. Without documentation to the contrary, it is assumed that the party named or cited in the title report is, in fact, the judgment debtor and that the judgment has been neither satisfied nor expired.

#### 8-3.5.3 Procedures

A. **Identity of Debtor** – The PAS determines whether the judgment debtor and the state's grantor is the same person. ***Note:*** The title company may require an identity affidavit for completion.

B. **Verification of Status of Judgment Against State's Grantor**

1. **Expired** – If the Title Report and/or the PAS's investigation indicate that no action has been taken to collect or renew the lien within the past ten years, the PAS requests that the Region RESM obtain a STR showing that the judgment is eliminated.

2. **Paid** – If such judgment has been paid, the PAS requests the creditor's attorney to satisfy the judgment of record.

3. **Assigned** – If the judgment creditor has assigned his interest in the judgment and the PAS is uncertain of the validity of the assignment, the assignor and the assignee are requested to join in execution of a satisfaction of judgment or partial release of judgment.

   ***Note:*** An Assignment of Judgment must include an acknowledged execution by the judgment creditor.

C. **Clearance**

1. If the conditions stated in Section 8-3.5.3.B.1 appear to pertain, but a new STR does not show that the judgment has expired, the PAS submits a complete explanation of the evidence to the Region RESM requesting that specific guidance be obtained from the Acquisition and Title Section Manager.

2. If the judgment remains of record against the state's grantor and is to be cleared, the PAS:

   a. Contacts the judgment creditor's attorney or assignee (if any) and obtains a written statement of the amount necessary to obtain a satisfaction or a partial release of the judgment.

   b. Arranges with the debtor and his attorney to pay the required amount, usually by a separate Real Property Voucher (Form RES-321).

   c. Arranges with the creditor and/or his attorney to have a Satisfaction of Judgment or a Partial Release of Judgment properly entered in court.

   d. If an Abstract judgment, has the satisfaction or partial release filed in the original county that the judgment was filed.

## *8-3.6 Miscellaneous Monetary Liens*

### 8-3.6.1 General

Any monetary debt may be reduced to judgment and become a lien against real estate. Monetary indebtedness (although not reduced to judgment) may become a lien capable of being specifically reported in a title report when the creditor or his attorney files the appropriate papers with the county clerk or records the papers with the county auditor. The condition of a grantor's title may also be questionable due to other types of monetary debts.

A. The following become a lien against real estate upon recording with the county auditor in the county where the lands lie and are reported accordingly as an encumbrance on the title report:

1. **Mechanics' and Materialmen's Liens** – Valid for a period of eight calendar months. However may be enforced by court action or, subject to further specific conditions (per RCW 60.04.141).

2. **Federal Tax Lien** – Delinquent federal taxes are a lien when properly filed with the appropriate county auditor. May be considered expired after ten years from date of filing unless a continuance has been recorded.

3. **Department of Social and Health Services Lien for Child Support** – Per RCW 26.18.055 when not paid, becomes a lien against all real and personal property of the debtor. It is WSDOT's policy to obtain a release of lien for the property acquired. There are no exceptions for clearing this type of lien.

4. **Uniform Commercial Code (UCC) Financing Statement** – The Uniform Commercial Code is a nationwide system for the simplification, clarification and modernization of the laws regarding commercial transactions as defined per RCW 62A.1-102.

B. At time of death, debts of the decedent become a lien against the estate without necessity for filing or recording and are generally only questioned in the commitment. Such debts may include:

1. State inheritance tax and federal estate tax.

2. Funeral expenses.

3. Bills and expenses of final illness.

C. There are additional types of indebtedness that may require clearance, e.g., tax warrants, financing statements.

### 8-3.6.2 Procedures

A. **Mechanics' and Materialmen's Liens**

1. **Verification of Status of Lien** – If eight months have lapsed since the date of filing of the lien, and no pending action to enforce the lien, the PAS obtains an STR (by request through the Region RESM) removing the lien.

2. **Clearance** – The following procedures apply only if an action to enforce the lien in court has not occurred:

a. The attachment period is eight months.

b. The lien is released by the claimant.

c. The documents of release are "Release of Lien" and "Partial Release of Lien."

d. The documents of release are drafted for each specific case under the supervision of the RESM in coordination with the Section Manager of Acquisition and Title.

e. The documents of release are recorded with the county auditor.

***Note:*** If an action has been filed to enforce the lien then the procedures for releasing a judgment shall apply.

B. **Federal Tax Lien** – The PAS clears the Federal Tax Lien by:

1. A request for the amount of funds necessary to clear the lien from the acquired property should be obtained from the Internal Revenue Service Lien Payoff Unit.

2. Requests that the IRS file a release where the debtor indicates the debt has been paid.

3. Includes a copy of the debtor's receipt identifying his payment of the debt or a copy of the release with the Right of Way Acquisition Transmittal.

4. Explains the method of clearance on the Encumbrance Report.

C. **UCC Financing Statement** – Per RCW 62A.9A-502(b) a financing statement is considered sufficient as fixture filing if it indicates that it is to be filed for record in the real property records.

1. If there is a record of the UCC filed with county auditor then a termination of UCC must be filed with said auditor.

2. Whether or not a recorded UCC is filed, since the only requirement is that the filings indicate it is to be filed in the real property records, an UCC search needs to be completed with the Washington State Department of Licensing.

HQ Acquisition and Title Section have access to the UCC website. Please contact HQ for any searches.

If any UCCs are found affecting the real property, they will need to be released by filing with the Department of Licensing a termination once the creditor has been paid.

D. **Lien on Estate of Deceased** – Refer to Section 8-5.5.

E. **Miscellaneous Monetary Encumbrances** – When the Title Report or any information obtained by the PAS discloses or raises questions concerning possible existence of other types of indebtedness on the part of the state's grantor, the PAS refers the information to the RESM and requests specific guidance.

# 8-4 Property Rights Encumbrances

## *8-4.1 Real Estate Contracts*

A. A real estate contract is similar to an installment plan transaction between seller (vendor) and purchaser (vendee) and establishes rights and duties between the two parties.

Either party may sell or assign his respective interest in the contract.

The contract seller's interest is transferred by a Warranty Deed, a Quitclaim Deed, or by a Seller's Assignment of Contract and Deed.

The purchaser's interest is transferred by a Quitclaim Deed or a Purchaser's Assignment of Contract and Deed.

B. An assignment of interest by a contract seller or a contract purchaser may be given as an actual (absolute) conveyance or may be given merely as a security document for a loan or for the performance of some act. A security document might, on its face, appear to be an absolute conveyance and be reported as such in the Title Report. The facts and relationships expressed by the assignor and assignee determine the intent of the parties.

C. Subject to the terms and conditions of the respective contracts, the most recent contract purchaser generally has the right to receive a deed upon fulfillment of the contract and, in the meantime, has the right of full use, control, and enjoyment of the property. Any contract seller has the right to receive the contract payments, the duty to deliver a deed upon fulfillment of the contract, and forfeiture rights to the contract if the purchaser does not fulfill his contractual obligations.

### 8-4.1.2 Rules

A. The most recent contract purchaser who is in physical possession and/or control of the real property is the "equitable owner" and is the principal party with whom the state deals.

B. Recorded and unrecorded contracts and assignments are cleared as to the property being acquired.

### 8-4.1.3 Procedures

The following procedures are used to clear the encumbrance of real estate contracts and assignments in either total or partial acquisitions.

#### *8-4.1.3.1 Parties*

A. The PAS determines the correct names and mailing addresses of contract sellers, purchasers, and assignees; and, where appropriate, verifies the intent of the respective parties as to absolute conveyance or security document (see Section 8-4.1.B).

B. The Region RESM determines the identity of all necessary parties in interest and the "equitable owner." In complex cases, the Region RESM coordinates with the Acquisition and Title Section Manager.

#### 8-4.1.3.2 Distribution of Funds

After obtaining agreement of the "equitable owner" to the state's offer to purchase, the PAS contacts all necessary parties in interest to establish a mutually-agreeable disbursal of funds. If the parties cannot agree on the distribution, the PAS turns in the parcel for possible condemnation.

#### 8-4.1.3.3 Conveyance

A. **Joint Conveyance** – Two alternatives are available:

1. Joint Conveyance, Single Voucher, and Single Payee: If there is no distribution of funds required, or if the parties wish to arrange their own private distribution of funds, the PAS has the contract purchaser and the contract seller join on an appropriate instrument. This instrument includes the appropriate clause authorizing payment by the state to only one of the parties. The Real Property Voucher is then executed and made payable to the party designated on the instrument of conveyance.

2. **Joint Conveyance, Separate Vouchers** – If there is to be a distribution of funds, the PAS has the contract purchaser (owner) and the contract seller join on an appropriate instrument. The "primary" Real Property Voucher is executed by and made payable to the contract purchaser and indicates (a) the full amount of the state's transaction, and (b) a deduction of the amount to be paid separately to the contract seller. A secondary Real Property Voucher is executed by and made payable to the contract seller for the amount deducted from the "primary" voucher.

B. **Separate Conveyances** – The PAS has the contract purchaser execute an appropriate instrument and also has the contract seller execute a deed to the state. Vouchering may be accomplished by any methods described in Section 8-4.1.3.3.A.

C. **Security Assignees** – The PAS clears the interest (as to the state's acquisition) of any security document assignee following the procedures for clearing of a mortgage except that a Quitclaim Deed is used instead of a Satisfaction of Mortgage or a Partial Release of Mortgage.

D. **Escrow** – If the transaction meets the requirements for closing in escrow, the PAS:

1. Has the contract purchaser execute an appropriate instrument and a Real Property Voucher which is made payable to the escrow agent.

2. Drafts an appropriate Escrow Agreement (RES-337), and has both contract purchaser and seller execute same if a partial acquisition is involved. If a total acquisition is involved, the contract seller's signature is not required.

## 8-4.2 Leases

### 8-4.2.1 General

A. **Lease Rights** – A lease is a conveyance of possessory rights in realty for a specified period of time, the consideration for which is termed "rent." To be fully binding, a lease must be in writing, just as any other conveyance involving real estate. The person conveying the possessory right is the lessor and the person to whom conveyed is termed the lessee.

Any portion of the bundle of rights that make up full ownership may be the subject of a lease, e.g., lease of the surface of the land only, lease of the improvements (or a portion thereof) only, some combination of land and improvements, lease of airspace over the property, or lease of subsurface rights such as oil or minerals.

A sublease is a lease between the original lessee and a third party (sublessee) in which sublease the original lessee becomes the (sub) lessor and may convey rights up to the limits of those which he himself holds.

A lease may contain an option to renew that, if exercised, would extend the term of the lease.

A lease may include an option to purchase all of or a portion of the property being leased.

B. **Self-terminating Leases** – A self-terminating lease contains a clause which automatically terminates the agreement upon the happening of a certain event, such as, eminent domain acquisition of all or a portion of the premises. The parties in interest (and not the condemnor) decide whether their agreement is terminated by an eminent domain acquisition.

### 8-4.2.2 Rules

A. A leasehold interest is recognized by the state when it is evidenced by either:

1. A written (recorded or unrecorded) document.
2. An existing use and possession of the property in exchange for a consideration (rent).

B. A lease and sublease interest in effect on the date of delivery of the initial Firm Offer Letter are cleared by the state when they conflict with acquisitions of fee title, easements, or permits.

1. A Partial Release of Lease (RES-312) is obtained in partial acquisitions and acquisitions of easements and permits where the rights of the lessee (in the remainder) are not being obviated by the state's partial acquisition.
2. A Release of Lease (RES-313) is obtained in all total acquisitions, and in those partial acquisitions and acquisitions of easements or permits where the rights of the lessee are being obviated by the state's acquisition.

C. Any effect on a lease due to an acquisition by the state of access rights only is a matter of adjustment between the lessor and lessee. Such leases are cleared when the loss of access would eliminate the effectiveness of the lease.

D. The state does not acquire property subject to an outstanding lease, i.e., assuming the position of the lessor.

### 8-4.2.3 Procedures

#### *8-4.2.3.1 Clearance of Lease Interests*

A. **Release** – The PAS:

1. Obtains the signature of the lessee on a Partial Release of Lease (RES-312) or Release of Lease (RES-313). The identity of the lessees should be established per Chapter 6 on the Landlord Tenant Form (RES-352)

2. If the lessee has or claims a leasehold value, advises the owner (lessor) and obtains the signature of the lessee on the principal Real Property Voucher along with the signature of the owner (lessor) without breaking down the amount payable to each.

   ***Note:*** The approved compensation includes the value of all interests.

B. **Commercial Lessees** – If the lessee owns improvements or is purchasing trade fixtures (under recorded or unrecorded conditional sales contract or chattel mortgage) and which fixtures are attached to the real property that is affected by the state's acquisition the PAS):

1. If not covered by the Reviewing Appraiser's DV, requests that the Region RESM provide a listing of all such lessee-owned property and its value as included in the approved compensation.

2. Advises the owner (lessor), deducts the value of said lessee's property from the principal Real Property Voucher, and obtains the lessee's signature on a second voucher covering only the property of the lessee being purchased by the state.

3. Obtains the lessee's signature on a Fixtures and Improvements Agreement (RES-335) covering only the lessee's property.

4. If the lessee is purchasing his property under a conditional sale contract or a chattel mortgage:

   a. Obtains the signature of the seller or mortgagee on the "secondary" Real Property Voucher (see Section 8-4.2.3.1.B.2) without breaking down the amount payable to each signatory.

   b. Obtains the signature of the seller or mortgagee on the Fixtures and Improvements Agreement (RES-335).

5. If the fixtures are being purchased by the lessee on a conditional sale contract where the fixtures vendor retains title until the contract is paid in full, requests that the fixtures vendor execute, for the lessee, his standard satisfaction of the conditional sale contract and obtains a copy of same to be included in the transaction package.

6. If the fixtures are being purchased by the lessee subject to a chattel mortgage, requests that the mortgagee execute, for the lessee, his standard satisfaction of the chattel mortgage.

   a. If the chattel mortgage is not recorded, the PAS obtains a copy of such satisfaction for inclusion in the transaction package.

   b. If the chattel mortgage was recorded, the PAS requests that the satisfaction be appropriately recorded, obtains the recording date and auditor's file number of the satisfaction, and recites same in his Encumbrance Report.

7. If access rights are acquired in the instrument from the owner, they must also be acquired in the release from the lessee.

8. See Chapter 6 for refunds of deposits.

C. Residential Leases

1. Per RCW 59.18.200 (Landlord/Tenant Act) when premises are rented for an indefinite time whether by oral or written lease with monthly or other periodic rent reserved, such tenancy shall be construed to be a month to month tenancy. These leases shall be terminated by written notice of 20 days or more, preceding the end of any of the months or periods of tenancy. Therefore when WSDOT requests a release of lease from a residential tenant, the displacee lease must be signed concurrently in order to not violate the statute.

2. See Chapter 6 for refunds of deposits.

#### *8-4.2.3.2 Acquisition Subject to Lease*

A. When the PAS has reached agreement with the owner of land to be acquired but finds that it is subject to a lease that the lessee refuses to release and *all* the conditions of Section 8-4.2.2.D are present, the PAS requests the RESM to obtain the approval of the Headquarters RESM for acquisition subject to the lease.

B. The Region RESM, by memorandum setting forth all the facts called for by Section 8-4.2.2.D, requests approval of the Headquarters RESM for acquisition subject to the lease. If such approval is obtained, directs the PAS to acquire subject to the lease; if approval is not forthcoming, directs the PAS to turn the parcel in for condemnation.

C. If the PAS is directed to acquire subject to the lease, the PAS obtains execution of the appropriate instrument from the owner (lessor), including therein the following clause:

*Note:* "Also the grantors herein release and assign unto the state of Washington all of said grantor's rights and responsibilities as lessor in and to that certain lease by and between the grantor (as lessor) and (name of lessee) (as lessee) dated _____ and recorded _____."

### *8-4.3 Utilities*

#### 8-4.3.1 General

Public and private utility companies may hold fee interest and/or easements for construction and operation of their facilities. Utilities may be underground, at grade, above grade, or combinations thereof. The state is obligated to make reasonable accommodation of utilities, avoiding disruption of operating systems in the public interest.

#### 8-4.3.2 Rules

The Region Real Estate Services Office should work closely with the Region Utilities Office to ensure that all utility property rights issues are addressed.

##### *8-4.3.2.1 Real Property Interests*

A. Responsibilities:

1. **Railroad Utilities and Bonneville Power Administration Utilities** – Any interest in real property (operating and nonoperating) is cleared as specified in Chapter 6.

2. **All Other Utility Properties** – Any interest in real property (operating or nonoperating) held by a utility company (except those held by a railroad or the Bonneville Power Administration) is cleared by the Region RESM as specified in Chapter 6.

#### 8.4.3.3 Procedures

##### *8.4.3.3.1 Identification of Interests*

The Region Utility Engineer (or designee) and the Region RESM (or designee):

A. In the early stages of plan development, determines the location of all utility interests that need to be cleared. Determination is made by:

1. Research of existing utility permits or franchises held in the Region Utilities Office.

2. Inspection and Subsurface Utility Engineering (SUE) process investigation.

3. Examination of all title reports and easement documents.

B. Prepares a summary of their findings to the region project engineer listing each location on a project encumbered by a utility interest. The following information should be given in each instance:

1. The parcel number affected, if assigned.
2. The owner of the utility interest and the type of utility service.
3. The location, bracketed by the pertinent Highway Engineer's Stations delineating a crossing or encroaching interest.
4. The type of property interest held, e.g., fee or easement.
5. Whether the property is classified "operating" or "nonoperating."
6. The action required to clear the encumbrance.

#### *8-4.3.3.2 Clearance*

The Region RESM (or designee):

A. Prepares the appropriate instruments:

1. A Quitclaim Deed (RES-306) is used if the utility system is to be relocated or otherwise removed from its existing right of way.
2. A Subordination Agreement (RES-314) is used if the utility system is to be reestablished remaining within its existing right of way, crossing or encroaching on the state's acquisition. (***Note:*** A Subordination Agreement is intended for use only when a utility company cannot convey its rights to the state due to restrictions on conveying operating properties during periods of indebtedness.)

B. Coordinates with the Region Utility Engineer as necessary on presenting their respective matters to representatives of the affected utility.

C. Transmits instruments pursuant to Chapter 6.

### *8-4.4 Private Easements*

#### 8-4.4.1 General

An easement is a property right which enables one party to use property owned by another party. To be fully binding, an easement must be in writing just as any other conveyance in real estate. The benefitted parcel is the dominant estate and the encumbered parcel is the servient estate. Generally, an appurtenant easement right will travel with the conveyance of the benefitted parcel, even if not mentioned in the conveyance.

#### 8-4.4.2 Rules

A. The state recognizes an easement when it is evidenced by a written (recorded or unrecorded) document.

B. An easement right affected by the state's acquisition is cleared as to the encumbered parcel by acquisition of such easement rights as are appropriate from the benefitted parcel.

C. When the state acquires all of both the dominant and the servient estates, or the entire dominant estate and so much of the servient estate as contains the easement, the interests merge (see Section 8-4.4.3.C).

### 8-4.4.3 Procedures

A. The Region RESM:

1. Identifies any easement which obviously has no bearing on the property as it currently exists (e.g., 1880 irrigation easement encumbering land presently developed to commercial use) and requests that the Acquisition and Title Section Manager accept such easement.

2. Confirms the ownership(s) benefitted by the easement pursuant to Chapter 7.

B. The PAS assigned to the encumbered parcel:

1. Acquires the property and/or property rights called for by the state's project plans.

2. If benefitted and encumbered properties are separate parcels, all parcels should be cleared and closed simultaneously unless the RESM coordinates with the Acquisition and Title Section Manager and obtains approval from the Attorney General's Office to clear and close separately prior to notating the Encumbrance Report that the encumbered parcel and the benefitted parcels will be cleared and closed separately.

3. If benefitted and encumbered properties do not have separate parcel numbers, the encumbrance is cleared per Chapter 8.

   ***Note:*** It is recommended that the same PAS should be assigned to the encumbered and benefitted parcels.

C. For Managed Access, the PAS assigned to the benefitted parcel(s) obtains (an) instruments in accordance with the following:

1. Benefitted Parcel is Outside the State's Acquisition – The PAS obtains a Quitclaim Deed (Release Easement) (RES-355) from the parties in interest in the benefitted parcel. See Appendix 8-1 for an example of RES-355.

2. Total Acquisition of Benefitted Parcel – Obtains the normal instrument (see Chapter 6) appropriate to the total acquisition as called for by the project plans. No special instrument or instrument clause is required.

3. Partial Acquisition of Benefitted Parcel – Obtains the normal instrument (see Chapter 6) appropriate to the partial acquisition as called for by the project plans. Also obtains a Quitclaim Deed (Release Easement) (RES-355) to release the encumbered parcel. See Appendix 8-1 for an example of RES-355.

4. If prior approval has been obtained makes appropriate notation in his Encumbrance Report to cross-reference the transaction to the encumbered parcel(s).

   ***Note:*** If there are road maintenance obligations, these should be reviewed with the RESM or designee to determine the effect on the acquisition.

D. For Limited Access, the PAS assigned to the benefitted parcel(s) obtains an instrument in accordance with the following:

1. Benefitted Parcel is Outside the State's Acquisition and is not authorized to use the encumbered parcel's access as part of the easement. The PAS obtains a Quitclaim Deed (Release Easement) (RES-355). See Appendix 8-1 for an example of RES-355.

2. Total Acquisition of Benefitted Parcel – Obtains the normal instrument (see Chapter 6) appropriate to the total acquisition as called for by the project plans. No special instrument or instrument clause is required.

3. Partial Acquisition of Benefitted Parcel – Obtains the normal instrument (see Chapter 6) appropriate to the partial acquisition called for by the project plans. Also obtains a Quitclaim Deed (Release Easement) (RES-355) to release the encumbered parcel. See Appendix 8-1 for an example of RES-355.

4. Acquisition of Access Use Only – Obtains the easement's rights to use the encumbered parcel's access per the procedures in Chapters 6 and 9. Also obtains a Quitclaim Deed (Release of Easement) (RES-355). See Appendix 8-1 for an example of RES-355.

5. If prior approval has been obtained makes appropriate notation in the Encumbrance Report to cross reference the transaction to the encumbered parcel(s).

### *8-4.5 Mineral Rights*

#### 8-4.5.1 General

A mineral right (reservation) is a right to extract a mineral from the earth or to receive payment, in the form of royalty, for the extraction of minerals. "Mineral" may have different meanings depending on the context and there is no universal definition. However, "mineral" generally includes: fossil fuels (oil, natural gas, and coal), metals and metal-bearing ores (gold, copper, and iron), non-metallic minerals and mineable rock products (limestone, gypsum, building stones, and salt), and sand, gravel, etc.

A mining claim is a form of surface ownership and is discussed in Chapter 6.

The rights of ownership held by the fee holder include subsurface mineral rights unless such subsurface rights have previously been conveyed or otherwise reserved (severed) from the fee ownership. The state's power of eminent domain is capable of stopping any exercise of subsurface rights potentially detrimental to the state's project.

For further information on mining and mineral rights, see Chapter 78 RCW.

### 8-4.5.2 Rules

A. Mineral rights that have not been previously reserved (severed) from the fee are automatically acquired with the fee conveyance to the state, unless the owner insists on retaining them by the reservation clause in Chapter 9.

B. Mineral rights that have been reserved (severed) from the fee are:

1. Ignored if the property is in an area in which subsurface exploration or interest is not apparent.

2. Cleared in the state's acquisition:

   a. If the property is in a known or suspected mineral rich area.

   b. If there are observed mining operations in the area.

3. Included for acquisition in any formal condemnation action or if the holder of such right is also the holder of a fee interest to be acquired within the project.

### 8-4.5.3 Procedures

A. The Region RESM:

1. Determines if mineral rights interests and/or explorations are apparent as a part of the project inspection (see Chapter 6).

2. Reviews the appraisal report(s) and/or the applicable Determinations of Value (RES-214) and assures inclusion of any actual value of mineral rights in the approved compensation.

3. If there is any question of mineral rights activity, submits the problem to the Acquisition and Title Section Manager for a project-wide determination of necessity for clearance.

4. Assigns acquisition in accordance with the determinations made pursuant to Sections 8-4.5.2 and 8-4.5.3.A.3, recognizing that one encumbrance may affect several parcels.

B. The PAS:

1. Determines the present ownership of the outstanding (severed) mineral rights that are assigned to be cleared.

2. If the appraisal data and reports conclude that there is no value attributable to mineral rights, determines if the rights can be readily acquired or adjusted either by donation or for a nominal consideration (up to $500).

   a. If severed mineral rights can be readily acquired, obtains a Quitclaim Deed from the holder of such rights using the same description used to purchase the required right of way, and if applicable, a Real Property Voucher in accordance with Chapter 10.

   b. If such rights can be modified (if the holder insists on reserving mineral rights), obtains a Quitclaim Deed using the same description used to purchase the required right of way, reserving to the holder the subsurface rights by special instrument clause in accordance with Chapter 9, and if applicable, a Real Property Voucher in accordance with Chapter 10.

3. If the appraisal reports conclude that there is value attributable to mineral rights, may either:

   a. Join the holder of such rights with the fee holder on the normal instrument and Real Property Voucher.

   b. Obtain a Quitclaim Deed.

4. If mineral rights cannot be acquired, reports the facts to the Region RESM in the Diary of Right of Way Activities (RES-301) and, as advised by the Region RESM, may either:

   a. Turn the transaction over to the Region RESM for administrative handling in accordance with Chapter 6, or

   b. Complete a condemnation report in accordance with Chapter 6, as appropriate.

### *8-4.6 Water Rights*

#### 8-4.6.1 General

The right of any person to private use of the water resources within the state is controlled by state law. While specifically providing for the preservation of water rights existing at the time of the adoption of the state law (Chapter 90.03 RCW), such law sets out that all waters within the state belong to the public and any right thereto, or to the use thereof shall be acquired for a beneficial use and only in the manner provided by law. Even though the state law provides for certain differences between rights in “surface waters” as opposed to “ground waters,” there is no basic difference requiring separate procedures in acquisitions for highway projects.

***Note:*** Riparian/littoral rights are not included in the subject addressed here.

### 8-4.6.2 Rules

A. The state recognizes water rights evidenced by either:

1. An existing beneficial use of water resources by way of private diversion.
2. A water right claim filed with the Department of Ecology or one of its predecessors.
3. A permit issued by the Department of Ecology or one of its predecessors.

B. A water right is an encumbrance if the state's acquisition leaves a remaining property that is physically or functionally severed from an existing water right of measurable value to such remaining property.

### 8-4.6.3 Procedures

#### *8-4.6.3.1 Identification of Rights Affected*

A. The Region RESM:

1. Determines if a water right exists on each affected parcel, pursuant to information received through any appropriate combination of the following:
   a. Title reports.
   b. Field observations including but not limited to those made by the region project development engineer, and the project inspection (see Chapter 6).
   c. Appraisal reports.
   d. Discussions with the parties in interest.
2. Determines if the water right is endangered or severed by virtue of the highway project.
3. Investigates all feasible methods for future water service including, but not limited to, the following:
   a. Reconnection to the self-same source by passing through or preserving same within the state's project.
   b. Connection with a suitable existing alternate source such as a neighbor or community system.
   c. Replacement and connection with a new source by entering into an agreement with the parties at interest.
   d. Leaving the present system alone.

4. Determines suitable action for future water service that may include but is not limited to:

   a. A construction item for reconnection or new connection (see Chapter 6).

   b. An agreement for replacement.

   c. Acquiring the affected rights which may include acquiring a remainder or paying damages.

   d. Ignoring rights not expected to be affected.

5. Submits to the Region RESM a written request for a test and report on each existing endangered domestic source as to capacity and potability, identifying each case by project title, parcel number, name of owner, address of property, type of existing source (e.g., private well, community well), and location of the respective sources.

B. The Region RESM forwards each request to the appropriate region office of the Department of Ecology, requesting that each reply be directed to the Region RESM.

C. The Region RESM coordinates with appropriate region personnel and obtains approval by the Regional Administrator on any necessary Construction Memos (see Chapter 6).

#### *8-4.6.3.2 Clearance*

The PAS:

A. Includes language appropriate to the settlement in the deed and Real Property Voucher.

B. If the settlement is by construction item, includes the approved "Memo: Construction Item" (see Chapter 6) in the transaction package.

C. If the settlement is by agreement, see Chapter 6.

### *8-4.7 Reservations, Restrictions, and Defects*

#### 8-4.7.1 General

Deed restrictions, deed reservations, plat restrictions, and defects in prior conveyances are generally reported as encumbrances in the title report. Some of these restrictions or reservations may be of the same nature and effect as easements, mineral reservations, or other rights subtracting from fee simple title. A defect in a prior conveyance may involve a reversionary right, a will restriction against sale to outside parties, or other unusual circumstances. Most restrictions on the use of property as contained in a plat or in a deed are surpassed by the state's higher right of eminent domain.

### 8-4.7.2 Rules

A. Reservations, restrictions, and title defects are individually analyzed as to any encumbering effect on the state's acquisition.

B. Encumbrances are cleared or adjusted in accordance with suitable procedures.

### 8-4.7.3 Procedures

A. The Region RESM:

1. Analyzes reservations, restrictions, and defects and identifies those which affect the state's acquisition.
2. If the encumbrance has the same effect as another property rights type encumbrance covered in Section 8-4, handles such encumbrance in accordance with the section governing that type of encumbrance.
3. If the encumbrance does not have the same effect as any other property rights type encumbrance covered in Section 8-4, coordinates with the Acquisition and Title Section Manager on handling appropriate to the individual case.
4. If the reservation, restriction, or defect does not affect the state's acquisition, instructs the PAS to ignore the reported encumbrance.

B. The PAS:

1. Handles encumbrances in accordance with instructions by the Region RESM as in Section 8-4.7.3.A.
2. Makes appropriate explanations in his Encumbrance Report (see Section 8-2.1.2.B.1).

## *8-4.8 Vacated Streets and Roads*

### 8-4.8.1 General

Streets and roads are vacated by either city or county ordinance. Such vacations will be noted in the PC.

### 8-4.8.2 Rules

A. A recorded claim of title to a vacated street will appear in the PC, and is cleared by the PAS in the course of the negotiations with the abutting owner (i.e., the property owner to whose lands the vacated street or road "attaches by operation of law").

B. An unrecorded claim of title to a vacated street or road must usually be perfected by a court decree.

C. Per RCW 36.87.090 if the street or road is not dedicated by a plat, the street may be considered vacated under the following conditions:

1. The street or road must have remained unopened for public use for a period of five years after the order is made or authority granted for opening it.
2. The lands must have not been conveyed to the state, or to any county, city, or town for highways, streets, roads, alleys, or other public places.

***Note:*** Check with title company for insurance requirements.

#### 8-4.8.3 Procedures

A. The PAS:

1. If the PC indicates that a vacated street (or portion thereof) is attached to the parcel by operation of law, includes any required portion of the vacated street in the description of the acquisition from the property owner.
2. If the property owner has an unrecorded claim to an unopened street or road, obtains information on the owner's claim and refers the matter to the Region RESM for further action.

B. The Region RESM:

1. Coordinates with the Acquisition and Title Section Manager to determine the appropriate course of action (e.g., condemnation, allow the claim, and obtain a new appraisal).
2. Instructs the PAS as to required procedures.

### *8-4.9 Prescriptive Streets and Roads*

#### 8-4.9.1 General

The legislature frequently adds a county road to the state highway system. When the entire right of way of the county road has been acquired by recorded deeds, waivers, or condemnation actions, the width of the right of way is known. However, many county roads have been acquired by prescription (i.e., without a formal conveyance to the county) and the widths of these roads must be determined when they become a part of the state highway system.

The principle that governs the width of a prescriptive road is set out in the *Matter of the Extension of West Marginal Way* (109 Wn 116). In this case, the city of Seattle sought to widen the existing West Marginal Way (a former county road). The city took the position that the prescriptive right of way was 60 feet wide because that was the width set out in the petition and the county commissioners' order which established the road. Sixty feet was also the maximum width permissible for county roads under the statute during the prescriptive period. The abutting property owners argued that the city could only claim title to the actual width of the travelled way (approximately 10 to 15 feet). The State Supreme Court upheld the city's position and stated that: "The county actually laid out and surveyed a road 60 feet in width. We think, under the authorities cited, and the

facts, which are not disputed, that the county acquired by prescriptive right the whole of the 60-foot road, notwithstanding the fact that but a portion thereof was actually used."

### 8-4.9.2 Rules

A. When a county road becomes a part of the state highway system, the Region RESM ascertains the width of the right of way so acquired.

B. In the absence of any acquisition instruments, the county road is prescriptive, and its width is determined by the statute applicable at the time the road was created:

   1. Territorial law: Section 7, Act of January 11, 1859: "County roads shall be 60 feet in width unless the county commissioners shall, upon prayer of the petitioners for same, determine a less number of feet in point of width."

   2. Legislature of 1881, Section 3119, page 578: Continued Territorial law.

   3. Laws of 1890, Chapter 19, Section 1: Provided that county roads should be not less than 30 nor more than 60 feet in width.

   4. Laws of 1925, Ex. Sess., Chapter 173, Section 3: Provided that county roads should be not less than 30 nor more than 120 feet in width.

   5. RCW 36.68.010: county road rights of way designated as being 60 feet in extremities and 30 feet on each side of the centerline of the road, unless the commissioners elect a different width.

C. The period of uninterrupted public use required to establish a road as a public highway is seven years if the county is performing maintenance on the right of way (RCW 36.75.070), and is ten years if there is no county maintenance (RCW 36.75.080).

### 8-4.9.3 Procedures

A. When a county road becomes a part of the state highway system, the Region RESM:

   1. If the road was previously on the state highway system, sends a memorandum to the Manager of the Title and Condemnation Program requesting information on the status of the road.

   2. If the road was not previously on the state highway system, or if the Acquisition and Title Section Manager so requests, ascertains the width of the right of way by:

      a. Searching for deeds, waivers, condemnation actions, or other acquisition instruments.

b. Searching the county commissioners' records to determine whether the road was established by petitions and county commissioners' orders. If so, determines that the width was within the limits of the applicable statute, and that the proper period of public use exists (see Section 8-4.9.2).

B. The Acquisition and Title Section Manager submits to the Region RESM a status report on the road upon request (see Section 8-4.9.3.A.1).

### *8-4.10 Riparian/Littoral Rights*

A. The rights of a riparian/littoral owner (see Chapter 3) may be so affected by the state's proposed acquisition as to require clearance thereof as an encumbrance on the state's acquisition. Such rights will seldom be set up in the Title Report, but should be the subject of concern by the PAS whenever the property or property rights to be acquired include the bed or banks of a stream, river, lake, or ocean.

B. Most adverse effects of the state's acquisition will occur downstream from such acquisition (e.g., change in water flow, change in channel causing bank cutting) but some may occur upstream (e.g., back-up flooding).

C. The nature of "riparian/littoral rights" are so complex and an adverse effect on them occurs so seldom (when not part of the plan) that the PAS should in all cases consult with the Region RESM and/or the Acquisition and Title Section Manager if any question should arise on this subject. The PAS should also enter into such consultations if the Title Report should raise such a question.

D. Clearance is obtained, usually by Quitclaim Deed (of riparian/littoral rights appurtenant to the affected property), in accordance with instructions received from the Region RESM or the Acquisition and Title Section Manager.

E. Compensation for loss of affected riparian/littoral rights is determined through the appraisal process.

## 8-5 Personal Rights Encumbrances

### *8-5.1 Life Estate*

#### 8-5.1.1 General

A title report may disclose the existence of a life estate either by virtue of the vesting or by a paragraph within the body of the report. A life estate is a possessory right in real property held for the life of the holder. The parties in interest are the holder of the life estate (life tenant) and the holder of the remainder (remainderman), or if there are no remaindermen named, then upon termination of the life estate, the possessory right returns to the grantor and is referred to as a reversion.

Although a life estate may have value, such value is but a part of the total value of the fee ownership. The division of the value of the fee ownership to determine the value of the life estate is a matter of negotiation between the life tenant and the remainderman.

### 8-5.1.2 Rule

The state recognizes all parties in interest.

### 8-5.1.3 Procedures

The PAS:

A. Investigates to determine which party (life tenant or remainderman) is in possession.

   1. If life tenant is in possession, determines address of remainderman.

   2. If remainderman is in possession, determines if the life tenant is alive or deceased.

      a. If life tenant is deceased, determines date and place of death and secures copy of death certificate if available to remainderman. Otherwise, corresponds with appropriate officials at place of death to secure copy of death certificate.

         ***Note:*** Such death terminates the life estate; hence no acquisition (of the life estate) from the heirs of the deceased is necessary.

      b. If life tenant is alive, determines address.

   3. If neither is in possession, determines interest claimed by possessor and facts concerning status and addresses of life tenant and remainderman.

B. If both life tenant and remainderman are alive, either:

   1. Joins the parties in interest on both the deed and Real Property Voucher.

   2. Joins the parties in interest on the deed which includes the appropriate clause authorizing payment to a specific party (see Chapter 9) and obtains execution of the Real Property Voucher by the party authorized on the deed, and if neither life tenant nor remainderman are in possession, clears interest of possessor as the nature of his interest dictates.

   3. As an alternate to 1 and 2 above, the signatures of the life tenant and remainderman may be taken on separate deeds and either a single Real Property Voucher or separate Real Property Vouchers, provided that, in the latter case, a written agreement of a mutually satisfactory distribution of funds is available for inclusion in the transmittal package. The payment due one party is shown as a deduction from the total amount due, and the second voucher made in the amount of the deduction.

C. If life tenant is deceased, obtains execution of deed and Real Property Voucher by remainderman (or remaindermen) only and clears life tenant's interest by including copy of death certificate in the transmittal package.

D. If for any reason (except the death of the life tenant) it is impossible to secure the signatures of both the life tenant and the remainderman or the remainderman's heirs and devisees if deceased, the interests of all parties are acquired through condemnation action.

## *8-5.2 Incompetent, Mentally Ill, and Insane Persons*

### 8-5.2.1 General

A. It is a fundamental precept of law that in order for any person to enter into a binding legal contract transaction or obligation, that person must be legally competent.

B. In general, there are two categories of persons considered incapable of legally entering into a legal and binding contract. They are:

1. Minors, persons under legal age; and

2. Persons who although of legal age, are suffering from some form of mental illness or other disability which renders them incapable of comprehending and understanding the consequences of their acts.

C. A person could be, in fact, incompetent at the time he signs a deed conveying the title to his property and, if he had never been legally adjudged incompetent, there would be *no record notice* of the fact of incompetency and persons later dealing with the property would not know that the validity of the deed is doubtful and that it might be declared void by proper court proceeding, due to the incompetency of the grantor.

D. Every person is presumed sane and competent until adjudged insane or incompetent by a court of competent jurisdiction. Therefore, unless there is an adjudication of insanity or incompetency, or unless sources, other than a mental illness proceeding disclose insanity or incompetency, the question of the legal capacity of the parties executing instruments cannot be raised.

### 8-5.2.2 Procedures

A. Party of interest has been adjudicated incompetent through a court determination. Agent proceeds with acquisition through the incompetent party's court appointed guardian. (See Chapter 6 for procedures.)

B. It is suspected that interested party may be incompetent.

The PAS:

1. Obtains all information available regarding relatives of said party and means of contacting them.

2. Refers all pertinent data to the Region RESM.

The Region RESM:

1. Reviews all data submitted by the PAS and also may:
   a. Contact relatives of interested party for additional information.
   b. Refer matter to the Acquisition and Title Section Manager for recommendations.
2. Directs the PAS as follows:
   a. To proceed with negotiations without questioning competency of interested party.
   b. To submit parcel for condemnation so that question of competency may be resolved as a part of the court action and a guardian ad litem appointed, if necessary.

## *8-5.3 Minors*

### 8-5.3.1 General

A. All persons are deemed and taken to be of full age for all right of way purposes at the age of 18 years (RCW 26.28.010). All persons married to a person of full age are considered to be of full age (RCW 26.28.020).

B. A conveyance by a minor is not void but merely voidable (i.e., the minor may disaffirm a conveyance within a reasonable time after reaching majority).

C. A sale of real property owned by a minor may be consummated by a general guardian or a guardian ad litem appointed for that purpose when the guardian acts through the court.

### 8-5.3.2 Rule

The state accepts a conveyance from a minor only through the services of a properly authorized guardian.

### 8-5.3.3 Procedures

The PAS:

A. If the party in interest is a young person, requests evidence of majority (e.g., drivers license, birth certificate, marriage license).

B. If the party in interest is a minor, handles the transaction through a guardian as described in Chapter 6.

## 8-5.4 Dissolution of Marriage (Divorce)

### 8-5.4.1 General

A. Dissolution of a marriage is the legal separation of a husband and wife by the court. The status of the community property is unaffected until the marriage is terminated on the date of entry of the Decree of Dissolution subject only to the expiration of a 30-day appeal period. If no Decree of Dissolution is entered, the filing of the legal action has no effect on the status of the parties' property.

B. A Decree of Dissolution may include a disposition of the property of the parties including the separate property of either party and is effective to decide the property rights of either party.

   1. If community property is not awarded to either party, the parties are legally "tenants in common."

   2. If, prior to the decree, property is vested as the separate property of one of the parties and the property is not mentioned in the court action, the property remains the separate property as last vested.

   3. If the court action took place in another state, the validity of any award of property in this state is questionable for lack of jurisdiction and an appropriate court action must be initiated in this state or instruments must be executed by both parties.

C. A lump sum judgment against either party awarded in the decree becomes a lien against that person's property but, if the lump sum judgment was entered in another state, it is not a lien against property in this state until the foreign judgment has been registered in this state and additional proceedings completed to levy on the local property (Chapter 6.36 RCW).

### 8-5.4.2 Rules

A property settlement granted by any county in this state is valid as to the award or division of real property in all counties in the state.

### 8-5.4.3 Procedures

A. The PAS:

   1. Obtains from the parties in interest, information concerning current marital status and any related property settlement.

   2. If the field inquiries indicate a conflict with the disclosures in the title report, obtains the following information from the parties at interest:

      a. Place of the court action (county, state).

      b. Date of the decree.

      c. Full names of the parties to the dissolution.

   3. Submits the information to the Region RESM and requests further instructions.

B. The Region RESM:

1. Makes the following determination:

   a. Whether a decree has been entered.

   b. Whether the appeal period has expired.

   c. Whether the property in question was awarded in the court action.

   d. Whether, and against whom, a judgment was entered in the court action.

2. Submits any relevant information to the title company and requests a STR.

3. Provides the PAS with any necessary special instructions.

C. The PAS closes the transaction dealing with the parties in accordance with any special instructions and the following, as detailed in Chapter 9, as applicable:

1. If the property was community property and not awarded in the court action, joins both parties in a normal conveyance as tenants in common.

2. If the property was vested as the separate property of one of the parties and the property is not mentioned in the court action, obtains a normal conveyance from the party as his or her separate property.

3. If the property was awarded in the court action, obtains a normal conveyance from the party to whom the property was awarded as separate property.

4. If the court action took place in another state, joins both parties in a conveyance and/or in accordance with special instructions from the Region RESM.

### *8-5.5 Death*

Acquisition from the estate of a decedent is achieved using one of the following general procedures:

#### 8-5.5.1 Probate

If the estate is being probated, the PAS:

A. Confirms that the probate has been filed by obtaining an STR.

B. Deals with the administrator, executor, or personal representative of the estate through the attorney disclosed representing the estate.

C. When the title report shows that the probate is complete except for payment of the state inheritance tax and/or the federal estate tax, the PAS proceeds as described in Section 8-5.5.1.B, except that a letter guaranteeing payment of the taxes is obtained in addition to the usual instruments.

### 8-5.5.2 Lack of Probate

If the estate is not probated:

A. The Region RESM obtains an "Affidavit Re: Lack of Probate" form from the title company that issued the title report.

B. The PAS:

   1. Assists the decedent's surviving spouse or nearest relative in completing the affidavit.

   2. Makes a copy of the affidavit and returns the original to the Region RESM.

C. The Region RESM obtains an STR that indicates who can convey title and the basis upon which the title company will insure that title.

D. The PAS deals with the heirs named in the STR and includes them on the instrument to the state.

E. If an heir cannot be located:

   1. The PAS submits a written summary in his Diary of Right of Way Activities to the Region RESM discussing the extent of the search.

   2. The Region RESM:

      a. Coordinates with the Acquisition and Title Section Manager:

         (1) To determine whether the state is willing to acquire title subject to the interest of the missing heir.

         (2) To obtain specifications for any additional and/or alternate actions suitable to the case.

      b. Inserts and signs appropriate instructions to the PAS in the Diary of Right of Way Activities and returns same to such agent for completion of action.

### 8-5.5.3 Community Property Agreement

If the decedent and the surviving spouse executed a community property agreement, the PAS:

A. Has the surviving spouse record the community property agreement in the county in which the parcel is located.

B. Assists the surviving spouse in completing the "Affidavit Re: Lack of Probate" as provided in the previous section.

C. Obtains from the surviving spouse, or from the appropriate officials at the place of death, a copy of the death certificate and furnishes same to the title company.

D. Upon receipt of the STR as provided in the previous section, completes the transaction with the surviving spouse.

### *8-5.6 Errors in Parties*

#### 8-5.6.1 General

At any point in the chain of title where a party has failed to convey or failed to appropriately join in a conveyance, the title report may recite the failure as an encumbrance against current vesting.

#### 8-5.6.2 Rules

A. The state investigates potentials for clearing any encumbrance due to prior errors in parties.

B. Prior errors in parties are cleared if the appropriate party can be readily located and agrees to execute the instrument(s) required by the state.

C. As determined by the Headquarters RESM, prior errors in parties may be:

1. Cleared by specific court action brought by the state.
2. Ignored, and the state's parcel file documented as to the available pertinent facts.

#### 8-5.6.3 Procedures

A. The Region RESM determines the form of instrument, the language, and the parties appropriate to clear the encumbrance (usually a Quitclaim Deed, or an affidavit).

B. The PAS:

1. Attempts to locate the party indicated in the title report.
2. If the PAS locates the party, requests that the party execute the necessary instrument.
3. If the PAS fails to locate the party or if the party refuses to execute the instrument, submits a written summary to the Region RESM in the Diary of Right of Way Activities including:
   a. An explanation of his attempts to secure execution of the necessary instrument.
   b. The date of the instrument/conveyance in fault.
   c. The nature of the interest in fault (e.g., fee, mortgage).
   d. The amount of interest (e.g., fractional, partnership, community property, authority of corporate agent).
   e. Whether full value was paid for the faulty conveyance.
   f. The value of the conveyance required by the state.

C. The Region RESM reviews all information and contacts the Title and Condemnation Program Section Manager requesting instructions.

D. The Acquisition and Title Section Manager reviews the information and may request either court action or may waive further action.

E. The Region RESM inserts the instructions on the PAS's Diary of Right of Way Activities dates and initials same and instructs the PAS to, either:

1. Complete a Negotiator's Report (RES-320), or

2. Complete all other parcel transactions ignoring or handling the error in parties in accordance with any special instructions.

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
PO Box 47338
Olympia, WA 98504-7338

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE

**Document Title: Quitclaim Deed**
**Reference Number of Related Documents: 4224209**
**Grantor(s): John Smith and Mary Smith, husband and wife**
**Grantee(s): State of Washington, Department of Transportation**
**Legal Description:**
**Additional Legal Description is on Page of Document.**
**Assessor's Tax Parcel Number:**

**QUITCLAIM DEED**

State Route 502, N.E. 21st Ct. to N.E. 102nd Ave..

The Grantor(s), **John Smith and Mary Smith, husband and wife**, their heirs, successors or assigns, as owners of the identified real property for and in consideration of clearing title, convey(s) and quitclaim(s) to the **State of Washington, acting by and through its Department of Transportation,** Grantee, all rights in and to that certain easement, identified in Auditor's File No. 4224209, that lies within the following described real property, and any after acquired interest therein, situated in Clark County, in the State of Washington, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain:

For legal description and additional conditions,
see Exhibit A attached hereto and made a part hereof.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, by and through its Department of Transportation, by its authorized agent.

FA No.
Project No.
Parcel No.

RES-355
Revised 11/10

Page 1 of ( ) Pages

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

**QUITCLAIM DEED**

Dated: _____, _____

_____
Name

_____
Name

Accepted and Approved

STATE OF WASHINGTON
Department of Transportation

By: _____
Title
Authorized Agent

Date: _____

Acknowledgment

RES-355 Page 2 of ( ) Pages Parcel No.

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

**QUITCLAIM DEED**

EXHIBIT A

Parcel 1:

All that portion of the easement rights, held by the Grantor(s) as the benefitted property hereinafter described as Parcel 2, over and across the hereinafter described Tract "X", lying westerly of line drawn parallel with and 200 feet easterly of the SR 502 line survey of SR 502, N.E. 21st St. Ct. to N.E. 102nd Ave.

Tract "X"

Lot 2 as shown on the plat of Running Hills per plat thereof recorded in Volume 30 of Plats, pages 6-9, records of Clark County, Washington

Parcel 2:

Lot 3 as shown on the plat of Running Hills per plat thereof recorded in Volume 30 of Plats, pages 6-9, records of Clark County, Washington

Herein conveyed is the extinguishment of that portion of the above described easement, the specific details all of which are to be found on sheet 5 of that certain plan entitled SR 502, N.E. 21st St. Ct. to N.E. 102nd Ave., now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval December 17, 2009, revised June 2, 2011

Grantor's Initials

RES-355 Page 3 of ( ) Pages Parcel No.

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

# Chapter 9 Instruments

9-1 General
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9-3 Document Title
9-4 Federal Aid Project Number
9-5 Recording Block
9-6 Project Number and Plan Title
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9-16 Attachments/Corollary Documents
9-17 Acceptance and Approval

## 9-1 General

### *9-1.1 Introduction*

This chapter specifies the instruments of conveyance used by the department, how they are prepared, and the standard, the special, and/or the variable language used therein. The instruments most commonly used are in electronic format and pre-approved by the Attorney General's Office and Federal Highway Administration. Unless otherwise specified, all instruments are prepared, signed, and acknowledged in such form and manner as to make them eligible for recording with the county auditor. The preparation of conveyance documents is usually done after review of a current preliminary commitment for title insurance (PC) also known as a title report. The Region Title Examiner will assist in understanding any special requirements.

Refer to Chapter 3 for glossary and abbreviations.

Refer to Chapter 6 for types of title or interests to be acquired and appropriate instruments of conveyance.

Refer to Chapter 8 for appropriate instruments for clearing encumbrances.

### *9-1.2 Rules*

#### 9-1.2.1 Language

A. Electronic forms located on the Washington State Department of Transportation (WSDOT) intranet site are used and are located at wwwi.wsdot.wa.gov/design/realestateservices/acquisitionforms.htm.

   Any modifications to the electronic forms require pre-approval by the Acquisition and Title Program Manager prior to execution.

B. Instruments for which there is no electronic model are custom prepared by the Region Real Estate Services Manager (RESM) on a case-by-case basis in compliance with the requirements of this chapter and in coordination with the Acquisition and Title Program Manager and may employ a preprinted, standard conveyance, affidavit, or other form provided by or acceptable to the title company issuing the Preliminary Commitment (PC). The RESM may accept a conveyance in the format or form prepared/required by another agency or major corporate body. All non-electronic model forms require pre-approval by the Acquisition and Title Section Manager and the Attorney General's Office prior to execution.

### 9-1.2.2 Composition

#### *9-1.2.2.1 Online Forms*

A. All alterations made at the time of signing must be initialed by the grantor.

B. If sheets are appended, they are prepared in accordance with Sections 9-1.2.2.2 and 9-16.

#### *9-1.2.2.2 Custom Forms*

A. **Paper** – White bond, 8½″ x 11″ size. Only one side of each sheet is used (reverse blank).

B. **Typed** – Acceptable instruments are error-free. All revisions following completion of the form will require that the grantor(s) initial them as being acceptable.

C. **Margins** – Except for the legal description, first page margins are 1 inch on each side and bottom and 3 inches at the top, thereafter one inch at all margins (see recording standards, Chapter 65.04 RCW).

D. **Descriptions** – The legal description is typed, single-spaced, and must meet recording standards.

E. **Page Numbering** – Each sheet including acknowledgments and exhibits is numbered, centered at the bottom of each sheet, showing both the page number and the total number of pages of the instrument, e.g., "Page 1 of 1 Page," "Page 2 of 4 Pages."

F. Acquisition documents are prepared so that the grantee is the State of Washington, acting by and through its Department of Transportation.

G. All custom forms require the approval of an Assistant Attorney General.

### 9-1.2.3 Parcel Identification

The applicable parcel number(s) is (are) inserted on the lower right-hand corner of each sheet of an instrument, e.g., "Parcel No. 1-12345."

## 9-2 Elements (Paragraphs)

Unless otherwise specified and/or illustrated in this chapter, the elements of an instrument include all of the following:

A. Document Title (see Section 9-3).

B. Federal Aid Project Number (FA No.) (see Section 9-4).

C. Recording Block (see Section 9-5).

D. Project Number and Plan Title (see Section 9-6).

E. Party Clause (see Section 9-7).

F. Consideration (see Section 9-8).

G. Conveyance Clause (see Section 9-9).

H. Property Description (see Section 9-10).

I. Miscellaneous Clauses (see Section 9-11).

J. Delivery Clause (see Section 9-12).

K. Instrument Date (see Section 9-13).

L. Execution (see Section 9-14).

M. Acknowledgment (see Section 9-15).

N. Attachments/Corollary Documents (see Section 9-16).

O. Acceptance and Approval (see Section 9-17).

## 9-3 Document Title

A. The title of the instrument is a clue to the function the instrument performs, e.g., warranty deed, lease, agreement.

B. The specific function of an easement, permit lease, or option is recited in the granting clause (see Section 9-9), e.g., Easement for Haul Road, Permit to Install Irrigation Facility, Lease for Borrow Site, Option to Purchase Lands.

## 9-4 Federal Aid Project Number

If federal participation is involved, the Federal Aid Project Number (FA No.) is inserted at the lower right-hand corner of the first page of the document above the parcel number. When a project on a federal aid route does not involve federal participation, the FA route and section are inserted and followed by a blank space enclosed by parenthesis, e.g., RF-037-2( ). When federal participation is not expected on a sundry site, the FA number is omitted.

## 9-5 Recording Block

A. Using the electronic version of the form, complete the top left-hand side of the document as prompted. This will include name and address to whom the instrument will be returned, title of instrument to be recorded, reference numbers (auditor file number) of affiliated document, names of the grantor(s) and grantee(s) including reference (document page number) to where the complete names are located, if applicable, abbreviated legal description of the property and reference (documents page number) to were the complete description can be found, assessor's tax parcel, or account number. See RCW 65.04.045.

B. The rectangular space between the above entries is reserved for the county auditor to enter the recording date and other recording information.

## 9-6 Project Number and Plan Title

The official project number (see Chapter 3) for which real property or property rights are being acquired is inserted at the very bottom right of every instrument to the state immediately below the Federal Aid Project Number with the parcel number directly below.

## 9-7 Party Clause

### *9-7.1 General*

The Party Clause identifies the parties who are making the conveyance. They are usually (but not necessarily) identified as "grantors" in deeds, easements, and permits, as "lessors" in leases, etc. The name(s) of the "grantor(s)" are generally shown so as to agree with the name(s) of such person(s) as they acquired title to the property being conveyed.

The Party Clause, e.g.,

> "The Grantors, John Doe and Jane Doe, husband and wife . . . ."
>
> also answers or resolves questions of the grantor's (1) identity, (2) marital status, (3) relationship between persons, and (4) the estate or interest held by the grantors.

### *9-7.2 Identity – Different Names*

If the grantor's correct name is questioned in the Preliminary Commitment (PC) or if the Property Acquisition Agent (PAS) finds the PC to be inaccurate as to identity, the party clause is used in the state's instrument to show the correct name of the grantor.

A. If the identity as vested in the PC was correct and the identity of alternate similar names is questioned and found to be the same person, the party clause is used to clarify the identity. The correct name appears first, followed by the alternate names as follows:

   1. " . . . John Doe, (as shown in the PC or vesting deed) also appearing of record as J. Doe . . .(being the alternate name)."

B. If the grantor's current identity is more correctly or accurately established than by the vested name in the PC, the following examples are adapted:

1. " . . . John Olson, who acquired title as John Olsen . . . ."
2. " . . . John B. Doe, who acquired title as John R. Doe . . . ."
3. " . . .Mary Doe, who acquired title as Mary Jones . . . ."

   ***Note:*** This form is for a woman who has married since acquiring title.

4. " . . .Charles Martin, who acquired title as Carlos Martino . . . ."
5. " . . . John Doe Company, which acquired title as John Doe Co., . . . ."
6. " . . . John Doe, Inc., which acquired title as John Doe and Sons . . . ."

### *9-7.3 Marital Status*

A. Because Washington is a community property state, any deed taken by either spouse of a marital community (except as provided in Section 9-7.3.B) becomes automatically the community property of both, and the interests of spouses (and former spouse(s)) must be acquired or eliminated. Hence, considerable importance is attached to the correctness of a statement regarding marital status in the Party Clause. The vesting in the PC is the starting point, for the title company ensures the state that the named vestee can convey good title, but if the marital status of the vestee is questioned by a comment or encumbrance or has changed since he/she acquired title, an investigation of the marital facts is required. The object is to arrive at a Party Clause which shows the currently correct names as grantors on the state's instrument (see Section 9-7.2) followed, if necessary, by (1) a statement of the currently correct marital status, and (2) if applicable, a statement clarifying the interest held.

B. A person who acquires land while single, or as a gift or an inheritance even while married, owns the land as his/her separate estate, and the joiner of the spouse is not required, although it is good practice to secure the spouse's signature as a precautionary measure. If there should be any resistance by the spouse to signing, such signing may be waived but only after ascertaining that the couple has not entered into a Community Property Agreement. If a Community Property Agreement has been executed, but not recorded in the county in which the required real property lies, a copy should be obtained and the matter referred to the Region RESM for instructions. If a Community Property Agreement has been recorded in the county in which the required real property lies, it will (usually) be reported in the PC and both signatures will be required.

C. The following are some of the historical and not often used terms involved in marital status questions and their precise meanings. Whenever possible, the proper term should be used to identify the grantor in our right of way deeds.

1. **Widow (Widower)** – A woman (man) whose husband (wife) had died.
2. **Single or Unmarried** – This term includes all persons who are not now married (bachelor, spinster, widow, widower, divorced).

D. On a great many of the titles encountered when acquiring right of way, no question of the marital status of the vestee will be raised by the title company in the PC. A simple investigation by the PAS aimed at verifying the marital status shown in the PC will permit him (assuming the fact of verification) to phrase the Party Clause in the exact same language as the vesting. (The facts elicited in his investigation are reported in the Diary of Right of Way Activities – RES-301.)

E. Where the title company does raise a question concerning marital status (often through the use of the word "presumptively") or where the investigation (9-7.3.D) does not verify the marital status given in the PC, the question may be resolved by considering the following typical situations:

1. If the PC reads "John Jones, presumptively subject to the community interest of his wife, if married on or after January 16, 1936, date of acquiring title," this means that the deed to the vestee reads merely "John Jones" and does not disclose whether or not John is married.

   The parties should be questioned as to their marriage date, and if it is found that they were husband and wife on or after January 16, 1936, this fact should be incorporated in the party clause of the deed. It is not sufficient merely to have his present wife sign the deed. The following is a good form to use:

   "John Jones and Mary Jones, husband and wife on January 16, 1936, and at all times since."

   If questioning discloses that John was single on the above date, the party clause should appear as follows:

   > "John Jones, a single man on January 16, 1936, and Mary Jones, his wife."
   >
   > If it is found that on said date, John was married to someone other than Mary, then the interest of that former spouse must be secured, or a determination made that it has passed properly to John by deed, court order, or otherwise. The existence of a former spouse is the most dangerous possibility of this type of vesting and is the condition against which every precaution should be taken.

2. If the PC reads "John Jones and Mary Jones, presumptively as community property," this means that the vesting deed ran to John Jones and Mary Jones but failed to identify them as husband and wife. (They might be brother and sister, for instance, and each of their interests would be presumptively subject to the community interest of his or her respective spouse.)

   In this case, if it is found that they are married, it is sufficient to take a deed reciting that they are husband and wife.

   If it is found that they are not married to each other, the PAS makes an investigation to determine the marital status of each person, reporting the facts found in his Diary of Right of Way Activities ( Form RES-301) and refers the matter to the Region RESM (or his designee) for instructions.

3. Some title companies also show title as being in "John Jones, husband of Mary Jones, presumptively as community property," this means that the deed ran to John Jones, without disclosure of his marital status, but the title company knows from its own records that he was the husband of Mary on the date of acquiring title.

   In this case, it is sufficient to accept a deed signed by John and Mary, identifying them as husband and wife in the party clause.

4. If the PC shows the title to be in Mary Jones, a widow, or Mary Jones, a spinster, and you find in contacting her that she has remarried or married, the following is the proper form for the party clause:

   "Mary Schwartz, who acquired title as Mary Jones, a widow, (or an unmarried woman), and Albert Schwartz, her husband." (Technically the husband need not join in the deed, since the property is the separate estate of Mary. But see Section 9-7.3.B for the possible effect of a Community Property Agreement).

5. Combinations and/or variations of the above examples should be referred to the Region RESM for instructions. Also, see Chapter 8 with respect to probate in the event of the death of a vestee.

6. If title was acquired when the party was single and has been single at all times, then the proper recital is . . . , a single person now and at all times since acquiring title.

### *9-7.4 Corporate Names*

#### 9-7.4.1 Private Corporations (also see Section 9-14.3.1)

The name of the corporation, using the exact words as filed in the office of the Secretary of State in Olympia, is shown in instruments to the state. Any variation is authorized by the Region RESM and explained in the Encumbrance Report on the Right of Way Acquisition Transmittal. (But see Section 9-7.2.B if PC vesting varies from name as recorded in office of Secretary of State.)

#### 9-7.4.2 Governmental Agencies (also see Local Public Bodies Section 9-14.3.2)

Acquisition from political subdivisions of the state of Washington (cities, counties, etc.) should be headed as shown in the title report, e.g., "_____ County, a political subdivision of the State of Washington ," "City of _____, a municipal corporation of the State of Washington ."

### *9-7.5 Estate or Interest*

When legally empowered to execute an instrument as a fiduciary, the party clause includes the name and the capacity of the party who executes the instrument for the vested owner. A fiduciary's name appears exactly as shown in the PC and/or the court appointment. Although an attorney in fact has fiduciary responsibilities, he has no estate or interest in the property to be conveyed; hence, the name of the principal only appears in the party clause. (See Section 9-14.2.3 as to execution by an attorney in fact.)

### 9-7.6 Trustee (also see Execution Section 9-14.2.3)

A. The title company may require proof of the trustee's authority in the form of copies of the trust documents and any amendments thereto. Check the PC. The PAS, obtains a copy of the trust agreement and any amendments. At times owners are reluctant to provide copies of these documents. At a minimum, the PAS will review the trust documents, puts notes in the diary confirming the name of the trust, name of the trustee, powers of the trustee, date of the trust, and confirms with the parties that the trustee identified in the documents is the current trustee.

B. If a trustee is executing the instrument only as a fiduciary, the following examples are adapted:

   1. " . . . Richard Roe as Trustee for the John Doe Trust, dated . . . ."
   2. " . . . Richard Roe as Trustee under the will of John Doe, deceased . . . ."
   3. " . . . The Grand National Bank as Trustee for the John Doe Trust, dated . . . ."

C. If a Trustee is executing the instrument for himself as a vested owner and as a fiduciary, the following example is adapted:

   1. " . . . Richard Roe, a single man, as his separate estate (etc., see Section 9-6.3) and as Trustee for the John Doe Trust, dated . . . ."

### 9-7.7 Executor/Administrator (also see Executor/Personal Representative Section 9-14.2.3)

A. If an executor/administrator (frequently referred to as personal representative (PR)) is executing an instrument only as a fiduciary, the following example is adapted:

   1. " . . . Richard Roe as Executor (Administrator, PR) of the Estate of John Doe, deceased . . . ."

B. If an Executor/Administrator is to execute an instrument for himself as a vested owner and as a fiduciary, the following example is adapted:

   1. " . . . Jane Doe, individually and as Executrix (Administrator, PR) of the Estate of John Doe, deceased . . . ."

### 9-7.8 Guardian (also see Section 9-14.2.3)

A. The contents of this topic is limited. Consult with the Region Title Examiner and the PC for guidance.

B. A Guardian Ad Litem is appointed by the court and acts as an officer of the court, the following example is adapted:

   1. " . . . Jane Doe as Guardian of the Estate of John Doe, a minor (an incompetent, etc.) . . . ."

### 9-7.9 Tenants in Common and Joint Tenants (also see Execution Section 9-7.3)

If the PC shows title vested in the parties as Tenants in Common (or as Joint Tenants), the following example is adapted:

1. " . . . John Doe and Ruth Roe, as Tenants in Common . . . ."
2. " . . . John Doe and Jane Doe, husband and wife, as Joint Tenants . . . ."
3. ***Note:*** Tenancy by the entirety is not authorized by the laws of Washington State (see RCW 11.04.071).

### 9-7.10 Fractional Interest

A. If the PC shows title held by two or more persons in fractional interests, the sum of such interests is verified by the PAS to equal 100 percent and the parties are joined on the instrument, adapting the following example:

   1. " . . . John Doe, Jane Doe, Ruth Roe, and Jim Olsen, as their interests may appear . . . ."

### 9-7.11 Partnerships

A. The title company may require proof of the partners authority to execute documents. Check the PC. The PAS obtains a copy of the partnership agreement and amendments, if any. At a minimum, the PAS will review the partnership documents and put notes in the diary confirming the name of the partnership and the name of the authorized partner(s).

B. If the PC shows title held in name of a firm which proves to be a partnership:

   1. If a Limited Partnership and evidence is available that only some of partners are authorized to convey the real property of the firm, the following is adapted:

      a. " . . . (FIRM NAME), a Limited Partnership . . . ." (See Section 9-14.4 for execution.)

   2. If a Limited or General Partnership and no evidence is available as to authority to convey, the following may be adapted after consulting with the Region Title Examiner for guidance:

      a. " . . . John Doe and Jane Doe, his wife; Richard Roe and Ruth Roe, his wife, (continuing through all the partners and their spouses), being all the partners of (FIRM NAME), a (Limited) Partnership . . . ."

C. If the PC shows title held by one or more persons who prove to be all or part of a partnership which in fact is doing business under a firm name, the following is adapted:

   1. " . . . John Doe and Jane Doe, his wife; Richard Roe and Ruth Roe, his wife; (continuing through all the partners and their spouses), partners doing business as (FIRM NAME) . . . ."

### 9-7.12 Limited Liability Companies (see Section 9-14.5)

A. The name of the Limited Liability Company aka (LLC.) is as it is filed in the office of the Secretary of State in Olympia and as shown in the written agreement. The agreement details the organization of the LLC. including provisions for management. For detailed information, see Chapter 25.15 RCW.

B. The title company may require proof of the members authority to execute documents. Check the PC. The PAS obtains a copy of the operating agreement and amendments, if any. At a minimum, the PAS will review the documents and put notes in the diary confirming the name of the Limited Liability Company and the name of the authorized managing member or members.

## 9-8 Consideration

### 9-8.1 Lump Sum

A. If no money is to be paid, the words "the sum of" and "Dollars" on the electronic forms are stricken. Alternate language used is:

   1. "Dedication, Donation, Special Benefits." Consult with the Region Title Examiner to determine the correct words based upon the circumstances and what additional information may be required. The phrase "mutual benefits" in and of itself is not used, state the actual benefits.

B. If money is to be paid for the purchase of property or a real property interest in the lands to be acquired, the following language is used in lieu of reciting the full amount of the just compensation for the parcel:

   1. " . . . Ten and No/100 ($10.00) Dollars and other valuable considerations . . . "

      ***Note:*** The word "Dollars" is printed on many forms at the end of a line. Hence, the parenthetical numerical amount is written in before the word "Dollars"; it normally should follow the word "Dollars" as in 9-8.1.C. "Other valuable considerations" includes construction items and the like. If actual money paid is less than $10, the dollar section in the above example should be changed to reflect the specific amount paid.

C. If money is to be paid in relation to an agreement or for a release of an interest, e.g., damages, judgment, or lease, in a secondary Real Property Voucher, the specific amount of the consideration is shown in words and numerals:

   1. " . . . ONE THOUSAND FIVE HUNDRED AND NO/100 Dollars ($1,500.00) . . . "

### 9-8.2 Rate

If money is to be paid periodically as in a lease, the amounts to be paid and the frequency of payments are included, adapting suitable language based on the following examples:

A. " . . . Ten and No/100 Dollars ($10.00) per month . . . ."

B. " . . . Ten and No/100 Dollars ($10.00) per month together with Two Cents ($0.02) per cubic yard of materials removed by the state of Washington and/or its assigns during each such monthly period . . . ."

C. " . . . On a royalty basis at the rate of $_____ per cubic yard of material removed by the state as measured by a cross section survey of the excavated area at the completion of each contract, said royalties to be paid promptly at the completion of each such contract . . . ."

## 9-9 Instrument Types

### 9-9.1 Deeds

A. To be effective as a deed there must be words manifesting an intention to pass title. The words of conveyance in the statutory forms are as follows:

Warranty Deed: conveys and warrants RCW 64.04.030

Quitclaim Deed: conveys and quit claims RCW 64.04.050

B. The conveyance clause states the exact terms and conditions of the conveyance. The complexity of the language varies with the function of the conveyance.

C. A deed normally contains a simple statement to "convey and warrant," (Warranty Deed – RES-302) or "convey and quitclaim" (Quitclaim Deed – RES-306).

D. In an "Access Rights Only" deed (RES-305), the complete conveyance clause also becomes the access clause.

E. The conveying language is followed by the name of the grantee ("the State of Washington , Department of Transportation") and nature of the interest conveyed, e.g., "the following described real property" (in a deed).

### 9-9.2 Easement

The Easement form (RES-324), contains the basic easement language (convey and grant) into which is inserted the language that describes only the interest which the state acquires, for example: " . . . construction and maintenance of a Channel Change Facility of the Cedar River . . . ." (see Chapter 6).

### 9-9.3 Right of Entry, Permit, Temporary Easement

These documents are used to obtain the temporary use of a property for a specific purpose. The document needs to clearly state the purpose and the termination date.

Condemnation. Temporary easement or permit areas to be acquired by condemnation must be shown on the official right of way plan.

#### 9-9.3.1 Right of Entry

There is not an electronic form for a right of entry. The Region RESM or Region Title Examiner can provide samples and assist with preparation (see Chapter 6).

#### 9-9.3.2 Permit

The Permit form (RES-326) contains the basic language into which is inserted the specific language describing the reason for the permit and the expiration date of the permit (see Chapter 6).

#### 9-9.3.3 Temporary Easement

The Temporary Easement form (RES-325) contains basic language describing the reason for the temporary easement and the expiration date of the temporary easement. The PAS must state the purpose and expiration date (see Chapter 6).

### 9-9.4 Acquisition Lease

A. A lease obtains specific rights of tenancy. The termination of use of the property and the rights and privileges of the lessee are specified.

B. The Acquisition Lease form (RES-329) contains the basic lease language ("grants"), into which is inserted the language that establishes rights and privileges of the lessee and the termination.

   1. See Section 9-7 for rental rate clauses (consideration).

   2. The lessee's rights and privileges are described, adapting language such as the following:

      a. " . . . the right, permit, license, and lease to use and occupy (for the purpose of) STOCKPILING OF ROAD MATERIAL including depositing and storing crushed stone and other highway materials as the exclusive property of the state . . . ."

      b. " . . . the right, permit, license, and lease to use and occupy (for the purpose of) the REMOVAL OF EARTH MATERIALS, including excavation and removal of rock, gravel, sand, or earth, from any portion of said land; storing materials and operating all necessary machinery and equipment thereon . . . ."

   3. Legal description of the land subject to the lease is required.

4. **Termination** – The agreement shall terminate and all rights of the lessee herein under shall cease and the lessee shall waive any right or claim to reimbursement, compensation, or remunerations of any kind and shall quietly and peaceable deliver possession of the premises to the lessor:
   a. At the expiration of the term of the Agreement.
   b. Upon failure to respond to 90-day written notice from the lessor to lessee claiming violation of any of the terms of the agreement.
   c. Upon 90 days written notice from the lessee to lessor stating lessee's interest to discontinue occupancy of the premises.

### *9-9.5 Option*

Option forms RES-327 (quarry or pit) or RES-328 (other lands) is a legal agreement between a future buyer (optionee) and seller (optionor) to contract to buy and sell real estate within a certain amount of time at a certain price with certain terms. However, the optionee has no obligation to follow through and buy it. All options are transmitted to headquarters and approved by the Headquarter's RESM.

### *9-9.6 Consent to Change of Grade*

The Consent to Change of Grade form (RES-323) is used only in those cases where the change of grade is to be accomplished entirely within the existing right of way.

## 9-10 Property Description

"A legal description, to be adequate, must be capable of being located on the ground with reasonable certainty by a competent surveyor, either with or without the aid of extrinsic evidence." (21 Wash. 371.)

It is impossible in a short outline to cover all of the fine shadings of meaning which have been placed by our courts on language used in the description of land. When a comparison is being made of the language in a given description to the examples cited herein, care should be taken to see that wording is exactly as it was in the case cited. Composing legal descriptions can present challenges. Consult with Headquarters Acquisition and Title staff for guidance.

### *9-10.1 Illustrations of Adequate Description*

A. The following are examples of adequate descriptions.
   1. Any section or subdivision of the U.S. Rectangular system of survey.
   2. Descriptions by reference to recorded plats, or to private surveys attached to and incorporated by reference.
   3. Metes and bounds tied to any point on either of the above, directly or by reference to an earlier deed, which in turn is so tied.

B. A description fails if for any reason it is vague, indefinite, or so ambiguous as to be impossible to interpret. Sample inadequacies causing the conveyance to be void:

1. "160 acres, more or less, in Section 2 -13 N. -2 E." (3 Wn. 2d 565).
2. "A house at 2626 West Fairview" (28 Wn. 2d 110).
3. "Approximately 207 feet" (24 Wn. 2d 586).
4. "Description by reference to an unrecorded plat" (21 Wn. 2d 593).
5. "A description failing to name the county, state, or meridian and range" (16 Wash. 34).

C. The following descriptions have been held to be sufficient; however, their usage is not recommended:

1. "All the real estate in the state of Washington of record in the name of the grantor" (96 Wash. 592).
2. "All property owned" by a certain company in a specified county. Held good as to all lands held under recorded title and would not pass lands acquired under an unrecorded deed" (28 Wn. 2d 953).
3. "Tax lot 3, Section 32 -Twp. 12 N., R. 42, as at present designated on the tax rolls of the County Assessor of said County." Sufficient provided the Assessor's tax rolls contain an adequate description of the tax lot (38 Wn. 2d 886). In spite of this case, the use of tax lot numbers as legal descriptions should be avoided. It is common practice in all Assessors' offices to abbreviate and paraphrase the original description in the interest of brevity. In many cases, the abbreviated description covers the same parcel of land as the original, but in many other cases, important controlling or qualifying language is omitted or typographical errors are introduced, any of which could destroy the accuracy of the description.

D. A court may apply its own wisdom in some cases, not withstanding B above. If a deed appears adequate on its face, but a dispute arises over the location of the lines on the ground, or if the intent of the parties is obvious when certain facts are stricken |or altered, the court will allow oral testimony to determine the true meaning of the description. For example:

1. "As where no block number is recited, but the grantor owns land only in one block in the recited addition, the court has read into the deed the missing block number (24 Wn. 225, 53 Wn. 285). The court has also substituted the word "southwest" for southeast in order to make the description close" (8 Wash. 642).
2. In a description failing to name the meridian "….Range 42….," the court supplied the missing term "East Willamette Meridian" as this was the only possible intention since Range 42 West would fall well out in the Pacific Ocean (38 Wash. 886).

### 9-10.2 Controlling Elements of a Description

A. "Natural and artificial permanent objects referred to in the description control over courses and distances. As where a metes and bounds description overruns a highway, and yet the highway is recited as being a boundary of the property, the highway controls (108 Wash. 413, also see 163 Wash. 10). The boundaries of a city lot are controlled by lines as actually run on the ground, as shown by surveyor's stakes, rather than the lot lines as shown by the plat" (30 Wash. 687, 94 Wash. 395).

B. "Where there is a variance between field notes and monuments as set out by the U.S. Government surveyors, the monuments prevail" (41 Wash. 583, 70 Wash. 435, 172 Wash. 405).

C. "Metes and bounds control over the other elements. As in a conveyance by metes and bounds which also recites that the conveyance includes so many acres, the courses, and distances control even though they include a larger area than recited" (38 Wash. 151).

D. "Reference to an adjoiner will control over recited bearings and distances" (115 Wash. 454, 124 Wash. 179).

E. "Where there is a conflict in boundaries in two deeds from the same grantor, the title of the grantee in the deed first executed is superior" (57 Wash. 150, 196 Wash. 54).

F. "In case of a conflict of terms in a description, it will be construed most strongly against the grantor" (57 Wash. 392).

G. "One may reject a false and impossible part of a description if by so doing a perfect description remains" (57 Wash. 150).

H. The existence of an adequate legal description is only the preliminary step to establishing the property lines on the ground. The linking factor between the description and the boundary on the land is the monument. Monuments may be any visible, tangible, physical object in existence which marks a point or a line on the earth's surface. The following are typical adequate monuments:

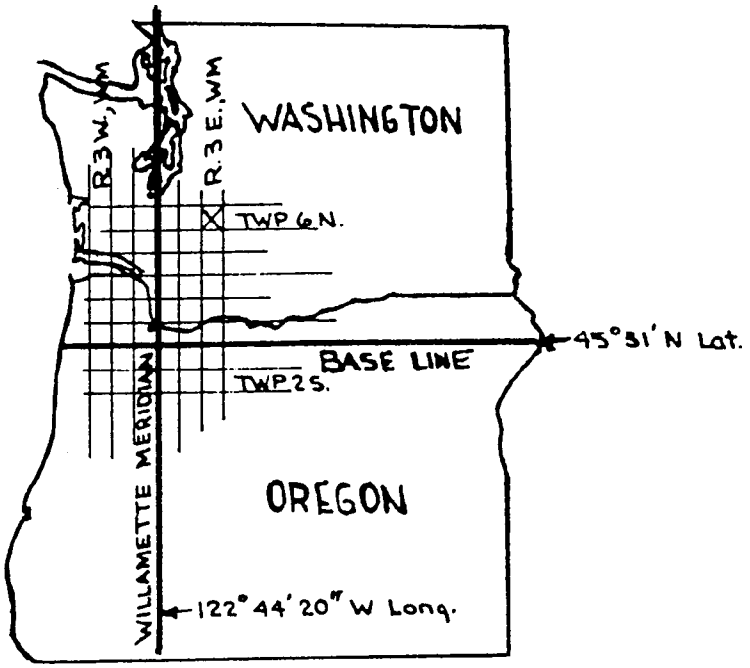
1. Clearly marked concrete posts (as are used by the federal surveyors to mark section and ¼ corners).
2. The line of ordinary high tide or high water.
3. The thread of a stream.
4. A tree, or a row of trees.
5. An iron pipe.
6. A bench mark (brass disc emplaced by USCGS).
7. A fence.
8. A building.
9. A hedge.
10. A sidewalk.
11. A cliff.

A full discussion of the importance of monuments and the requirements for establishing their genuineness is beyond the scope of this text, but an excellent analysis of the problems involved appears in *Surveys, Subdivision and Platting, and Boundaries, Bureau of Governmental Research and Services, Report No. 137*. Published by University of Washington Press. 1958, Page 67, et seq.

### 9-10.3 Rectangular Survey Descriptions

A. The rectangular survey system was adopted in 1785. The system has been used in most of the states. For the purposes of the rectangular survey, the states of Washington and Oregon form a region. This region is quartered by a north-south line (the Willamette Meridian) and an east-west line (the Base Line) which intersect in Portland, Oregon (see Figure 9-10.3A). The tiers lying north or south of the Base Line are numbered consecutively and are called Townships. The columns lying east or west of the Willamette Meridian are numbered consecutively and are called Ranges. Each Township and Range also bears a compass direction which indicates its direction from the Base Line and from the Willamette Meridian respectively. Thus, the area marked with an "X" on Figure 9-10.3A is described as "Township 6 North, Range 3 East, Willamette Meridian." The Township (T or Twp) always appears first and the Range (R or Rge) second, followed by the Meridian (Willamette Meridian = WM). In the sample given, the information would usually appear in abbreviated form: "T6N, R3E, WM."

The Townships and Ranges are bounded by lines which are drawn parallel with the Base Line and the Willamette Meridian. In order to make up for the curvature of the earth, correction lines are inserted (after some variation in the early days) every 24 miles.

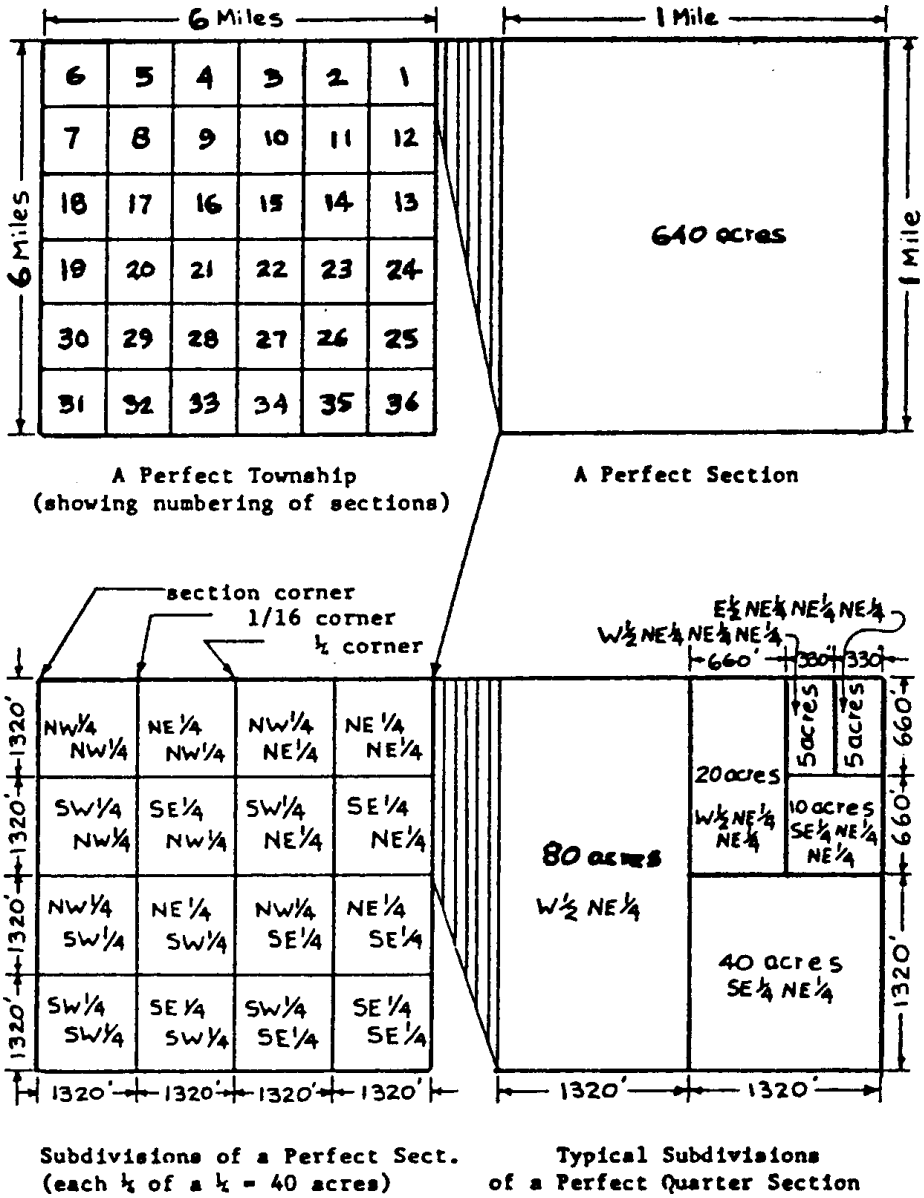



**Townships and Ranges**
*Figure 9-10.3A*

B. Each Township consists of 36 sections (see Figure 9-10.3B), and each section ideally contains 640 acres. In practice, sections rarely are perfect.

The statute requires only the setting of the section corners, but in most instances in this state, the federal surveyors also set the ¼ corners. The latter are required to be midway between the section corners on the section lines. The center lines are established by drawing straight lines connecting the ¼ corners.

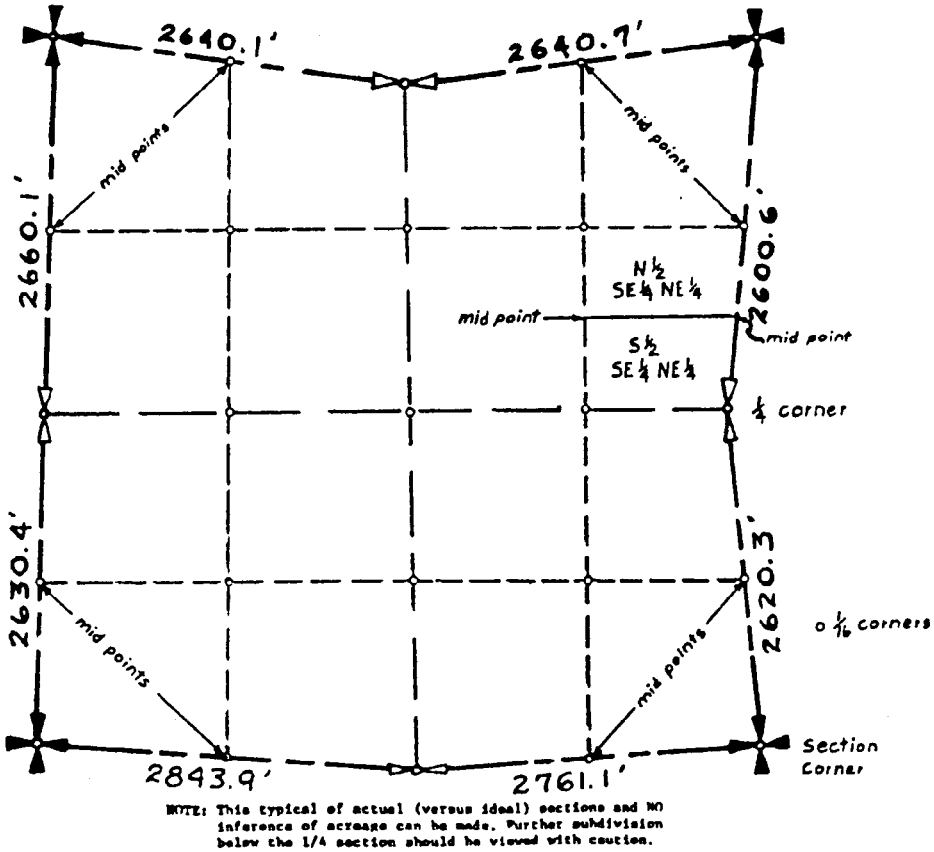
The method of further subdivision by private survey is to establish mid-points between the section corner and ¼ corners (these are 1/16 corners). Straight lines connect these mid-points in each ¼ with the corresponding mid-points on the opposite side.




**Land Areas and Dimensions**
*Figure 9-10.3B*

C. Once the corners have been placed by the Federal Surveyors and conveyances made, they stand as the true corners. This holds true no matter how small or large an error might have been made in the setting of the corners. Even with errors as great as those shown in Figure 9-10.3C, the monuments stand as placed and determine the size of the section and its subdivisions. However, in the absence of the original monuments, or witness marks, the field notes will control (41 Wash. 583). The more rugged the country, the less likely the existence of actual sections that are "perfect" or "ideal."

The conveyance of large tracts of land within such a section is normally accomplished by the subdivision style of description. It is necessary to recite the section, township, range, county, and state, as well as the subdivision of the section, to complete the identification of the property. Further subdivision within such a section is accomplished by measurement. For example, in Figure 9-10.3C, the N ½ and S ½ of SE ¼ NE ¼ are determined by connecting the mid-points on the East and West Lines of the SE ¼ NE ¼. The resultant areas and direction of the dividing line have no bearing on the problem unless the description specifically says the N ½ in area of SE ¼ NE ¼. In the latter case, the same rules apply as in subdividing platted land.




**The Size of a Section is Determined by Its Monuments**
*Figure 9-10.3C*

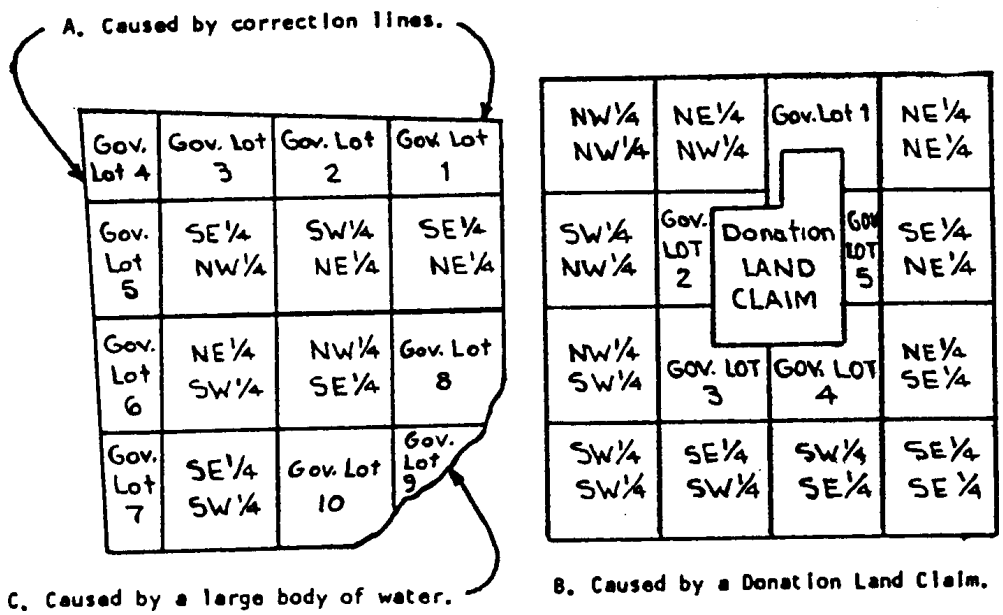
### 9-10.4 Government Lots

Under the U.S. rectangular survey system abnormally-sized subdivisions of a section are called Government Lots and are numbered. Examples of the causes of Government Lots are illustrated in Figure 9-10.4.

A. When the excesses or shortages in the area of subdivisions are caused by correction lines, the corrections are made by designating the northerly and westerly subdivisions of the section as Government Lots (see A in Figure 9-10.4).

B. Government Lots are created in those subdivisions which border a grant which preceded the U.S. rectangular survey. For example: Donation Land Grants are excluded from subdivision (see B in Figure 9-10.4). Similarly, when a mining claim is patented, the U.S. Bureau of Land Management draws an amended plat of the section and assigns Government Lot numbers to the remaining portions of subdivisions which border the patented mining claim.

C. Government Lots are also created where the normal layout of a section is precluded by the existence of a body of water (see C in Figure 9-10.4); e.g., along the shores of Puget Sound, large lakes, or rivers.




**Government Lots and Normal Subdivisions (Example)**
*Figure 9-10.4*

### 9-10.5 Water Boundaries

One of the areas of greatest confusion exists in the definition of "navigable" bodies of water. The Washington State Supreme Court has held that to be navigable within the meaning of Article VII of the state Constitution, a body of water must be capable of being used to a reasonable extent in the carrying of commerce in the usual manner by water, and be so situated and have such length and capacity as will enable it to accommodate the public generally as a means of transportation. (167 Wash. 385, 195 Wash. 537, 16 Wn. 2d 107).

On attaining statehood (November 11, 1889), the state of Washington asserted its ownership of the beds and shores of all navigable bodies of water in the state, excepting only those previously patented by the Federal Government. The question of the navigability of any particular stream or body of water can be answered only by a decision of the State Supreme Court — in the absence of such a decision, DNR assumes the stream or body of water to be navigable if it has been meandered.

All "navigable" rivers are meandered (how the surveyor was to determine this point is uncertain). Also meandered is any river whose right angle width is three chains (198 Engineer's) or more, and all lakes of 25 acres or more (see Manual of Surveying Instructions, U.S. Department of Interior, Bureau of Land Management, 1947, U.S. Government Printing Office, Superintendent of Documents).

For additional information on water boundaries, tidelands, shorelands, and the effect on ownership of water boundaries, see *Waterfront Titles in the State of Washington* by George N. Peters, Jr. ©1981-2008 Chicago Title Insurance Company as published on the Washington Land Title Association website at www.wltaonline.org/download/waterfront%20titles%20booklet%20-%202008.pdf.

### 9-10.6 Metes and Bounds Descriptions

This method of land description involves locating property by: (a) a reference and tie to a legal monument (or point of public record) and (b) an outline of the courses and lengths of each line of the perimeter of the property.

The point of origin in any metes and bounds description is normally called "the point of beginning." If the property boundary does not include the monument at which the description begins, and a tie call or calls must be used to get to the first corner of the property being described, the first corner of the description and the end of the tie are identified as "the true point of beginning," and the same term is again used in the closing call.

#### 9-10.6.1 Rules

In a metes and bounds description, the perimeter of a tract of land is described by:

A. Starting at a definitely known (i.e., monumented) point.

B. Stating bearings and distances of a line or lines from the monumented point to a point on the boundary of the tract (i.e., the "true point of beginning").

C. Stating bearings and distances for each successive boundary line of the tract. The use of "more or less" following the distance will prevent overlaps or gaps but should not be used haphazardly. It is usually used with the last distance call to be sure of closure; it may be used elsewhere only when another element (monument fixes the point without regard to the actual distance).

D. Returning (closing) at the "true point of beginning."

E. When referring to a section corner or to a quarter corner, reference is made only to the section in which lies the point of beginning of the parcel to be described.

F. The first reference made in a description to a section includes the Township (and its North/South identification number) and Range (and its identification number East or West of the Willamette Meridian). Thereafter, reference is made only to "said section."

G. "Commencing" is used when the first call is not the corner of the property described.

H. A good description makes frequent use of "controls" which will govern over either bearings or distances recited. For instance, it is common practice on the closing course to recite ", more or less, to the (true) point of beginning." This final call will then automatically be forced to close on the (true) point of beginning in spite of any errors of survey or description language for the final course.

1. The following are examples of other common controlling language:

   a. Thence North 89° 59′ East 590′, more or less, to the west line of Primary State Highway No. 16, Twisp to Winthrop. This call would run to the west line of the highway even if the true distance is actually 600 feet. Similarly, the call does not overrun the highway, even though the true distance is only 550 feet. This is true even without the words, "more or less" appearing in the call.

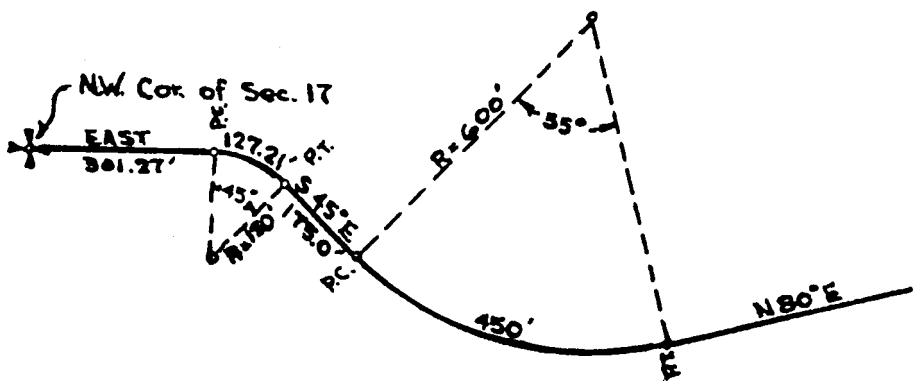
   b. Thence North 17° 31′ West along the southwesterly right of way line of the N.P.Ry.Co. Regardless of the true bearing of the railway right of way line, this call would follow along the right of way boundary.

   c. Thence East 120′, more or less, to the southeast corner of a tract of land conveyed to Elmer Fudd, by deed recorded in Vol. 799 of Deeds, Page 601, records of said county. This is good practice, particularly when describing property adjacent to a tract which was carved out of a larger parcel at some date prior in time. Such a point in a prior description may even be used as a "point of beginning." Care should be taken, however, to be certain that the description in the deed referred to is adequate. Such a control will insure against an accidental gap or overlap in the descriptions of the two parcels.

### 9-10.6.2 Description of Curved Lines

Boundary lines running along curves are frequently encountered in descriptions bordering in highways, county roads, and railroads.

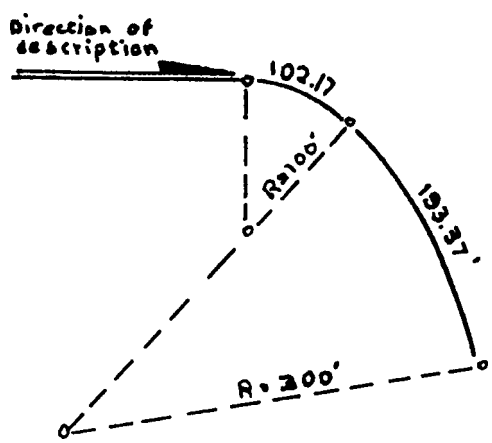
A. A description of the line in Figure 9-10.6.2A would read: "Beginning at the Northwest corner of Section 17, Township _____, Range _____ E, WM; thence East along the North line of said section 301.27'; thence along the arc of a curve to the right having a radius of 150.0 feet a distance of 127.21 feet, (or through a central angle of 45°: thence South 45° East 175.0 ft; thence on the arc of a curve to the left having a radius of 600 feet a distance of 450 feet; thence North 80° East . . ."




**Typical Curved Line (Example)**
*Figure 9-10.6.2A*

B. A compound curve is one in which the radius of the curve is changed somewhere along the arc without the intervention of a tangent course.

The description of the line Figure 9-10.6.2B would read: "thence along the arc of a curve to the right having a radius of 100 feet a distance of 102.17 inches; thence along the arc of a curve to the right, having a radius of 300 feet, a distance of 193.37 feet.




**Compound Curve (Example)**
*Figure 9-10.6.2B*

### 9-10.7 Platted Property

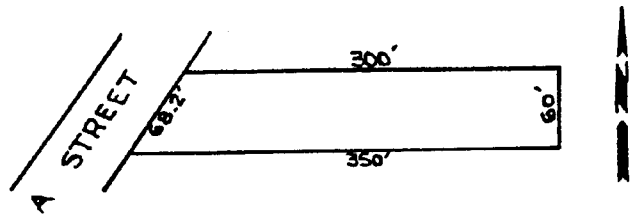
The recording of an official plat with the County Auditor considerably simplifies the legal descriptions of the properties shown on the map. Generally, any lot or block identified on the face of the plat can be accurately described by simply naming the lot, block, name of the addition, and the name of the county and state and reciting the volume and page of plats and the county where the official copy of the particular plat has been recorded. The name of the plat, as well as the volume and page, should be taken only from reliable sources.

Where the conveyance covers all of a given lot or block, little difficulty can arise if care is taken to recite the plat name and recording information accurately. Problems do, however, frequently arise in the description of part of a platted lot.

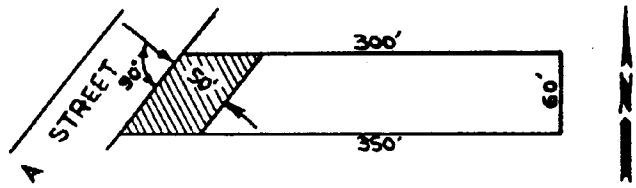
Where the lot is rectangular and oriented N and S, or E and W, there are few difficulties encountered in describing a fraction of the lot. The east 100 feet, or the east ½, or the east 2 acres, of a given lot, are all determinable with certainty. A different and considerably less simple problem exists where the lot is not rectangular or is not oriented N and S, or E and W. Consider the following cases:

A. How would you measure the west 50 feet of the lot at A in Figure 9-10.7A? Obviously, there are several ways in which the measurement could be made and to eliminate all possibilities of misinterpretation, the description should be reworded so that it can be interpreted in only one way. 1-4 below, illustrate the desirable language to cover various possible intentions of the parties.

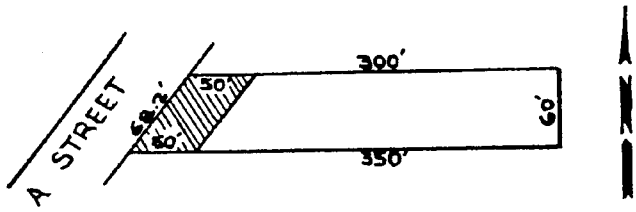
   1. The westerly 50 feet, when measured at right angles to “A” St. (see A1, Figure 9-10.7A).
   2. The westerly 50 feet, when measured along the north and south lines (see A2, Figure 9-10.7A).
   3. All that part of Lot, Block Addition, lying westerly of a line drawn from a point on the north line of said lot, 50 feet easterly of the northwest corner thereof, southerly to a point on the south line of said lot, 100 feet easterly of the southwest corner thereof (see A3, Figure 9-10.7A).
   4. An easier way to describe the same parcel as in Section 9-9.6A3, would be as follows: All of Lot ___, Block ___,_____ Addition, according to the plat thereof recorded in Vol. ___ of Plats, Page __ records of _____ County, Washington, except the east 250 feet thereof (see A4, Figure 9-10.7A).



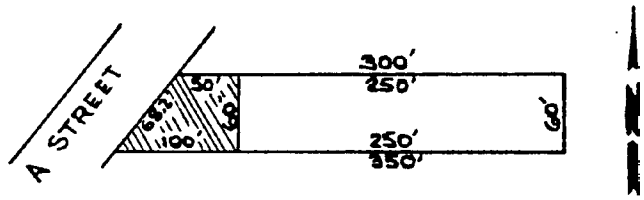

A. The Lot Prior to Subdivision




A1. Subdivided at Right Angles to a Street




A2. Subdivided by Measurement Along Lot Lines




A3. Subdivided by Joining Points on the N and S Lines

A4. Subdivided by Exception

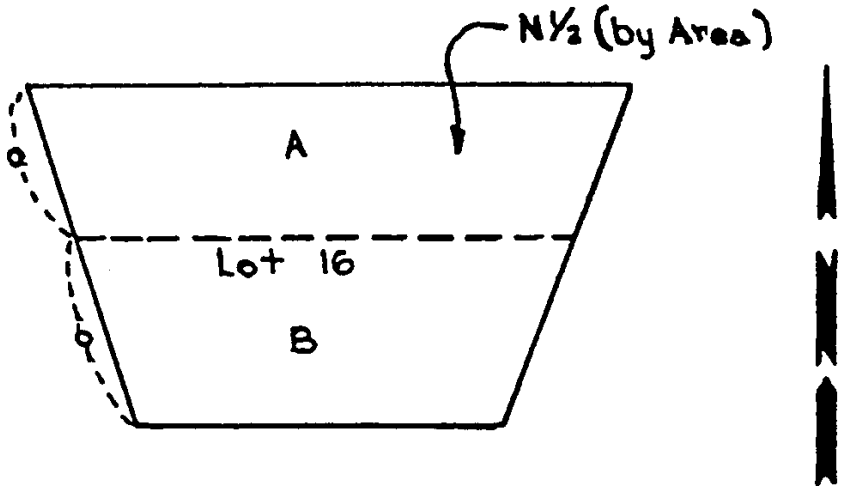
**Possible Subdivisions of a Platted Lot (Example)**
*Figure 9-10.7A*

B. Generally, directions unless qualified or controlled by other words (such as "parallel with" or "along the section line") will be construed as meaning due North, East, etc. (2 Wash. 198, 135 Wash. 539).

C. "A description calling for the "north half" is interpreted north half in area" (16 Wash. 39, 68 Wash. 351). The description of Tract "A" in Figure 9-10.7C is as follows: "N ½ Lot 16." Therefore, Lot 16 is divided by a due East-West line so that the area of Tract "A" is equal to the area of Tract "B." Obviously, the distance "a" is less than the distance "b."

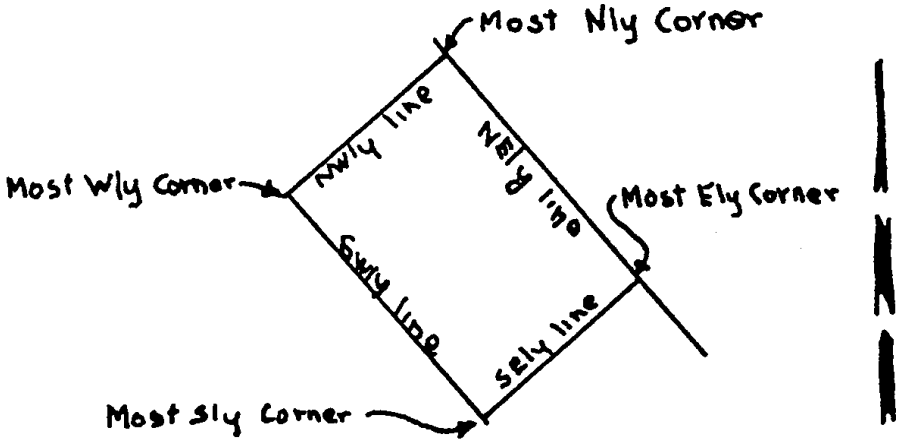
Even if the north and south boundaries were not parallel, the dividing line would be a due East and West line, creating two parcels equal in area.

The only exception to the above rule is where such language is used in connection with the government subdivision, then the rules for subdividing sections apply (see Section 9-10.3).




**Subdivision by Area – Platted Lands (Example)**
*Figure 9-10.7C*

D. Where a lot is not oriented N and S, or nearly so, the possibility of confusion exists when referring to the lines and corners of the lot. In Figure 9-10.7D, it would be difficult to determine which corner is the "northwest corner" of the lot, or which line is the "North" line. Terminology which eliminates the difficulty is shown in Figure 9-10.7D.




**Orientation of a Lot (Example)**
*Figure 9-10.7D*

E. Care must be taken in combining descriptions of fractions of lots with full lots to be certain that the resulting description is free of ambiguity. For instance, does "the W ½ of lot 7 and lot 8" mean all of lot 8 or only the "W½?" All question of interpretation is removed by reciting the full lot first, as "All of Lot 8 and the W½ of Lot 7," if that is the desired intention.

F. If parts of two lots, together with a full lot are to be described, clarity can be assured by the following style:

The N ½ of Lot 7, all of Lot 8 and the S ½ of Lot 9.

### 9-10.8 Streets, Roads, and Highways

Generally, any description adjoining on a street, road, or highway, which is only an easement, carries by implication the underlying fee to the center of the street. This is not true where the right of way is held in fee. For many years, almost all state highways have been acquired in fee, and since June of 1909, streets acquired by condemnation by cities and towns could be acquired in fee and therefore properties adjoining such rights of way do not carry any underlying interest in the road. Practically, all streets dedicated to the public on recorded plats are considered to be easements, and the owner of an abutting lot also has the underlying fee to the adjacent half of the street (79 Wash. 455 and 137 Wash. 452).

Where a street has been vacated, a question arises as to whether the vacated portion adjoining will pass without specific mention thereof in the conveyance. Generally, this will be governed by whether or not the vacated portion is of sufficient size to be capable of separate use.

If the vacated land is a narrow adjacent strip, as where an 80-foot street is narrowed to 60 feet by the vacation of the outer 10 feet on each side, or where it is a narrow alley, a conveyance of the adjoining land after the vacation would carry the vacated lands automatically whether mentioned in the deed or not (52 Wash. 341, 167 Wash. 39).

However, if the vacated strip is capable of separate use, it must be described to indicate an intent of the grantor that he did not wish to retain title to the strip (74 Wash. 462, 137 Wash. 452).

A perimeter street in a plat dedicated prior to June 13, 1901, attaches entirely to the abutting lots, provided the plattor owned nothing beyond the limits of the area platted. The logic is obvious that owners outside the limits of the plat had no part in the dedication of the perimeter street, and when the easement to the public is lifted by the vacation proceedings, the original boundary line is restored to exactly where it was at the time of the vacation (54 Wash. 595).

The Act of 1901 purports to take the outer half of a perimeter street away from its rightful owner (i.e., the plattor or his successors) and give it to the abutting owner outside the limits of the original plat. This point has apparently not been before our courts, but it is very likely that the statute might be considered unconstitutional. Article I, Section 16, Amendment 9, provides that private property shall not be taken for private use.

In addition to the usual formal vacation proceedings, a platted street may become vacated under the nonuser statutes (Laws of 1889-90, Section 32, page 603, amended by Laws of 1909, Chapter 90, page 188) provided that all of the following conditions are met:

A. The plat must have been recorded on March 12, 1904, or earlier.

B. The streets dedicated thereon must have remained unopened for a period of not less than five years after platting and prior to March 12, 1909.

C. The plat must have been outside the limits of a corporate city at the time of platting and for the entire five-year period during which the streets remained unopened.

In simple cases, the vacation of a street causes the adjacent half of the street to attach to the abutting ownership between the side lines of the property projected to the center of the street. For complicated intersections, as with diagonal streets, the area which attaches to each lot becomes very controversial and may even result in some portions remaining with the original plattor, or even "no man's land" (203 Wash. 331). The best language to use in a description which includes portions of vacated streets or alleys falling in this category is: "...together with that portion of vacated street attaching thereto by operation of law."

An additional point of importance in right of way work, is that since June 9, 1949 (Laws of 1949, Chapter 14), a city or town may retain an easement for utilities within the vacated streets or alleys. This could take the form of reserving the right to continue the occupation and maintenance of existing utility facilities, or may even reserve the right to grant future easements and franchises within the area. Further, since June l2, l975 (Laws of l975, Chapter 22), counties may retain easement rights for the construction, repair, and maintenance of public utilities and services whenever a county road, or portion thereof, is vacated. The public utility must be authorized or physically located on the land being vacated prior to the time the county, by resolution, authorizes said land to be vacated. The legislative body is restricted from conveying such easement to any public utility, but may convey a franchise to a public utility.

Formal vacation of streets and roads outside the limits of cities is accomplished by order of the Board of County Commissioners (RCW 35.79). Within cities, it is accomplished by ordinance (RCW 36.87).

### *9-10.9 Title Problems*

#### 9-10.9.1 Overlaps and Gaps

From various causes, such as faulty conveyancing or surveying, we frequently find titles which overlap each other, or where a hiatus (gap) has been created between two ownerships. While the solution of this problem can be complex as between the parties, it is relatively simple to handle as far as acquisition of the highway right of way is concerned.

In the case of the overlap, particularly where the area involved is small and not of high value, the right of way deeds should be so drawn that the controversial strip is included in the deeds secured from all parties having an apparent interest. The matter of compensation can usually be resolved by payment of 50 percent of the value of the overlap area to each party (presuming only two parties have claims on the area).

In the event of a hiatus, some weight can be given to physical boundary markers (as fences, rock walls, etc.) which might show that the party on one side or the other of the gap is claiming possession. This is especially true where the boundary marker has been recognized as such and acquiesced to by the neighbor for a period of ten years or longer.

In the event that there are no physical boundary indications, or if the area is of high value, the best procedure is to include the strip in the deeds from the owners on either side (or take a separate quitclaim deed), as well as securing the joinder of the original owner who conveyed out the two parcels and created the hiatus. In all but the most simple cases, the Region RESM (or his designee) refers the problem to the Acquisition and Title Program Manager for resolution prior to final negotiation.

#### 9-10.9.2 Appurtenances

A deed not only conveys all of the lands embraced within the legal description, but also carries, without the need of specific mention, all the appurtenances and incidentals rightfully belonging to it, and which are essential to the full and perfect enjoyment of the property (29 Wash. 70, 121 Wash. 572).

It is quite commonly known that this includes buildings, fences, timber, wells, crops, etc., but there are many other interests and rights which will pass with the deed which are not so well known. Some of these are:

A. Appurtenant easements (120 Wash. 144).

B. The underlying title to adjoining streets, roads, and railroads (if they are easements and not fee).

C. Ditches (72 Wash. 547).

D. Vacated alley (52 Wash. 341).

E. After acquired title (if Statutory Warranty, or Bargain and Sale Deed, or if Quit Claim Deed specifically includes after-acquired title clause).

F. Title to a building lying partly outside the limits of the lands conveyed (30 Wn. 2d 4).

### *9-10.10 WSDOT Line Survey Descriptions*

#### 9-10.10.1 General

A. In a total acquisition, the only property descriptions on the instrument is the parcel description.

B. In a partial acquisition, the instrument includes both a description of the acquisition portion and the parcel description.

C. In the case of a partial acquisition for roadway purposes, the state normally employs a “line survey description” in which the portion to be acquired is described in its relation to the highway project engineering data “over and across” the parcel description. All call-outs of Highway Engineer’s Stations (HES) must be preceded by a proper line survey identification; e.g., LL, LR, A12. Example:

“…at a point opposite HES LR 250+00 on the LR line survey of…”

D. Upon demand by a grantor having substantial real estate holdings (usually a corporate body), a metes and bounds description of the acquisition is drawn by the Region RESM in coordination with the Acquisition and Title Program Manager. The Region RESM initiates action to have the appropriate metes and bounds incorporated on the Right of Way Plan.

E. All engineering data upon which any acquisition description is based appears on the approved plan of the project (i.e., the Right of Way Plan or the Sundry Site Plan).

F. The sample descriptions cited in Section 9-10.14 are used as models for drafting of property descriptions for acquisition purposes.

### 9-10.10.2 Rules

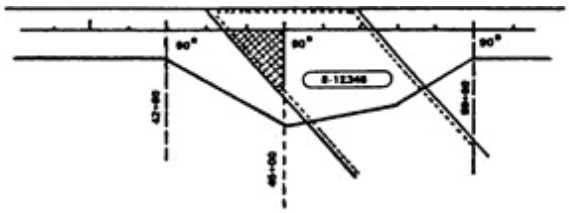
The following rules apply to "line survey" acquisition descriptions:

A. The word "opposite" properly means, "at right angles to" when in reference to a determined point (HES) on an established line (line survey) whether the established line is straight or a curve. When measured "opposite" an established curved line, the measurement is along the radius of such curve.

B. The term "when measured at right angles to and/or radially from" is properly used when the distance measured is from an established line without reference to a point on the established line.

C. A line which is parallel with an established line follows all the sinuosities of the established line and remains the stated distance from the established line.

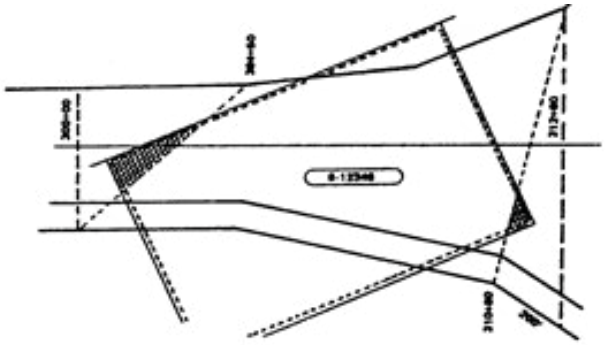
D. If that portion of a parcel which is to be acquired lies in a given direction from a described line, perpendiculars to the reference line drawn from the ends of the described line, must include all of the portion of the parcel which is to be acquired (see Figure 9-10.10.2D).




Although the point opposite HES 45 + 00 lies outside parcel 8-12345, the shaded area would not be included in the description. (See Section 9-9.13I)

**Partial Acquisition (Example 1)**
*Figure 9-10.10.2D*

E. If that portion of a parcel which is to be acquired lies between two lines, lines drawn to connect the ends of the two described lines must lie beyond all of that portion of the parcel to be acquired (see Figure 9-10.10.2E).



Although the points opposite HES 300 + 00, HES 304 + 50, HES 310 + 80, and HES 312 + 00 are all outside parcel 8-12346, the shaded areas would not be included in the description if the "take lines" are limited to between HES 304+50 and 312+00 on the north side and between HES 300+00 and 310+80 on the south side. It is obvious that lines drawn between the respective termini fail to include all of the necessary take. The "take lines" in this case must extend from HES 300+00 to 312+00 on both sides. See Section 9-9.13J.

**Partial Acquisition (Example 2)**
***Figure 9-10.10.2E***

F. The ends of a strip which are contiguous to a right of way are closed by lines which are described as being perpendicular to the highway line survey or by using a metes and bounds description.

G. Reference in a description to a right of way plan title is made at the first mention of any highway project. For example: "Beginning at a point on the "X" Line survey of SR No. (plan title in full)." Thereafter, reference may be made by stating "said highway".

H. In the use of the word "said": No similar item can intervene between the item and references to it in the description. Thus, if two line surveys are involved in a description, all references to the "said line survey" which refer to the first line survey should precede any mention of the second line survey. If an intervention must occur, the next reference to the first survey line must repeat the identification of the first line survey. "Said (noun)" always refers to the last previous use of that noun and its descriptive modifiers.

I. Unnecessary wordiness is avoided. E.g., "To wit"; "thence run" or "thence running"; stating "said Township and Range" after each mention of a section; "distant" or "a distance of" (but see M, below); etc.

J. The words "a distance of" are used only to separate two sets of sections. E.g., "189+24 254.25 feet" should be written "189+24 a distance of 254.25 feet."

K. The following are always spelled out:

1. The word “feet.”
2. Reference to subdivisions of a section (northwest quarter) and directions (northerly).

L. Symbols (‘ for feet) or abbreviations (NW) (Nly) are avoided, except that bearings are shown as follows: North 1° 34’ 27” East.

M. When describing strips of land as being certain widths on each side of a survey line, the term “on each side” is used only when the widths are the same. Do not use the term “on either side.”

N. If reference to line survey stationing appears more than once in a description, the following statement may be used at the first reference: “Highway Engineer’s Station (hereinafter referred to as HES).” Thereafter, the abbreviation “HES” may be used. When two lines are described as the boundaries of the acquisition description, they should both proceed in the same direction (preferably in the direction of increasing HES numbers).

### *9-10.11 Parcel Description*

A. In the case of a total acquisition, the legal description of the grantor’s property is given exactly as it appears in the title report.

B. In the case of a partial acquisition, either:

1. The parcel description is inserted as a Parcel “A” type of description following the description of the acquisition portion
   a. The term “Parcel A type description” refers to a method of acquisition description in which the acquisition portion is separate and distinct from the parcel portion of the description. The acquisition portion includes the phrase “all that portion of the following described Parcel A lying . . .”, and is followed by the whole parcel description as contained in the PC and identified in the instrument as “PARCEL A:.” The use of “A” is arbitrary and may be any other letter of the alphabet, but no letter is used more than once in any given instrument.
2. The parcel description is included within the acquisition description when the parcel description is very short and the acquisition description is relatively simple.

C. A Parcel “A” description too long for a preprinted form may be typed and appended as an “EXHIBIT” on a separate, 8½” x 11” sheet of white bond paper. In the space on the preprinted form in which such description would otherwise appear is inserted the reference, binding the exhibit to the instrument.

D. There are often cases in which more than one acquisition is required from a single ownership and/or where more than one parcel is described in the title report, with acquisitions required from more than one such parcel.

1. Multiple acquisitions in a single instrument are identified as "Tract I," "Tract II," etc., and are used in the following situations:

   a. Acquisitions which are separated from each other, although taken from a single parcel of property.

   b. Acquisitions in which the acquisition portion of the description would be so complicated that greater clarity can be achieved by breaking it into two or more parts.

2. Multiple parcels on the title report are identified in "Parcel A type descriptions" as "Parcel A," "Parcel B," etc.

3. Examples:

   "Tract I: All that portion of the following described Parcel A lying . . ."

   "Tract II: All that portion of the following described Parcel A (B) lying . . ."

### 9-10.12 County Roads Acquired

Conveyances from the counties for all roads within a given highway project contain adaptations from the following property description:

> "All County Road rights of way, together with all appurtenances thereto, located within ..."

### 9-10.13 Exchange Agreement

The exact description used on the deed from the state may vary somewhat in detail from the description used in the Exchange Agreement (RES-322). Care is exercised to provide an accurate description in the Exchange Agreement based on conventional survey ties, on plats or on survey line ties and distances shown on the appropriate Project Plan.

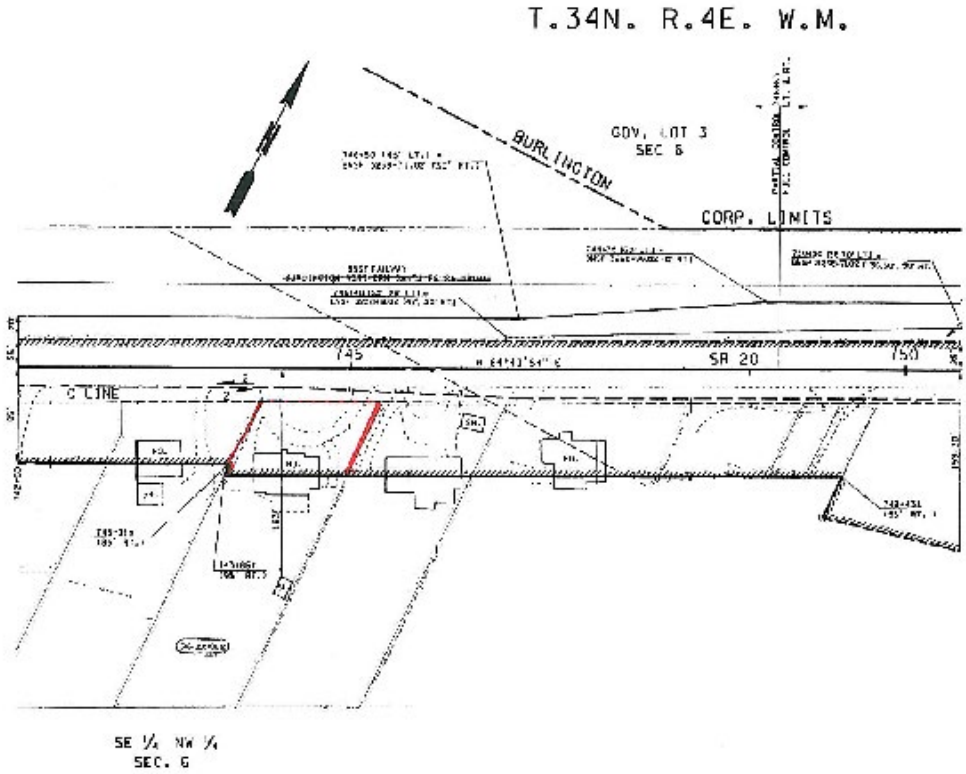
### 9-10.14 Vacated Street or Road

If the title report or a court determination attaches a vacated street or road (or portion thereof) to the parcel description, include in the parcel description appropriate language from the PC to cover the vacation, or adapt the following:

> "together with that portion of vacated (name of street) attaching thereto by operation of law"

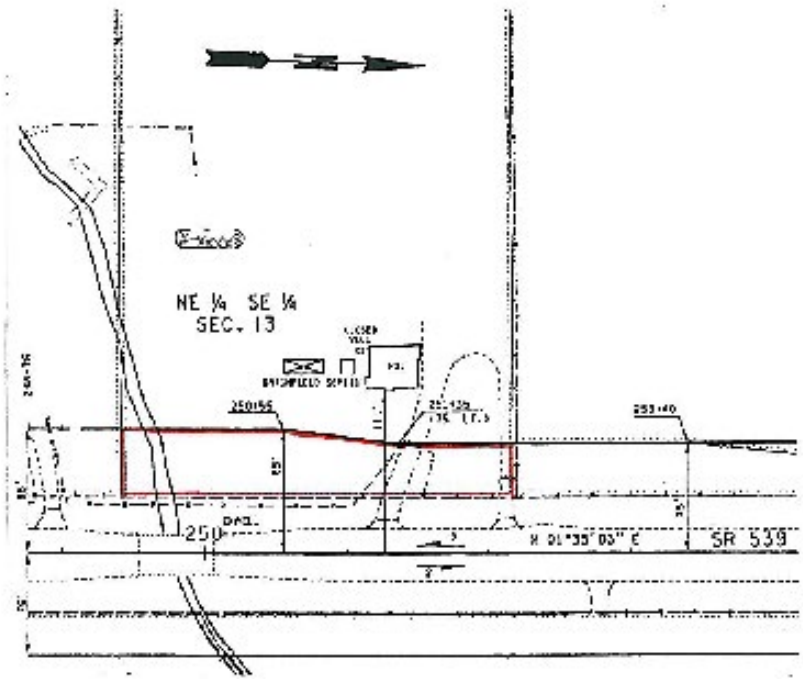
## 9-10.15 Sample WSDOT Descriptions

**Line Description That Can Be Used on Multiple Acquisition Parcels**



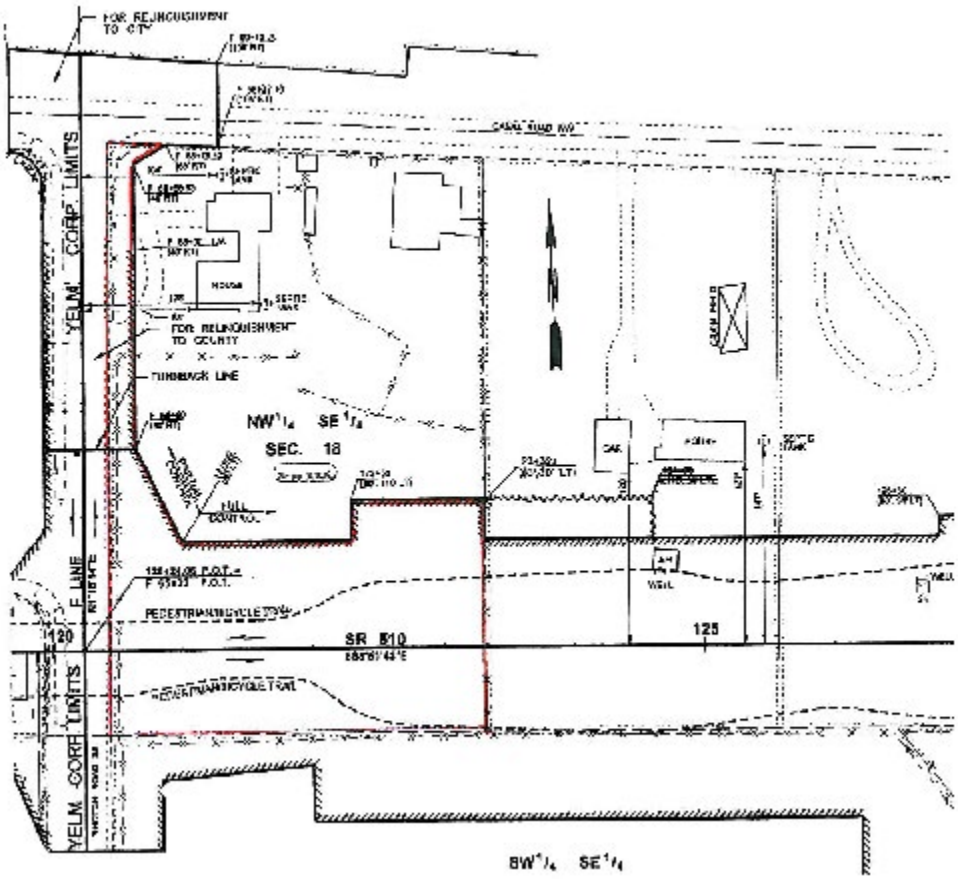

All that portion of the hereinafter described PARCEL “A” lying northwesterly of a line drawn parallel with and 95 feet southeasterly of, when measured at right angles to, the SR 20 line survey of SR 20, Fredonia to Pulver Rd. Vic.

**Simple Line Acquisition Description**




All that portion of the hereinafter described Parcel "A" lying easterly of a line beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 248+75 on the SR 539 line survey of SR 539, Horton Road Vic. to Ten Mile Road Vic. and 85 feet westerly therefrom; thence northerly, parallel with said line survey, to a point opposite HES 250+55 thereon; thence northeasterly to a point opposite HES 251+35 on said line survey and 75 feet westerly therefrom; thence northerly, parallel with said line survey, to a point opposite HES 253+40 thereon and the end of this line description.

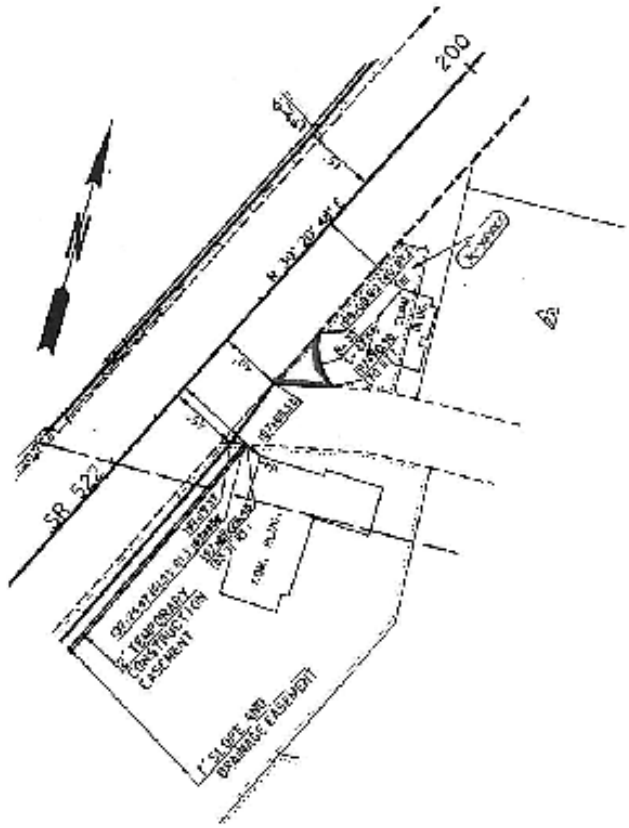
## Complex Line Description




All that portion of the hereinafter described Parcel “A” lying Westerly and Southerly of a line described as:

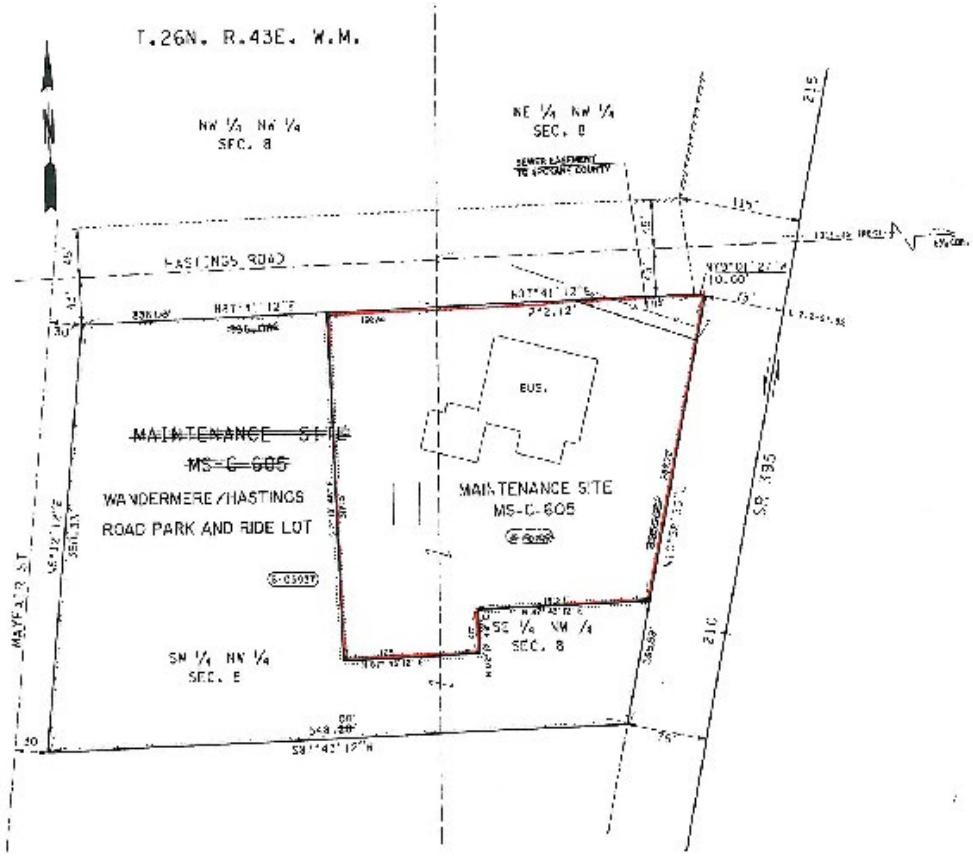
Beginning at a point opposite Highway Engineer’s Station (hereinafter referred to as HES) F 69+40.29 on the F line survey of SR 510, Mud Run Rd. Vicinity to SR 507 Vicinity and 105 feet Easterly therefrom; thence Southerly, parallel with said line survey, to a point opposite HES F 68+77.46 thereon; thence Westerly to a point opposite HES F 68+79.42 on said line survey and 65 feet Easterly therefrom; thence Southwesterly to a point opposite HES F 68+65.63 on said line survey and 40 feet Easterly therefrom; thence Southerly, parallel with said line survey, to a point opposite HES F 66+50 thereon; thence Southeasterly to a point opposite HES 121+00 on the SR 510 line survey of said highway and 80 feet Northerly therefrom; thence Easterly, parallel with said SR 510 line survey, to a point opposite HES 122+30 thereon; thence Northerly to a point opposite said HES and 110 feet Northerly therefrom; thence Easterly, parallel with said SR 510 line survey, to a point opposite HES 124+60 thereon and the terminus of said line description.

**Perimeter Acquisition Description and Curve Description**




All that portion of the hereinafter described PARCEL "A" lying within a tract of land beginning at a point opposite Highway Engineer's Station (herein after referred to as HES) 197+66.53 on the SR 522 line survey of SR 522, N.E. 145th St. to N.E. 165th St. and 40 feet southeasterly therefrom; thence northeasterly to a point opposite HES 197+90.55 on said line survey and 70 feet southeasterly therefrom; thence northwesterly on a curve to the right having a radius of 33 feet, an arc distance of 37.58 feet to a point opposite HES 198+09.60 on said line survey and 40 feet southeasterly therefrom; thence southwesterly parallel with said line survey to the point of beginning.

## Sundry Site Acquisition Description (Metes & Bounds)




That portion of Section 8, Township 26 North, Range 43 E.W.M. described as follows:

Beginning at a point opposite Highway Engineer's Station L212+97.52 on the L line survey of Spokane County Sundry Site Plans, Maintenance Site MS-C-605 Wandermere/Hastings Park and Ride Lot and 75 feet Northwesterly therefrom; thence North 79º01′27″ West a distance of 10.00 feet; thence South 87º41′12″ West a distance of 242.12 feet; thence continuing South 87º41′12″ West a distance of 102.61 feet; thence South 2º18′48″ East a distance of 317.15 feet; thence North 87º43′12″ East a distance of 125 feet; thence North 2º16′48" East a distance of 40 feet; thence North 87º43′12″ East a distance of 161.27 feet; thence North 10º58′33″ East a distance of 282.72 feet, more or less, to the point of beginning.

# 9-11 Miscellaneous Clauses

## *9-11.1 Limited Access*

### 9-11.1.1 Acquisition of Access Rights Only

A. For acquisition from a fee owner, the appropriate form is used for conveying access rights (RES-305 or RES-307). If there are exceptions to full control of access, the appropriate exception clause is also inserted as explained in Section 9-11.1.5 et seq.

B. For acquisition from a benefitted parcel (dominant estate), the appropriate form is used for conveying access use rights (RES-356). If there are exceptions to full restriction of access, the exception clause 9-11-1.5.3.C.3 is inserted.

### 9-11.1.2 Acquisition of Land and Access Rights

A. For a fee owner the access control clause follows the property description clause in a conveyance of a partial acquisition adapting the following:

> "Also, the grantors herein convey and grant to the State of Washington all rights of ingress and egress (including all existing, future or potential easements of access, light, view and air) to, from and between (plan title) and the remainder of said (Parcel A). It is expressly intended that these easements, covenants, burdens and restrictions shall run with the land and shall forever bind the grantors, their heirs, successors and assigns."

B. For a benefitted parcel owner the restriction of access clause is as follows:

> "Also the grantors herein convey to the State of Washington all their easement rights to use the access approach belonging to the hereinafter described Parcel (use servient estate description) for ingress and egress to, from and between SR and the remainder of said Parcel (dominant estate)."

***Note:*** If an access reservation is provided, continue with the appropriate clause in Section 9-11.1.5 et seq.

### 9-11.1.3 Release of Lessee's Interest

The access control clause agrees with the language of the conveyance from the owner, adapting the following:

> "Also, said lessee hereby releases from the effect of said lease, all rights of ingress and egress (etc., as in Section 9-11.1.2) . . . and the remainder of the real property described in said (lease) (Parcel __)."

### 9-11.1.4 Release of Mortgagee's or Beneficiary's (Deed of Trust) Interest

The access control clause agrees with the language of the conveyance from the owner, adapting the following language in the satisfaction or request for reconveyance:

> "Also, said (mortgagee/trustee) hereby releases from the effect of said (mortgage/deed of trust) all rights of ingress and egress (etc., as in Section 9-11.1.2) and the remainder of the real property described in said (mortgage/deed of trust)."

### 9-11.1.5 Access Reservation

If the access control is modified by any "Access Note" or other feature appearing on the approved plan, such feature is specified in the instrument of conveyance or release by adding to the "Access Control Clause" (see Section 9-11.1.2 et seq.) an "Access Reservation Clause" adapted from one of the following clauses.

Composing proper language for a road approach reservation can present challenges. In instances where the following clauses do not meet unique requirements, work with the Headquarters RES Acquisition and Title staff.

The language of such clause in a partial release of lease, substitutes the words "said lessee" in place of the words "grantor" or "grantor herein." Likewise, the word "mortgagee" is substituted in a partial release of mortgage and the word "trustee" is substituted in a partial reconveyance of a deed of trust.

#### *9-11.1.5.1 By Highway Connection*

For access specifically permitted by way of a highway connecting with an access controlled facility:

> " . . . EXCEPT that the (grantors, lessees, mortgagees, trustee(s) herein reserve(s) for (himself) (his heirs) (its) successors or assigns, the right of reasonable access to the "_____" Line connection of said Highway (_____ erly of HES _____ + _____ on the "_____" Line survey of said highway)." Continue with the text in Sections 9-11.1.5.3.1, 9-11.1.5.3.2, or 9-11.6 as appropriate.

#### *9-11.1.5.2 By Frontage Service Road*

A. State to Construct – Now

> " . . ., EXCEPT that as a part of the consideration of this transaction, the state agrees to construct on the right of way a frontage service road along the (easterly) side of said highway, and to which frontage service road only, the grantors, their heirs, successors or assigns reserve a right of reasonable access." Continue with the text in Sections 9-11.1.5.3.1, 9-11.1.5.3.2, or 9-11.6 as appropriate.

B. State to Construct – Future

" . . ., EXCEPT that as a part of the consideration for this transaction, the state agrees to construct on its right of way at a future date, a FRONTAGE SERVICE ROAD along the (easterly) side of said highway, it being understood and agreed that the grantors herein, their heirs, successors and assigns reserve a temporary right of reasonable access . . . ." Continue with Sections 9-11.1.5.3.B.1 or B.2 as required.

1. Direct Access to Highway. " . . . directly to said highway until such time as said FRONTAGE SERVICE ROAD is actually constructed at which time all such temporary rights of direct access to the highway shall cease and the rights shall then be limited to the right of reasonable access to the FRONTAGE SERVICE ROAD." (Insert description of location and/or use restrictions of temporary direct access as appropriate.) Continue with the text in Sections 9-11.1.5.3.1, 9-11.1.5.3.2, or 9-11.6 as appropriate.

2. Other Temporary Access. When temporary access other than via a direct route to the highway is to be provided, such as allowing temporary access only to a specific other public road that is available or can be made available, insert the details as to the type, location, and any restriction of the access as stated in the design specifications. Continue with the text in Sections 9-11.1.5.3.1, 9-11.1.5.3.2, or 9-11.6 as appropriate.

### *9-11.1.5.3 By Road Approach*

A. Type "A" (Residential)

"… EXCEPT that the state shall construct on its right of way a Type "A" off and on approach, not to exceed 30 feet in width, for the sole purpose of serving a single family residence, on the _____ side, at or near Highway Engineer's Station _____, as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

B. Type "B" (Farm)

1. One Side

"… EXCEPT that the state shall construct on its right of way a Type "B" off and on approach, not to exceed 50 feet in width, for those uses necessary to the normal operation of a farm but not for retail marketing on the _____ side at or near Highway Engineer's Station _____, as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach, only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

2. Each Side

"…EXCEPT that the state shall construct on its right of way a Type "B" off and on approach, not to exceed 50 feet in width for those uses necessary to the normal operation of a farm but not for retail marketing, on each side of said highway, at or near Highway Engineer's Station _____, as shown on Sheet _____of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approaches the grantors, their heirs, successors and assigns, reserve the right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

a. Multiple Approaches – Controlled Movement

Used if the grantor has reserved road approaches on each side and traffic may not cross or make left turning movements at grade.

"…The direction of travel to and from each of said approaches shall be limited to the same direction as the movement of the traffic in the lane abutting said approach."

b. Temporary Grade Crossing

Used if the grantor has reserved road approaches on each side without restriction on crossing or left turning movements at grade.

"…It is understood and agreed that the state may temporarily permit the crossing of said highway at grade and free turning movements from each of said approaches. However, whenever necessary in the opinion of the Department of Transportation, all grade crossings shall cease and terminate and the direction of travel to and from each of said approaches shall be limited to the same direction as the movement of the traffic in the lane abutting said approach."

C. Type "C" (Special Use)

Used only on the instrument with the parties who are to have the right of use of such approach. The Special Use must be defined in the document, consult with Region Access or HQ Access units.

1. State to Construct

"…EXCEPT that the state shall construct on its right of way a Type "C" off and on approach, not to exceed (_____) feet in width, (insert purpose per right of way plan), on the _____ side, (northbound) only, at or near Highway Engineer's Station _____, as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors, or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

2. Owner to Construct

   "…EXCEPT that the state agrees to permit the construction on its right of way of one Type "C" off and on approach to the remainder of said Parcel "A", not to exceed (_____) feet in width, for the uses necessary to the normal operation of a farm (or whatever use is specified by the highway plan), at a point on the _____ side of said highway, between Highway Engineer's Station (_____) and Highway Engineer's Station (_____),and to which off and on approach only, the grantors, their heirs, successors or assigns reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.1.5.3.2.

3. Benefitted Parcel (Dominant Estate) State to Construct

   "…EXCEPT that the State shall construct (reconstruct) on its right of way a Type "C" off and on approach for the remainder of Tract "X" (servient estate), not to exceed ___(insert width of approach) in width for (insert language for purpose from Type "A", "B" or "D" approaches) on the _____ side of said highway, at or near Highway Engineer's Station _____, as shown on Sheet ___ of ____ Sheets of the hereinafter mentioned map of definite location. The Grantors, as holders of an easement to cross the remainder of Tract "X", their heirs, successors or assigns, shall have the right to use this Type "C" off and on approach onto SR ___ only for such time as the easement across Tract "X" remains in effect.

4. Benefitted Parcel (Dominant Estate) [Encumbered Parcel Owner to Construct]

   "…EXCEPT that the State agrees to permit the construction (reconstruction) on its right of way of a Type "C" off and on approach for the remainder of Tract "X" (servient tenement), not to exceed ___ (insert width of easement) in width for (insert language for purpose from Type "A", "B" or "D" approaches) on the _____ side of said highway, between Highway Engineer's Station _____ and Highway Engineer's Station _____ , as shown on Sheet ___ of ____ Sheets of the hereinafter mentioned map of definite location. The Grantors, as holders of an easement to cross the remainder of Tract "X", their heirs, successors or assigns, shall have the right to use this Type "C" off and on approach onto SR ___ only for such time as the easement across Tract "X" remains in effect.

D. Type "D" (Commercial Single 50 Foot Width)

Used only where Modified Access Control has been established, and further subject to provisions of WAC 468-58-090.

"….EXCEPT that the state shall construct on its right of way a Type "D" off and on approach not to exceed 50 feet in width for use necessary to the normal operation of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway

stations as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

E. Type "E" (Commercial Double 30 Foot Width)

***Note:*** This approach is to be utilized only with approval of the HQ Access and Hearing Engineer's office.

"…EXCEPT that the state shall construct on its right of way a separated off and on approach with each opening not exceeding 30' in width, for use necessary to the normal operations of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

#### *9-11.1.5.3.1 Maintenance of Road Approach*

" . . ., which approach shall be maintained between the right of way line and the shoulder line of said (highway, frontage service road of said highway, highway and/or frontage service road, " " Line of said highway) by the grantors, their heirs, successors or assigns."

#### *9-11.1.5.3.2 Construction Costs and Permits – Owner to Construct Approach*

"Obtaining required permits from responsible agencies and the complete construction (and maintenance) costs of said approach shall be the sole responsibility of the grantors, their heirs, successors or assigns."

#### *9-11.1.5.4 By Highway Structure*

Used when the approved Right of Way Plan contains an "Access Note" which permits access under or over the traveled way by use of a highway structure — adapt the text of the "Access Note":

" . . ., EXCEPT that traffic movement will be permitted under the highway structures at the (insert name of bridge, etc.) between HES _____ + _____ and HES _____ + _____ as restricted clearances will permit." If appropriate, continue with the text in Sections 9-11.1.5.3.1 and 9-11.1.5.3.2.

### 9-11.2 Specific Details

Used in each instrument (deed, easement, temporary easement, etc.) involving a partial acquisition also can be used on other instruments as a courtesy. Specific details are not used for a description involving a total acquisition parcel or donation or dedication not shown on the right of way plan.

#### 9-11.2.1 One Type of Acquisition

The cited language is used in instruments relating to conveyances of only one type, e.g., fee, easement, permit, lease.

When mile post information is provided and appears to be included in the plan title name at the lower right of the plan sheet, it is not referenced in the specific detail clause.

Example:

If as shown on the plan SR 82 MP 32.48 to MP 33.59, East Yakima Ave. Interchange.

The correct plan title is SR 82, East Yakima Ave. Interchange.

The lands herein (described) (condemned) contain an area of (xxx square feet or x.x acres), more or less, the specific details concerning all of which are to be found on sheet xx of that certain plan entitled SR (plan title), now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval xxxx,xx, xxxx, revised xxxxx,xx, xxxx.

#### 9-11.2.2 Multiple Types of Acquisition

The cited language is used in instruments relating to conveyances of combinations of fee, easement, permit, etc., most frequently used with negotiated possession and use agreements.

> "The lands herein described in fee contain an area of (_____ acres, _____ square feet), more or less, and herein described in (easement, permit) contain an area of (_____ acres, _____ square feet) more or less, the specific details concerning all of which... (see Section 9-11.2.1)".

#### 9-11.2.3 Release of Easement

The cited language is used in instruments releasing the servient estate (encumbered parcel) from the easement.

> "Herein conveyed is the extinguishment of that portion of the above described easement containing an area of (xxx square feet or xxx acres), more or less the specific details all of which are to be found on sheet xx of that certain plan entitled SR (plan title), now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval xxxx, xx,xxxx, revised xxxx, xx, xxxx.

### 9-11.3 Payment Authorization

Used in instruments where there are multiple signatories and all the parties agree to the state making payment to one of their members. Commonly known as a "pay one clause."

#### 9-11.3.1 By Grantors to One Grantor

"The undersigned grantors hereby authorize and instruct the State of Washington , Department of Transportation to pay the entire consideration to _____, and direct that the state voucher in payment thereof shall be executed only by said _____."

#### 9-11.3.2 By Mortgagee to Mortgagor/Beneficiary to Grantor

Used on the (Partial Release of Mortgage/Request for Partial Reconveyance of Deed of Trust) to authorize payment to the grantor (borrower).

"The undersigned herein consents to the payment of any consideration for the lands being herein released directly to the (mortgagor/grantor), his or her heirs, successors, or assigns."

### 9-11.4 Improvement Straddling Right of Way Line

Used in each case in which improvements straddle the right of way line. All improvements within the acquisition area are automatically acquired with the land as "real property." Owners (or others) do not "retain" or purchase improvements to be removed or salvaged but may purchase them as personal property by purchasing salvage rights. Salvage rights (sales of personalty) are transacted and documented in a separate Fixtures and Improvements Agreement (RES-335).

"It is understood and agreed that the (specify type of improvement(s)) located partially upon the lands herein conveyed and partially upon the grantor's remaining lands is (are) conveyed herein in its (their) entirety to the State of Washington , its agents or assigns."

"The grantor herein further grants to the State of Washington , or its agents, the right to enter upon the grantor's remaining lands where necessary to (construct said approach, remove said improvement, remove said crop, remove said timber, etc.)."

### 9-11.5 Timber (Crop) Removal

Use if timber (crops) are to be removed by the grantor:

"The grantor herein reserves the right to remove (all hay, the sugar beet crop, all standing or down timber) located (insert right of way centerline or other legal description of the area where timber/crop removal is permitted) at any time until (insert exact date); however, all (timber, crops) yet remaining on said lands after said date shall become the property of the State of Washington and all rights of the grantor to said (timber, crops) shall then cease and terminate."

### 9-11.6 Road Approaches – Nonlimited Access

Access to nonlimited access state highways is managed under the provisions of Chapter 47.50 RCW.

All new or altered road approaches must be documented by permit. Region Real Estate Services staff will assist those assigned to granting permits. We will attempt to obtain signatures on all permits on any project even though there may not be an acquisition from that particular property owner. If any owner refuses to sign, the PAS should so note on the permit, leave a copy with the owner, and return the original to the region. A copy of all road approach permits must be included in your acquisition files.

For nonlimited access within an incorporated city, WSDOT has no jurisdiction to grant road approach permits.

A record of authorized road approaches will be maintained in the State Access and Hearings Engineer's Office in Olympia. The information in this computer file will be input and updated in each region office responsible for issuing the permits.

Acquisition documents will not make reference to any road approach or access rights. All information about the approach type, location, maintenance, right of entry, etc., will be in the permit. Region Real Estate Services will coordinate closely with those issuing the permits to assure the appropriate language is included in each one.

If the owner requests any additional approaches, the PAS should explain the procedure established in the statute and provide whatever help is appropriate for the owner to apply. If at all possible, any request for additional or modified access should be separated from our acquisition activities.

If the owner insists on a document assuring them the state will reconstruct any existing approach, we can provide a letter from the authorized region personnel but the letter should not contain any reference to a type or location.

The construction memorandum regarding road approaches may still be prepared and provided to the project engineer. That decision will probably vary region to region. The memorandum does not have to be sent with your acquisition file. Remember that the project engineer's signature on this memo *does not constitute approval of the approach* but only agreement that it will be constructed as part of the project. This memorandum is intended for internal use and should not be given to the property owner.

### 9-11.7 Construction Item

If the instrument contains a clause requiring or potentially obligating the state to perform any nature of construction or labor on or adjacent to the grantor's remaining land, the following is inserted as part of said clause in the grantor's instrument only:

> "The grantor herein further grants to the State of Washington , or its agents, the right to enter upon the grantor's remaining lands where necessary to (construct said approach, remove said improvement, remove said crop, remove said timber, etc.)."

### 9-11.8 Occupancy Date

Occupancy of unimproved real property will occur upon payment being made available to the grantor(s). No clause is required.

### 9-11.9 Land Locked

On occasion the owner will retain an uneconomic remainder. Determine if the remainder will have access. If there is no access, inform the owner and put notes in the diary accordingly.

### 9-11.10 Release of Damages

The following are examples of clauses which are to be inserted between the words:

> " . . . by reason of" and the words "due to the . . . ." on the Release of Damages (RES-315) to identify the specific damages for which the state of Washington is making a settlement.
>
> ***Note:*** Since these clauses are inserted in the middle of a sentence, the clauses do not require capitalization or final punctuation.

#### 9-11.10.1 Fencing

The following clause releases the state from the obligation to erect and maintain fencing:

> " . . . its obligation to erect and maintain fencing along the right of way line contiguous to the hereinafter described property . . . ."

#### 9-11.10.2 Water Systems

See Chapter 6 for well and water system agreements.

#### 9-11.10.3 Release of Road Maintenance

A. Eliminating obligations relating to road maintenance provisions concerning property being condemned.

> "TOGETHER WITH all claims of the defendants herein, their heirs, successors or assigns, from any liability of future costs and obligations of the road maintenance provisions incurred as set forth in that certain (name of recorded document from which the obligations for payment come) recorded under Auditor's file No. XXXXXXX as condemned herein by the State of Washington."

B. Nonjudicial acquisition of property that has as an appurtenant, a road maintenance obligation.

> "ALSO, the Grantors hereby release the Grantee from all liability of future maintenance costs and obligations of the road maintenance provisions incurred as set forth in that certain (name of recorded document from which the obligations for payment come) recorded under Auditor's File No. XXXXX. The Grantors, their heirs, successors and assigns further agree to assume all responsibilities of future maintenance costs and obligations for all of the hereinafter described Parcel "A"."

### 9-11.11 Mineral Rights Reservation

Used in some instruments of conveyance to the state (deeds), and in some instruments releasing mineral rights.

> "It is understood and agreed that all mineral, coal, oil, ores and gases below the surface of the lands conveyed by this instrument and hereinbefore described, are hereby reserved unto the grantors, their successors and assigns; EXCEPT, however, that in the exploration, development, excavation, mining or removing of same, the surface of said lands shall not be occupied or used, the exercise of said rights shall not injure or damage in any manner the highway or highways to be built thereon, increase the cost of maintenance thereof, or interfere with the primary use of said lands and rights of way by the State of Washington , its successors or assigns for road, street, highway or other purposes, or franchises granted across, along, or beneath the surface of said highways, nor shall the grantors, their successors or assigns, do any exploration, development, excavation or mining beneath the surface of the lands hereinabove conveyed within a vertical depth of 500 feet below said surface until the said grantors, their successors or assigns have a plan for such exploration, development, excavation or mining approved by the Secretary of Transportation of the State of Washington , or his successors and assigns, determining that such plan will not be injurious to the primary use of the surface."

### 9-11.12 Pit Site and Common Borrow

Mineral rights may include gravel and similar material, consult with Acquisition and Title Section Manager prior to final acquisition.

### 9-11.13 Slope Easement, Termination of

At the request of an owner, the state may terminate its rights in a recorded slope easement. This would be considered when the owner has excavated and/or placed an embankment on the area covered by the slope easement to the level of the grade of the abutting highway. Upon inspection by the state of work performed by the owner and, if such work is found satisfactory to the state, the state may release the slope easement. Be certain that the easement does not include reservation of sidewalk areas, utility rights of way, etc. The rights are terminated by a conveyance from the state containing the following:

> " . . . slope easement(s) conveyed to the State of Washington , Department of Transportation by instrument recorded xxxxxx, under Auditor file Number XXXXXX is hereby released . . . ."

### 9-11.14 Easement for Transfer

Used only when the easement is to be transferred to another party, e.g., a slope easement for a frontage service road that is to be relinquished to the county. "It being understood and agreed that, upon completion of construction, the easement rights granted herein are to be transferred to _____ by an appropriate instrument to be placed of record and that thereafter the rights of the state shall cease and terminate." When acquiring such rights consider the needs of the transferee; what rights would be acquired if they made the purchase direct?

### *9-11.15 Reversion*

Used only upon demand by major land owners maintaining substantial real property holdings such as a railroad and federal government that traditionally have conveyed only easements, provided that the acquisition compensation reflects the reversion right, and only with prior approval of Headquarter's RESM.

#### 9-11.15.1 Reversion Clause

"Upon abandonment of the lands conveyed herein, all of the state's right, title and interest in and to said lands shall revert to the grantors, their heirs, successors, or assigns; subject to any permits or franchises for public or private utilities."

### *9-11.16 Right of First Refusal*

Used only upon demand by grantor(s) with prior approval of the Headquarter's RESM.

#### 9-11.16.1 Right to Repurchase Clause

"Upon determination by the State of Washington, Department of Transportation that all or any portion of the lands herein conveyed are surplus to the needs of the state the grantor(s), __(his, her, their)__ heirs, successors, or assigns shall be offered the right to repurchase. Said right shall be exercised within (60) days of the date the property is offered to the grantor at the current fair market value as determined by the states appraisal.

### *9-11.17 Donation Clause*

A donation of property rights may be accepted only after the owner has waived in writing their right to an appraisal and payment of just compensation. This applies to individuals, businesses, corporations, and other private entities. Donations from government agencies are exempt from these requirements. Right of way obtained through donation may be incorporated into a federal aid project without jeopardizing participation in other project costs.

The appropriate clause is:

> (My/Our) donation of (parcel number or property description) to the state of Washington, Department of Transportation, is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation therefore. (I/We) hereby waive the state's requirement of obtaining an appraisal for the acquired property.

## 9-12 Delivery Clause

The following delivery clause is included in all forms.

> "It is understood and agreed that the delivery of this (deed, etc.) is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, by and through the Department of Transportation, by its authorized agent."

## 9-13 Instrument Date

The Instrument Date is normally the date the instrument is signed by the (first) grantor(s). The following text appears above the grantor(s) signature(s): Dated this _____ day of _____."

## 9-14 Execution

### *9-14.1 General*

A. Each person appearing as or representing the grantor is required to sign the instrument in his own hand, spelling out his name(s) and/or initial(s), as applicable, exactly as the name appears of record. The desired form or appearance for the signature is predetermined and is typed under the appropriate signature line before offering the instrument to the signatory for execution.

B. The act of signing may be done before the qualified officer who is to certify an acknowledgment (see Section 9-15). The act of signing may be done elsewhere but each person signing an instrument must personally appear before said qualified officer and acknowledge his own signature.

C. If the initial space provided for signatures is insufficient add additional pages (see Section 9-1.2.2) for adding pages for all signatories.

### *9-14.2 Individuals*

#### 9-14.2.1 Personally

Where individuals are executing for themselves, the interest held or the relationships between such signatories is not stated at the signature blank.

#### 9-14.2.2 Signature by Mark

A witness to a signature is desirable in the case of a sane person who, due to illiteracy, old age, or incapacitating illness, can sign only by using a mark. There is no legal requirement that a signature by mark be witnessed, but the use of witnesses offers great protection to the state because of the agency relationship of the PAS who frequently also acts as the Notary Public. For further guidance consult with Region Title Examiner.

| | |
|---|---|
| S/ _____<br>Richard Roe, Witness | His _____Mark_____<br>John Doe |
| S/ _____<br>Jack Smith, Witness | |

**Signature by Mark With Witnesses (Example)**
*Figure 9-14.2.2*

### 9-14.2.3 Fiduciary

A person executing an instrument in the place of, or on behalf of, the party in interest does so, by identifying their official and/or legal capacity at the signature blank on the instrument (see Figure 9-14.2.3). The language for identifying the signatory agrees with the language of the party clause.

| **Execution Only as a Fiduciary** | **Execution, Individually *and* as a Fiduciary** |
|---|---|
| S/ John Doe (written by the attorney in fact)<br><br>By: _____<br>Jane Doe, as his attorney in fact | _____<br>Jane Doe<br><br>S/ John Doe (written by the attorney in fact)<br><br>By: _____<br>Jane Doe, as his attorney in fact |
| _____<br>Richard Roe, as trustee under the will of Joe Doe, deceased | _____<br>Richard Roe<br><br>_____<br>Richard Roe, as trustee under the will of John Doe, deceased |
| _____<br>Richard Roe, as trustee for John Doe | _____<br>Richard Roe<br><br>_____<br>Richard Roe, as trustee for John Doe |
| _____<br>Richard Roe, as (Executor/Personal Representative) for the estate of John Doe, deceased | _____<br>Richard Roe<br><br>_____<br>Richard Roe, as (Executor/Personal Representative) for the estate of John Doe, deceased |
| _____<br>Jane Doe, as guardian of the estate of John Doe Jr., a minor | _____<br>Jane Doe<br><br>_____<br>Jane Doe, as guardian of the estate of John Doe, Jr., a minor |

**Execution By Fiduciaries (Example)**
*Figure 9-14.2.3*

## 9-14.3 Corporations

### 9-14.3.1 Private Corporations

Ordinarily, the corporation's president and secretary are the officers who can execute conveyances for the corporation. Their names and titles are typed beneath their signatures (see Figure 9-14.3.1). An instrument from a private corporation is accompanied by a resolution. Consult with Region Title Examiner for certain exceptions.

ABLE BAKER CHARLIE COMPANY, INC.

By: _____
John J. Doe, President

By: _____
J. Paul Smith Jr., Secretary

**Corporate Signature Block (Example)**
*Figure 9-14.3.1*

### 9-14.3.2 Local Public Bodies

Examples of signature blocks for local public bodies are given in Figure 9-14.3.2. An instrument from a public body is accompanied by a resolution.

**Counties***

1. Commissioner System: _____ County

(SEAL)

_____
John J. Doe, Chairman

_____
Mary E. Smith, Commissioner

Attest: _____
County Auditor and Clerk of the
Board of County Commissioners

_____
James J. Jones, Jr., Commissioner

2. Executive – Council System:

(SEAL) _____ County

Attest: _____
Director of Records and Elections

_____
John J. Doe, County Executive

---

**Cities***

1. Mayor – Council (Commissioner) System: City of _____

(SEAL)

_____
John J. Doe, Mayor

_____
Mary E. Smith, Councilman (Commissioner)

Attest: _____
City Clerk

_____
Paul P. Peters, Councilman (Commissioner)

2. Manager – Council System: City of _____

(SEAL)

Attest: _____
City Clerk

_____
John J. Doe, City Manager

---

**Other Political Subdivisions***

Example: A School District: Board of Directors of _____
School District No. _____

_____
John J. Doe, Chairman

Attest: _____
Clerk of the Board of Directors
of School District No. _____ of
_____ County, Washington

Mary E. Smith,

_____
James J. Jones, Jr.

**Signature Blocks for Local Public Bodies (Examples)**
*Figure 9-14.3.2*

### 9-14.4 Partnerships

A. If the PC shows title held in name of firm, which proves to be a partnership, modify corporate form (Figure 9-14.3.1) to show firm name and identity of signers as "Partner" if a general partner, or "Limited Partner" if such is the provable fact.

B. If the PC shows title held by individuals, take signatures as prescribed in Section 9-14.1.

### 9-14.5 Limited Liability Company (L.L.C.)

A. If the PC shows title held in name of an LLC, obtain a copy of the operating agreement to identify the appropriate parties to execute the instrument. This could be one or more individuals acting as either a partner, member or manager of the LLC. After reviewing the agreement, if there are questions of who should sign, consult with the Region Title Examiner.

## 9-15 Acknowledgment

### 9-15.1 General

A. To be recordable and to permit its entry as evidence in a court of law without witnesses, a person signing an instrument must acknowledge before a qualified officer that the signature on the instrument is his signature and that he signed the instrument as his free and voluntary act and deed. The signature of the Governor of the state of Washington requires an attest by the Secretary of State.

B. A witness is not a party in interest and his signature is not acknowledged.

C. A single acknowledgment may be used for all parties who acknowledge their signature on an instrument on the same date, provided that the same acknowledgment language is otherwise applicable.

### 9-15.2 Rules

A. A person acknowledging that a signature is his own, must appear before the qualified officer (see RCW 64.08.010) certifying to the fact and must be known by that officer.

B. The date of the acknowledgment must be the same as or later than the date of the instrument.

C. The acknowledgment must state that the person who signed an instrument did so as his free and voluntary act and deed.

D. The acknowledgment for a corporate grantor must state that the officers of the corporation who signed an instrument were authorized to do so.

E. The qualified officer taking an acknowledgment must derive no personal profit as a result of the execution of the instrument.

F. The acknowledgment must be taken within the territorial jurisdiction of the qualified officer; for example a Washington notary can not acknowledge a signature physically obtained in Oregon.

G. The acknowledgment must recite the capacity for which the person is acting.

H. The acknowledgment of an attorney in fact must state that his principal is alive and sane and that the instrument was executed in behalf of said principal.

I. If the qualified officer taking an acknowledgment is required to have a seal, said seal must not have expired and must be affixed to the acknowledgment. If the qualified officer taking an acknowledgment does not have a seal, a certificate of authority must by attached to the acknowledgment, except that no certificate of authority is required of officers of the U.S. Armed Forces or the U.S. Merchant Marine (see Sections 9-15.2.K.9 and 9-15.2.K.10).

J. The signature of the grantor must be in the same form as it appears within the party clause and within the acknowledgment, unless it is a signature by mark.

K. Officers qualified to take acknowledgments within the geographic area of their respective jurisdictions are as follows:

1. A United States district court commissioner.
2. A judge, clerk, or deputy clerk of the Supreme Court of the state of Washington.
3. A judge, court commissioner, clerk, or deputy clerk of a county superior court

   or a county auditor or a deputy county auditor.
4. A notary public in and for the state of Washington.
5. Any person authorized to take acknowledgments according to the laws of any state other than the state of Washington, or of any territory, district, or possession of the United States wherein the acknowledgment is taken.
6. A notary public, judge, clerk, or other proper officer of any court of a foreign country.
7. The mayor or other chief magistrate of any city, town, or municipal corporation in a foreign country.
8. In a foreign country, any minister plenipotentiary, secretary of a legation, charge d'affairs, consul, vice-consul, consular agent or commercial agent appointed by the United States Government.
9. A commissioned officer in active service with the military forces of the United States.

L. Whenever an instrument is sent out of state for signature and acknowledgment, attach the acknowledgment form appropriate for the state of Washington. The format may be modified by the official taking the acknowledgment to meet the requirements of the jurisdiction where the signature and acknowledgment is actually taken.

### 9-15.3 Format Examples

Refer to forms for notary acknowledgements on the WSDOT Intranet site as shown in Section 9-1.2.1.

## 9-16 Attachments/Corollary Documents

### 9-16.1 General

A. Items which may be attached to an instrument are referenced within the body of the instrument as "Exhibit" with a letter identification, e.g., EXHIBIT "A," EXHIBIT "B." The attachment is labeled with the same reference.

B. A document such as an affidavit may be required to answer questions of grantors' identity, status, interest, etc. This is seldom made as an attachment to the instrument, but held in the file. Most likely such affidavit would be a requirement of the title company.

### 9-16.2 Rules

A. Attachments to an instrument are verbally bound to such instrument by appropriate language within the instrument at the point the attachment is first mentioned (see Section 9-16.3).

B. Attachments to an instrument are marked EXHIBIT "A," EXHIBIT "B," etc., in the order in which reference is made to each in the instrument.

C. There is no relationship required between the identifying letter of an exhibit and other identifications within the instrument, e.g., Parcel "A". A legal description, if lengthy, may be attached as an exhibit.

D. The word "EXHIBIT" followed by its sequential exhibit identification letter ("A," "B," etc.) in addition to being at the header of the page is also inserted in the lower right-hand corner of each page of each exhibit above the Parcel Number.

E. All attachments (appendages, exhibits, etc.) to an instrument are prepared and attached prior to execution of the instrument.

### 9-16.3 Exhibits

#### 9-16.3.1 Parcel Descriptions

A. The legal description is an acceptable attachment.

B. The exhibit is verbally bound to the instrument by inserting (in the instrument at the location at which the parcel description would otherwise appear) language such as the following: "See EXHIBIT "A" attached hereto and by this reference made a part hereof."

### 9-16.3.2 Exhibit Maps

A. Exhibit maps are rarely attached to recorded documents. This is due to the standards for which documents including exhibit maps must comply in order to be recorded.

B. Check with the county auditor/recorder prior to obtaining signature of the grantor to determine if a specific map is acceptable for recording. The determination may consider map details, font, margins and legibility.

C. Each map sheet reproduction is identified above the title block by the "EXHIBIT" identification letter given to it within the instrument.

D. The exhibit maps are prepared by showing the areas to be conveyed as hachured.

E. If more than one type of interest is to be conveyed, the exhibit maps should identify the other interest in alternate hachures or symbols.

## 9-17 Acceptance and Approval

A. After completion of review and verification that the title and/or interest required by the state is adequately described and suitably clear to the state, the WSDOT authorized signature with date signifies acceptance and approval of the instrument.

B. Instruments not contingent upon acceptance and approval by the WSDOT authorized signatory may be any instrument or document which:

   1. Does not directly or indirectly commit the state to a monetary or other financial obligation.

   2. Does not encumber property under the ownership or control of the state.

# Chapter 10 Vouchers

10-1 General
10-2 Real Property Vouchers
10-3 Reserved
10-4 Invoice Vouchers
10-5 Relocation Assistance Vouchers

## 10-1 General

### *10-1.1 Real Property Vouchers*

The Real Property Voucher (RES-321) is a legal document upon which an authorized claimant presents for payment itemized charges against the state. It is unlawful for the state to issue a warrant except upon a voucher (RCW 43.88.160).

### *10-1.2 Invoice Vouchers*

The Invoice Voucher (DOT Form 134-139) is used to present for payment itemized charges against the state for goods or services, not otherwise invoiced, such as reimbursement to employee for purchase price paid from personal funds for books for state use.

### *10-1.3 Relocation Assistance Vouchers*

The Relocation Assistance Voucher (see Chapter 13 for RES form) is used to pay all claims determined to be eligible under the Relocation Assistance Program. Types of payment include replacement housing entitlements, moving cost reimbursement, and direct payments to moving companies and other vendors/contractors.

### *10-1.4 TRAINS*

In addition to the three above mentioned vouchers, another form is needed to enable Real Estate Services to pay claimants and that is a Payment Voucher, also referred to as a Trains Voucher. See TRAINS (Transportation Reporting and Accounting Information System) Users Manual for information.

### *10-1.5 Information Required by the Internal Revenue Service (IRS)*

The IRS requires that the Washington State Department of Transportation (WSDOT) obtain the property owner(s) taxpayer identification number (TIN) or social security number (SSN) for reporting purposes. The TIN or SSN provided must match what is registered with the IRS before the payment process can be completed.

#### 10-1.5.1 Procedures to Obtain W-9

A. The PAS shall include a substitute Form W-9 in the package delivered to the property owner at the time the offer to purchase is made. This will provide the property owner adequate time to read over the instructions and complete the form. A substitute Form W-9 is required for all property owners.

B. In the event of a tenant occupant, the Relocation Specialist should include a substitute Form W-9 at the time the specialist delivers the Notice of Eligibility, Entitlements, and 90-Day Assurance Letter to the displaced person for completion.

C. Acquisition and Relocation will need to coordinate efforts so we do not ask the same payee to complete a substitute Form W-9 more than once. In most cases, the Acquisition Specialist will obtain the substitute Form W-9 as part of the transmittal package. If there is a question as to whether or not a substitute Form W-9 is on file, the PAS should contact the TRAINS Helpdesk directly by email to WSDOT TRAINS Help Desk or call 360-705-7514.

D. The PAS shall not provide guidance on how to complete the substitute Form W-9. The payee should be referred to the IRS, their accountant, or legal consultant for advice on how to complete the form. If there are questions on the substitute Form W-9, the PAS should contact the TRAINS Helpdesk directly by email to WSDOT TRAINS Help Desk or call 360-705-7514.

### *10-1.6 Statewide Vendor Registration*

All vouchers require a Statewide Vendor Number to be assigned through the Office of Financial Management (OFM).

#### 10-1.6.1 Procedures to Obtain a Statewide Vendor Number (SWV)

A. The PAS shall include a Statewide Vendor Registration and Payment Options Form (SWV) in the package delivered to the property owner at the time the offer to purchase is made. This will provide the property owner adequate time to read over the instructions and complete the form. One SWV form is required per payee, i.e., if payment to be made to Husband and Wife and using Husband's SSN, property owner completes one SWV form with Husband information on first line and wife's information on second line of the form.

   In the event of a tenant occupant, the Relocation Specialist should include a substitute Form W-9 at the time the specialist delivers the Notice of Eligibility, Entitlements, and 90-Day Assurance Letter to the displaced person for completion.

B. If relocation is involved, the PAS completing the acquisition should provide the SWV number to Relocation.

C. Acquisition and Relocation will need to coordinate efforts so we do not ask the same payee to complete a SWV form more than once. In most cases, Acquisition will obtain the SWV form as part of the transmittal package and provide the SWV number to Relocation. If there is a question as to whether or not an SWV number has been assigned, the Specialist should contact the TRAINS Helpdesk directly by email to WSDOT TRAINS Help Desk or call 360-705-7514.

D. The PAS shall not complete the SWV form for the payee.

### 10-1.7 Payment Processing

Each payment voucher submitted for payment processing will need to include a SWV number assigned for the payee. If no SWV number has been assigned for the payee, submit an executed substitute Form W-9 and a completed SWV form to have payee set up in TRAINS system and obtain SWV number.

## 10-2 Real Property Vouchers

### 10-2.1 Rules

A. The Real Property Voucher (RES-321) is available in electronic form. No erasures, strike-overs, or corrections are permitted in any figure in the "Amount" column.

B. No changes or deletions are permitted in the claimant's certificate.

C. All items appearing on the voucher are documented. The just compensation for lands, improvements, damages, special benefits, etc., is supported by the Determination of Value (RES-214). All other items are supported by bills, receipts, letters of approval, etc.

D. Every transaction that is transmitted involving a payment of money by the state requires an original Real Property Voucher for each parcel number.

1. The Real Property Voucher is a summation of the entire transaction.
2. There may be additional Real Property Vouchers.
   a. Additional vouchers are prepared to order payment of any sum which has been deducted from another voucher, such as:
      (l) For payment of the property owner's obligation to another party e.g., property taxes, payment to lender, etc.
      (2) For the direct payment of a cost-to-cure item, statutory evaluation allowance, etc.
   b. A "secondary" voucher is prepared to order payment of an item which is not part of the "principal" voucher (e.g., the trustee's fee).

      ***Note:*** The seller's incidental expenses are shown in the "Other Items" section of the "principal" voucher when the recipients thereof join with the grantor(s) on that voucher, or are to receive any payment due through an escrow distribution.
3. If a grantor is unable to accept any particular voucher language, the Region RESM contacts the Acquisition and Title Section for instructions.

### 10-2.2 Procedures

#### 10-2.2.1 Preparation

The Acquisition Specialist prepares all necessary Real Property Vouchers.

#### 10-2.2.2 Signature

The PAS:

A. Obtains the signature of the appropriate grantors or claimants in the signature block per Chapter 9.

B. Obtains a completed SWP form from the payee in accordance with Chapter 10-1.

C. Assures that the date of signing is inserted in the space provided.

D. Signs and dates the voucher in the space provided.

E. Gives a copy of the voucher to the property owner or claimant. Includes the original voucher(s) with the acquisition transmittal.

#### 10-2.2.3 Approval

The Region RESM signs as the Authorized Agent on the original Real Property Voucher.

### *10-2.3 Internal Coding Sheet for Real Property Voucher*

#### 10-2.3.1 Rules

Every Real Property Voucher shall have attached an Internal Coding Sheet for Real Property Voucher (RES-336). The form is available in electronic format.

## 10-3 Reserved

## 10-4 Invoice Vouchers

### *10-4.1 Rules*

A. The Invoice Voucher (DOT Form 134-139 EF) is available in electronic form. No erasures, strikeovers, or corrections are permitted in any amount to be charged against the state.

B. The Invoice Voucher is an alternate form available for payment of fees, etc.

## 10-5 Relocation Assistance Vouchers

### *10-5.1 Rules*

A. The Relocation Assistance Voucher (see Chapter 13 for RES form) is available as an electronic form.

B. Claims for payment are documented by attaching invoices, statements, or other supporting documentation as necessary or retained in the official file in HQ.

C. Delinquent rent owed to the department shall not be withheld from the displaced persons relocation entitlements. In addition, the department cannot make deductions from relocation entitlements to satisfy a debt of a creditor.

## 10-5.2 Procedures

### 10-5.2.1 Preparation

The specialist prepares the Relocation Assistance Voucher (see Chapter 13 for RES form) in accordance with the following:

A. **Displaced Person or Claimant Block** – Insert the names of all payees and the address of one payee. If the transaction is being escrowed, the claimant block should be filled out as shown below:

ABC Escrow Company
113 Spending Money Lane SW
Beautiful, WA 98222-1212

1. A substitute form W-9 and SWV from the escrow company is required and must be obtained in accordance with the procedures set forth in this chapter.
2. The Entitlement instructions will be sent to the escrow company by the Relocation Specialist.

B. **Signature Block** (Upper Right-Hand Corner)

1. If the claimant is the displaced person, the claimant must sign in this space.
2. If the claimant is not the displaced person (as in the case of a direct payment to a commercial mover or other contractor), an original invoice must be attached and "See Attached Invoice" is inserted in the space. The displaced person must provide confirmation of "okay to pay."
3. If the claimant is not the displaced person, but the displaced person directs payment to said claimant, the displaced person must sign in this space. This includes vouchers made payable to escrow companies or a third party who is being paid on behalf of the displaced person in addition to the displaced person(s).
4. An SWV number must be included on the voucher.

C. **Title** – The official project title as shown on the approved right of way plan is inserted.

D. **Parcel Number** – The parcel number for the subject property is inserted here.

E. **Displacee Number** – The number assigned to the displaced person by IRIS is inserted.

F. **Displacee Name** – The name of the displaced person is inserted.

G. **Date Parcel Vacated** – The date the displaced person's personal property has been removed from the parcel is inserted here.

H. **Replacement Housing Payments**

1. **Price Differential: 180-Day Owner** – Amounts paid to or on behalf of residential owner-occupants displaced by a project (who have been in occupancy of the acquired dwelling for at least 180 days prior to initiation of negotiations) for a purchase or rent supplement payment. Includes reimbursement for eligible loan fees and incidental purchase expenses. The maximum amount on this line is $22,500.
2. **Mortgage Interest Differential Payment (MIDP)** – Amount paid to owner-occupant for increased interest costs associated with financing the purchase of a replacement dwelling only if they have 180-day bonafide mortgage on the displacement dwelling.
3. **Incidental Expenses** – Amount necessary to pay or reimburse an eligible displaced person for certain actual costs incurred incidental to the purchase of an eligible replacement dwelling.
4. **Last Resort Housing: Owner** – Any amount paid under the category of last resort housing to or on behalf of a displaced residential owner-occupant in excess of $22,500.
5. **Rent Supplement: 90-Day Tenant and Certain Other** – Amount paid to 90-day tenants and owner-occupants (who have been in occupancy between 90 and 180 days prior to the initiation of negotiation) for a rent supplement. The maximum amount on this line is $5,250.
6. **Last Resort Housing: Tenant** – Any amount paid under the category of last resort housing to or on behalf of a displaced residential tenant-occupant in excess of $5,250. This includes all payments toward down payments in excess of $5,250 and amounts paid to tenants who fail to meet the length of occupancy requirements.
7. **Down Payment Assistance: 90-Day Tenants and Certain Other** – Amount paid to 90-day tenant and owner-occupants (who have been in occupancy between 90 and 180 days prior to initiation of negotiations) for a down payment allowance toward the purchase of a replacement dwelling.
8. **Comments/Other** – This portion of the voucher can be used to provide direction, such as a last resort housing case where payments will be made on an installment basis. If an advance payment has been or will be made, a short statement is also required.

I. **Moving Expense Amounts**

1. **Schedule/Dislocation Allowance: Residential** – Amount paid to a person displaced from a dwelling by a project. The payment is based upon the number of rooms in the dwelling and whether they are furnished or not.
2. **Actual Expenses/Commercial: Residential** – Amount paid to or on behalf of persons displaced from a dwelling by a project. Basically, any moving related payment which is not a schedule type would fall into this category.

3. **Fixed Payment: Nonresidential** – A particular type of payment available only to business, farms, or nonprofit organizations which meet certain criteria. This payment is in lieu of any and all other types of payments for which the displaced person would otherwise be entitled. It is based on the business income rather than actual moving costs.
4. **Actual Costs: Nonresidential** – Amounts paid to or on behalf of business, farm, or nonprofit organization for all actual, reasonable, and necessary moving expenses.
5. **Reestablishment Costs: Nonresidential** – Amounts paid to or on behalf of a small business, farm, or nonprofit organization for eligible expenses incurred in reestablishing the displaced business at a replacement site.
6. **Personal Property Only: Nonresidential and Nonbusiness Moves** – Amounts paid to displaced persons who have personal property to be moved from the right of way due to an acquisition or project purpose where there is NOT a need for a full relocation of a residence, nonresidential operation (vacant land), business, farm operation, or nonprofit organization (NPO).
7. **Comments/Other** – This portion of the voucher can be used to provide additional information such as explaining an advance payment or deductions. This section can also be used to discuss any other moving payment which would not fit into one of the previously listed categories.

J. **Deductions** – This space is used when a deduction is necessary.

K. **Coding** – Relocation Assistance Vouchers are coded based on the type of relocation payment. The specialist must select the appropriate coding from the object codes and definition chart, i.e., residential replacement housing payments or moving expenses, non-residential reestablishment or moving expenses, and personal property only moving expenses.

Appendix 12-3

### 10-5.2.2 Signature

The Property Acquisition Specialist:

A. Obtains the signature of the appropriate claimant(s). In an escrow situation, only the signature of the displaced person(s) is necessary.

B. Assures that the date of signing is inserted in the space provided.

C. Signs and dates the voucher in the space provided.

D. Obtains the signature of the appropriate supervisor or manager within the region or work unit.

#### 10-5.2.3 Approval

A. The PAS identifies and inserts the proper account coding and the breakdown of federal participating and nonparticipating costs. Account coding information is contained in the *Chart of Accounts* M 13-01, Chapter 10.

B. The relocation voucher is sent to Headquarters.

C. The remainder of the approval is conducted as a part of the Headquarters processing.

### *10-5.3 Relocation Assistance TRAINS Vendor Setup*

All relocation payments need to be made through the TRAINS system and follow the department's accounting rules for proper documentation, signatures, and authorization. These rules will be found in Chapter 4-6 of the *Accounting Manual* M 13-02 and in Section 4 of the *TRAINS User Manual*.

A. To setup the vendor for a relocation payment:

1. Region sends completed substitute Form W-9 and SWV form to their region accounting office to obtain a vendor number according to region procedures.
2. These payments must use the vendor number of the entity being paid.
3. If more than one entity is being paid via the payment, the vendor number used must match the name of the first entity shown on the payee line of the relocation voucher.

11-1 Responsibility
11-2 Preparation for Management
11-3 Initiating Management
11-4 Inspection and Maintenance of State-Owned Property
11-5 Improvements of Personal Property Within Right of Way
11-6 Disposal of Timber
11-7 Disposal of Surplus Property
11-8 Leasing
11-9 Right of Way Encroachments
11-10 Assessments Against State-Owned Lands
11-11 Facilities

## 11-1 Responsibility

Property Management Specialists are responsible for:

A. Providing effective management and security for all Washington State Department of Transportation (WSDOT) properties.

B. Ensuring "Fair Market Value" or "Economic Rent" is received from all sales and leases.

C. Disposing of property not required by the department.

D. To the greatest extent practicable, eliminating hazards and public nuisances originating on or caused by department-owned land or improvements.

## 11-2 Preparation for Management

### *11-2.1 Property Management System and Inventory*

A. Property Management data records will be entered and maintained in IRIS and will include:

1. Inventory of all real property and real property interests inside and outside of the operating right of way. A description of all such property types is shown in Appendix 11-1, Property Types.

   ***Note:*** *Due to the new direction we have received from Accounting and Financial Services (AFS), we will need to inventory every "interest held". That means you may have one acquisition that will have multiple Inventory Control Numbers (ICN). If, from one property owner we acquire a fee interest, an easement, and a temporary construction easement, 3 ICN's will be required. Additionally, it will be necessary to split the acquisition costs amongst the multiple inventories. Title and Acquisition staff here in HQ are currently working on changes to IRIS to more comprehensively detail costs and there will be revisions to the Real Property Voucher to show each interest acquired, square footage/acres acquired for each interest held, the appropriate parcel number, funding resource, etc.*

*Of primary importance to AFS (in addition to IRIS acquisition totals matching TRAINS acquisition totals) is the completion of the tabs identified as "Improvements/Fixtures/Land Inventory & Disposition" and the tab identified as "Acquisition Data". All of the entries into the Improvements tab should equal the amount shown in the Acquisition Data tab. As mentioned above, those costs should be split if the acquisition includes varied interests; fee, easement, etc.*

2. Inventory of WSDOT owned/managed Airports and Rail lines.

   ***Note:*** *over the past few years, we have begun the process of entering all of the Aviation real property information into IRIS and we see a continuing effort toward collaboration from the Rail Division. Please note that the Property Management/Property Inventory tab should contain all of the general information regarding the property purchased.*

3. Records of rental properties, including all leases (e.g., airspace, ground, residential).

   ***Note:*** *it is oftentimes necessary to create Displacee Leases prior to acquisition of the parcel. In order to assure accurate data in IRIS, the ICN created to address the lease must contain the information relevant to the Parcel, not to the Premises being leased. Additionally, staff must be sure to revisit the IRIS database to update all of the appropriate acquisition cost information once all of the parameters of the parcel acquisition are obtained, e.g., size, specific location, nickname, etc.*

4. Property disposal status/activities.

   ***Note:*** *Numerous situations can occur within the property disposal arena: 1) If selling the entire parcel, the information on the Property Detail screen will remain unchanged; 2) If selling a portion of the "larger parcel", a new ICN must be created and the new ICN Property Detail screen must reflect all of the appropriate parameters of that sale property, as well as a split out of the original purchase dollars to go with the new inventory. There must also be appropriate changes to the original purchase dollars to go with the new inventory. There must also be appropriate changes to the size and value of the property that remains within WSDOT ownership. The property type for the disposal area will be indicative of the "type" of property being sold. The Property and Acquisition Specialist must also update the relevant information found in the Disposal tab, e.g., disposal activation date, disposal to RA date, RA decision/date, comments; 3) In some cases, WSDOT will convey an easement having a long term impact on the property it continues to own. In those cases, WSDOT is conveying a less than fee interest "encumbering" its remaining ownership. A new ICN must be created to record the encumbrance against the parent "fee" owned inventory. The new ICN only exists to record the encumbrance, not to record any ownership. For the new ICN, the property type will be "Encumbrance", there will be no values or line items in the Improvements/Fixtures/Land Inventory & Disposition section. The Acquisition Data section should only reference the parcel # of the parent ICN, but no dollar values. Interest*

*Held will reflect the interest being conveyed, e.g., easement, permit, etc. Present Use should be indicative of the use being allowed. Since this encumbrance will require a plan revision, the square footage or acreage covered by the encumbrance should be noted. For the parent ICN, all fields remain unchanged. For both ICN's, it is critical to make entries in the Comments section that at a minimum references the two ICN's to each other and why the second ICN was created. There will also be some changes to the IRIS screen and the Property Details when conveying property to other public entities for continued "highway purpose". As those situations occur, Region and HQ staff will work together to appropriately reflect the details in the IRIS database.*

5. Real estate contract sales.
6. Reporting capability for various informational needs.
7. All improvements acquired, whether inside or outside of the operating right of way.

   ***Note:*** *as mentioned above, this Improvements tab should detail all of the costs of the acquisition. These costs will include the land, any and all building with value, interest payments, title costs, relocation costs, etc.*

8. Payment information related to leases and contract sales.

   ***Note:*** *The information added by Property Management staff statewide is keyed off the data provided on the Acquisition side of the house. A great deal of the cost information that AFS is looking for can be found under the Acquisition tabs and uploaded into the appropriate field under the Property Management tab. We continue to refine the Property Types utilized in order to minimize the number of times staff must return to IRIS to update data, e.g., are we properly noting when unconstructed right of way becomes operational right of way; are we properly noting the funding resource; are there participating federal dollars; if a building is located on the purchased land, are we using it for a project office; is the interest held temporary in nature? If so, then a Temporary Right Expiration Date should be entered and Region staff should track when the right expires and update the IRIS information. If the data is not readily found on the Acquisition side of IRIS, then the Real Property Voucher is a tool that details the information necessary to complete the Improvements tab and the Acquisition Data tab.*

   *Region staff will be responsible for the input of the Property Management information into IRIS as well as the update of that information when appropriate, e.g., upon completion of construction – altering the inventory to reflect what was utilized within the right of way and what may now be considered excess and was not utilized for the constructed facility, noting the completion of the temporary construction period for a TCE, etc.*

   *COMMENTS, COMMENTS, COMMENTS – Every time you enter IRIS and alter data, a comment should be made in the Comments portion of the IRIS screen. This comments section is extremely important as we have never had a functioning IRIS diary, and the standard diary that may be added to the hard copy file is not globally available.*

### 11-2.2 Property Management Diary

A. The Property Management Specialist places a Diary of Right of Way Activities in the property management file for each parcel under the control of property management, whether improved or unimproved and whether operating or nonoperating right of way. The diary will reference an acquisition parcel number, ICN, lease number, and federal aid number (FA) and all other pertinent information as required.

B. Since the diary is an official record, it is either typed or written legibly in ink. Each diary starts with the specialist's name clearly printed or written. Once complete the specialist signs (full name) and dates the last page.

C. The diary contains a summary of every activity relative to the parcel. This includes inspections, telephone conversations, letters, approvals, sales, leases, maintenance, emails, etc.

D. Copies of updated diaries are submitted to HQ when significant activities, such as initiation of a lease, modification to a lease, disposal activities, etc., occur on the parcel.

E. Upon completion of all property management activities on a parcel, the completed diary is sent to HQ and region comments are entered into IRIS.

### 11-2.3 Project Inspection

As soon as practicable after receiving the approved right of way plans, the region inspects all real property and improvements to be acquired on the project, and identifies the following individual parcel information, and enters the information into IRIS and region inventory file:

A. Number and type of improvements (e.g., house, detached garage, shed, out buildings).

B. Property dimensions (sq. ft. or acres).

C. Physical location (property address), condition, septic, well, utilities, and environmental concerns such as underground storage tanks (UST).

D. Date-stamped photographs of the property and all improvements that should portray a complete visual inventory of the parcel (to use as a visual reference in case of break-ins, illegal dumping, and salvage).

E. Presence of hazardous materials.

### 11-2.4 Salvage Appraisal Report

A. Staff in Region Real Estate Services are responsible for salvage sales and completion of the appropriate Salvage Appraisal Report (DOT Form 263-003 EF) for those improvements, including timber and crops, which may be sold as salvage.

   1. For property management purposes, merchantable timber is considered to be an improvement (see RCW 47.12.140).

   2. Fixtures, such as built-in cabinets, light fixtures, built-in appliances, etc., retained or salvaged by the grantor, also require preparation of a salvage report.

3. When the salvage appraisal report has been completed by the Property and Acquisition Specialist, it is reviewed and approved by the Region Real Estate Services Manager and a copy forwarded to HQ.
4. The region retains two copies: one for the regional property management file and one for use by the Acquisition Specialist.
5. The region enters the salvage appraisal information into IRIS.

### 11-2.5 Grantor Retained Salvage

Under certain circumstances and prior to completion of acquisition, the department may allow the grantor to retain the salvage rights to any improvement on the property acquired from him/her through a Fixtures and Improvements Agreement (RES-335). In deciding whether or not to allow the grantor to salvage the improvements, the region must consider the occupancy rights of any tenant on the property and whether or not there is enough time to remove the improvements before construction. The complications that can arise from salvaging tenant occupied improvements can be significant and should be carefully considered. ***Note:*** Items necessary to salvage are the Salvage Appraisal Report and Fixtures and Improvement Agreement.

***Note:*** Once acquisition is complete, items cannot be salvaged by the "grantor." An auction must be performed.

If the grantor purchases the salvage rights to an improvement, the region:

A. Ensures that the salvage values are accurate and approved by the Region Real Estate Services Manager. This is documented in the Salvage Appraisal Report (DOT Form 263-003 EF).

B. Ensures that the Fixtures and Improvements Agreement has been completed.

C. Verifies that the value of any salvage purchased by the grantor has been deducted from the Real Property Voucher and the performance deposit/bond has been processed appropriately.

D. Ensures that the Fixtures and Improvements Agreement provides a clear understanding and agreement between the department and the grantor as to when the improvement is to be removed and that the performance deposit/bond will be forfeited if the improvement is not satisfactorily removed by that date.

E. Ensures that there is sufficient time after the tenant vacates to complete the salvage removal. ***Note:*** It may be in WSDOT's best interest to work with the previous property owner regarding salvageable items and removal of those items. The removal period must be reasonable. Salvage items must be for DS&S compliance, e.g., refrigerator, range, water heater. ***Example:*** Tenant occupied property and the owner is salvaging example items above prior to tenant vacating the property. The project saves money by not purchasing, renting, and/or installing these items before the property is vacated and demolished; if in question contact HQ.

F. Monitors to ensure that salvage and cleanup will be accomplished on time. If it appears the grantor will be unable to complete the salvage by the previously agreed upon date, the region may consider allowing a time extension. HQ should be notified of any extensions.

G. Upon successful completion of the salvage activity, submits a PISR to HQ requesting a release of the performance deposit/bond and termination of any existing lease. HQ updates IRIS as appropriate.

H. If salvage and cleanup are not satisfactory, submits a PISR (DOT Form 263-007 EF) to HQ recommending forfeiture of the performance deposit/bond. The transmittal includes photos of remaining improvements/debris, copy of the updated diary, and a statement about the future disposition of the improvements.

### *11-2.6 Acquisition Transactions – Regional Processing (Chapter 6)*

All acquisition transactions are routed to Region Property Management for review, comment, approval, creation of property record in IRIS, and further action if necessary.

#### 11-2.6.1 Acquisition of Improvements and Real Property

The Region Property Management Specialist will complete the following:

A. Create an ICN and attach the parcel number (IRIS). Complete all fields in IRIS. (***Note:*** For information about creating an inventory control number, please see Appendix 11-3, Property Inventory Instructions)

B. Reviews the Real Property Voucher (DOT Form 262-039 EF) and the acquisition appraisal/determination of value (DV) or market analysis. Input the values assigned to each improvement into IRIS including all fees, damages, settlements, taxes, etc.

C. Reviews the Fixtures and Improvements Agreement (RES-335) completed by the Acquisition Specialist. The original and one copy are transmitted to HQ with the acquisition transmittal package and one copy is retained in the regional Property Management file.

D. Identifies and inventories all trade fixtures acquired on commercial properties (see Fixtures and Improvements Agreement).

E. Creates an ICN in IRIS, completes the Property Management Section of the Right of Way Parcel Transmittal (DOT Form 262-048 EF), initials in the "region action section," and passes the package to the next review station.

F. Assures that all property types acquired are inventoried separately and carry the appropriate property type designation shown in Appendix 11-1, Property Types. Ensures that the parcel number is attached to the ICN (parcel numbers may have multiple associated ICNs). Be sure to follow the requirements of Chapter 6.

### 11-2.6.2 Lands Traded in Acquisition

***Note:*** Pursuant to RCW 47.12.063(i), WSDOT has the ability to sell surplus land to "any other owner of real property required for transportation purposes." If someone from whom WSDOT is acquiring property requests to purchase property WSDOT already owns, the following procedures must be followed.

The region: Assures that the ICN has been created and the appropriate information entered into IRIS, receives the Exchange Agreement (RES-322) from the Acquisition Specialist and then initiates the Electronic Review process to declare WSDOT-owned property as surplus. See Section 11-7 for disposal instructions.

***Note:*** The Region Acquisition Specialist prepares the Exchange Agreement which must include: parcel description, parcel number, ICN, federal aid number, value information, and names and legal status of the grantor. See Chapter 6 for information regarding Exchange Agreements.

## 11-3 Initiating Management

WSDOT has legal control (ownership) of properties purchased on the payment available date. If the property is occupied, physical possession does not occur until the occupant has vacated the property.

### *11-3.1 Taking Control of the Property*

A. If the property is unoccupied whether it is improved or unimproved, taking control occurs on the payment available date. Payment available date is determined by the HQ Title Section. See IRIS for payment available date.

   The region:

   1. Inspects for presence of hazardous materials.
   2. Photographs the property and all improvements to portray a complete visual inventory of the parcel (to use as a visual reference in case of break ins, illegal dumping, and salvage).
   3. Notes presence of abandoned personal property/debris.
   4. Enters "Inspection Date" and comments into IRIS in the Maintenance/ Demolition screen.
   5. Completes a PISR (DOT Form 263-007 EF) and places it in the ICN file. A copy of the PISR is sent to HQ.

B. If property is occupied whether it is improved or unimproved, taking control occurs on the payment available date (payment available date is determined by the HQ Title Section. See IRIS for payment available date.

   The region:

   1. Inspects for presence of hazardous materials.
   2. Photographs the property and all improvements to portray a complete visual inventory of the parcel. This is to ensure that WSDOT is getting what the appraisal depicted; appraisal will indicate what is real property or personal property (e.g., range, refrigerator, woodstoves, window

coverings, shelving, doors, windows, garage door openers, hot tubs, light fixtures, dishwashers).

3. Ensures that a Displacee Lease has been completed (RES-415/RES-416) and is included in the acquisition file. If occupant refuses to enter into a Displacee Lease and intends to continue to occupy the parcel, the region staff consults with HQ staff. ***Note:*** Refer to Leasing section.
   a. Every displacee should be approached with a Displacee Lease with a term no less than 90 days from the date Relocation staff present the "Notice of Relocation Eligibility, Entitlements and 90-day Assurance."
   b. Multiple attempts to get a lease in place may be necessary. If the displacee refuses to sign lease, make notes in diary, IRIS, and contact HQ staff to assure that we properly document the landlord-tenant relationship.
4. Performs other related Property Management responsibilities as listed above.
5. Completes a PISR (DOT Form 263-007 EF), sends to HQ, and files a copy in the ICN file.

### *11-3.2 Taking Physical Possession After Vacation by Occupant*

In those cases described in Section 11-3.1.B (occupied), WSDOT takes physical possession after the occupant vacates the premises.

***Note:*** The property is considered vacated when all personal property is removed and keys are surrendered to a Specialist. (Property Management staff become responsible for the property once the displacee is relocated.)

The region:

A. Inspects for hazardous materials.

B. Photographs and verifies that the property is in the condition in which WSDOT purchased it (normal wear and tear is acceptable). If there are discrepancies, the region prepares a detailed report describing the missing items, their value, and any opinion as to the reasons for the discrepancies and submits the report to HQ for further action.

C. Verifies that all personal property has been removed from the premises. If personal property remains on the premises, the PM Specialist verifies with the Relocation Specialist that the Abandonment Information section of the Vacate Inspection of Displacement Dwelling (RES-517) is completed and signed by the personal property owner. If the form was not obtained or signed, the PM Specialist coordinates with the Relocation Specialist for possible reduction of the Relocation Moving Entitlements.

D. Verifies the status of any salvage removal (see Sections 11-2.4 and 11-2.5).

E. Completes a PISR (DOT Form 263-007 EF), sends to HQ and files a copy in the ICN file.

# 11-4 Inspection and Maintenance of State-Owned Property

## *11-4.1 General*

The region conducts yearly inspections of department-owned properties to guard against encroachments, theft, pest control, dumping of debris, and hazardous materials. Region ensures that local building, fire, housing, and occupancy codes are satisfied. Use photos to establish a time-line of property conditions. The inspections also provide an opportunity to evaluate the condition of the property and, in the case of improved properties, develop a management strategy for future use or development. The results of all property inspections are documented in the Specialist's diary and in IRIS. If there is a lease in place, a copy of a PISR should be sent to HQ as well.

If inspections reveal any situation that cannot be resolved by the region, a detailed report, including photographs, is sent to HQ for action. HQ will consult with the appropriate Assistant Attorney General, if necessary, and advise the region accordingly. If the parcel is designated as a capital facilities site, HQ advises the appropriate regional and HQ capital facilities contact.

## *11-4.2 Maintenance and Repair of Improved Properties*

The region inspects each improvement to develop a strategy for continued use or demolition. A number of factors are considered during this process including the suitability of the improvement for continued occupancy, length of time until removal for construction, cost of repairs vs. income, and relocation assistance rights (see Chapter 12). Repairs to improvements may be accomplished by private contractor, rent credit (see Section 11-4.2.1), or state Maintenance employees. The region is responsible for ensuring that any building permits and/or local government inspections required for the repair are obtained. Emergency repairs may be authorized by the region based upon individual circumstances. If WSDOT has acquired the property prior to the environmental decision, region staff must check with their environmental group before allowing the demolition to ensure there are no concerns with proceeding with the demolition. Due to increasing instances of vandalism and transient activity, current common practice is the demolition of any structures remaining once any occupants have been relocated.

### 11-4.2.1 Rent Credit for Maintenance or Repairs by Tenants

A. **Rules** – Rent credits are not allowed in cases when the current rent is delinquent or the tenant has a history of delinquencies. In addition, at least one month's rent must have been paid and the tenant must continue to pay the contract rent until the work is completed. The tenant must be qualified to do the work or hire a licensed and bonded contractor. Rent credits are applied only after the region determines the work has been performed satisfactorily.

B. **Rent Credits**

1. The Region Real Estate Services Manager may approve a rent credit (up to their delegated purchasing authority) without HQ approval. Payment for tenant's labor is not generally allowed for rent credit repairs unless approved prior to work commencing. If tenant's labor is to be considered, at least two cost estimates from private contractors are required for repairs over $2,500. Cases requiring special consideration may be submitted to HQ for review, which includes the following information.
   a. Complete description of the items needing repair, including photos.
   b. Itemization of hours needed to complete the repair, rate per hour, and materials needed to do the job, including any equipment rental if needed.
   c. A cost/benefit analysis of the proposed repair. This should consider factors such as estimated length of time until sale or demolition, total repair expenditures to date, and estimated cost of repairs in the future if known.
2. After the repairs have been completed in accordance with the agreement between the tenant and WSDOT, the region submits a PISR to HQ including diary entries, paid receipts (for materials used in the repair), a copy of the building permit and related inspection report (if required), and photos showing the before and after repair/maintenance job.
3. HQ enters the total amount of the rent credit in IRIS. The region updates the comment screen.

### 11-4.2.2 Maintenance or Repairs by Private Contractor

A. **Rules** – When the region determines the maintenance or repairs must be done by a private contractor, all the requirements set forth in the *Purchasing Manual* M 72-80 must be followed.

B. **Maintenance or Repair**

1. The region may approve maintenance or repair without HQ approval (up to statutory purchasing authority of the approving individual).
2. After the job is completed, the region transmits the PISR, diary, copies of any bids required, a copy of required building permit, and inspection report along with photos of the before and after maintenance or repair.
3. HQ updates IRIS to reflect the total cost of the job.

## 11-5 Improvements of Personal Property Within Right of Way

A. Improvements may be removed by the salvage method (sale to grantor through the acquisition process or by post-acquisition auction) by contract demolition, or by inclusion in the project construction contract. Improvements may also be removed for use by WSDOT. The factors of economic feasibility and project schedule are the primary concerns.

B. If personal property has been acquired, the Department of Enterprise Services (DES) facilitates the sale of said personal property. Region staff should contact DES directly to facilitate the sale of any personal property remaining on the parcel upon payment available date.

### 11-5.1 Mobile Homes as Personal Property

A. DES has given WSDOT the necessary delegation to acquire mobile homes that are appraised as personal property.

B. The mobile home, as personal property, may be acquired upon completion of a region assessment of the acquisition issues and the completion of a Mobile Home Work Sheet (RES-220) with signature by the Region RESM.

### 11-5.2 Disposal of Mobile Homes as Personal Property

A. WSDOT does not have the authority to sell mobile homes acquired as personal property. Facilitating the disposal of a mobile home acquired as personal property will be completed by region staff, and must initially be done by DES as follows:

1. Fill out an online Surplus Property Disposal Request.
2. $200 payment to DES for mobile home sale.
3. DES will assign a tracking number.
4. WSDOT will provide DES with digital photos of the mobile home.
5. DES will list the mobile home on the “Public Surplus” Internet site for approximately 14 days with pictures and information provided by WSDOT.
6. WSDOT will provide DES with a contact name and number for those prospective purchasers wishing to view the mobile home.
7. Average sale timeframe is one week and once the sale closes, money is collected and buyer arrives at the site with a copy of the paid invoice.
8. Disconnecting electrical and plumbing is a WSDOT responsibility. All other responsibilities fall to purchaser.
9. Once the sale and associated documentation is complete and monies received, title to the mobile home will need to be signed and provided to the new owner. DES has indicated that they do not want to receive title to the mobile home, but expect WSDOT to complete that portion of the transaction. Therefore, the Region Real Estate Services Manager should sign the title and provide it to the purchaser.

B. Any monies received by DES for the sale of the mobile home will be returned to WSDOT Accounting Services. If the mobile remains unsold, DES will return the responsibility to WSDOT. At that time, WSDOT will decide to destroy or otherwise dispose of the mobile.

### 11-5.3 Sale of Improvements/Personal Property by Auction

The department may, in accordance with the provisions of RCW 47.12.140, elect to sell any "structures, timber, or other thing of value attached to the land and sell as personal property." In making its determination to sell these items, the department considers whether or not there is enough time to conduct the auction and remove the items prior to construction. Any tenant occupancy rights, as well as the economic advantage of conducting an auction, are also considered. ***Note:*** Special rules for the auction of timber are given at Section 11-6.

#### 11-5.3.1 Preparation for Sale

In preparation for the auction, the region:

A. Establishes a salvage value for the items and prepares a Salvage Appraisal Report for each item to be sold. If a structure (e.g., home, shed, garage) is being auctioned, property on which the structure is located must be leased at fair market value if the purchaser requests an extension to the removal date established by WSDOT. Purchaser must contact city or county and meet all requirements to move the structure. ***Note:*** The region must verify with city/county that the structure can be moved from the property; there may be restrictions on height, distances, time, building codes, site development plan, etc.

B. Prepares appropriate documentation to proceed with an auction of salvageable improvements (see Appendix 11-2, Notice of Auction for Improvements). The policy for establishing minimum bids for auction of salvage is:

| Salvage Value | Minimum Bid |
|---|---|
| $500 and over | 50% of Salvage Value |
| $0 to $499 | $10 |

***Note:*** The use of the above applies only to auction sales not sales of Grantor-retained salvage. There would be no minimum bid "discount."

C. Prepares a Notice of Auction which includes the information pertaining to the sale. A sample of such notice may be found in Appendix 11-2.

D. Per RCW 47.12.283, publishes the Notice of Auction twice, with an interval of one week between publications (do not have to wait a week after second publication to hold auction, e.g., notice 1/1/09 wait one week, notice 1/8/09, auction on 1/9/09), in the "Legal Notices" section of a legal newspaper published in the county in which the sale is to take place. Once the second notice is published, the auction may be held immediately. ***Note:*** If there is no legal newspaper published in the county, then the notice is published in the legal newspaper nearest to the sale site and located in this state.

E. Mails copies of the Notice of Auction to all persons who have requested notification of the sale.

F. Attaches a copy of both sides of the auction notice to the item to be sold.

G. Prepares a Personal Property Sale and Removal Agreement (DOT Form 263-023 EF) for each item on the auction notice.

H. Assures that all WSDOT personnel involved in the sale are aware of the restriction to WSDOT employees (see Chapter 1 Sales to Employees).

I. Contacts the local Washington State Department of Revenue office to determine appropriate sales tax rates for the area of the properties to be sold. ***Note:*** The tax rates can vary within the same area.

### 11-5.3.2 Sale Procedure

On the date of the sale, the region:

A. Inspects the property. If a change in the condition of the property has occurred which affects the value, the region determines whether or not to lower the minimum bid (e.g., broken windows, vandalism, water damage). Once determined, the region updates the Salvage Appraisal Report and IRIS.

B. Establishes property walk through date prior to the beginning of the sale.

C. At auction start time, gathers the qualified prospective bidders together in a convenient location and makes the following announcements before beginning the sale:

   1. A statement that none of the persons conducting the sale may become a purchaser, have an interest in any purchase, nor accept any commission, gratuity, or award in connection with the sale.

   2. Names any WSDOT employees who have been authorized by the Secretary of Transportation to bid as private citizens.

   3. A review of the terms and conditions of the sale and, if a performance deposit/bond is required, the extent of the cleanup required to qualify for refund of the deposit.

   4. The order in which items will be sold and whether any items have been removed from the sale. Clarify whether shrubs and appurtenances (landscaping, lighting, fountains, etc.) are included in the sale.

D. The auctioneer begins the sale by asking for the minimum bid on the first parcel and continues until all bidding is completed on that parcel.

E. Upon completion of the bidding for a parcel, the auctioneer (or assistant) will record the name, address, telephone number, and bid amount of the successful bidder. The required deposit including performance deposit/bond is collected and a receipt is issued.

F. Obtains from the successful bidder:

   1. All information necessary to complete the Personal Property Sale and Removal Agreement (DOT Form 263-023 EF).

   2. Payment in compliance with the terms of the Notice of Auction.

G. Completes a Receipt (DOT Form 133-105) for all payments received and ensures that all monies are deposited.

H. Delivers a copy of the Personal Property Sale and Removal Agreement (RES 435) and the original of the receipt to the purchaser.

I. If no acceptable bid is received, the auctioneer may announce (at the end of the auction) that the unsold items may be reauctioned. If it is determined that the unsold items will not be reauctioned, it is lawful for WSDOT to sell the item(s) at private sale for the best price which it deems obtainable but not less than the highest amount bid at the auction.

#### 11-5.3.3 Post Sale Procedure

After the sale is completed, the region:

A. Records the sale (including a breakdown of the sale amount, sales tax, the performance deposit/bond, and tax identification number (TIN) and/or social security number (SSN) on the Receipt and on the Personal Property Sale and Removal Agreement and updates IRIS. If the sale is a capital facilities property, both the Receipt and the Personal Property Sale and Removal Agreement should reflect the Facilities Control Record number (FCR).

B. Distributes copies of the Receipt and Personal Property Sale and Removal Agreement as follows:

   1. Receipts are distributed as noted on each duplicate colored copy; additional copies are sent to HQ and retained in the region file.

   2. A copy of the Personal Property Sale and Removal Agreement is sent to HQ, given to the purchaser, and retained in region file.

C. Monitors the improvement removal operation to make sure the removal and subsequent cleanup will be accomplished in a timely manner. If it appears the purchaser will be unable to complete the removal by the agreed upon date, the region may consider allowing an extension of time to complete the removal.

### *11-5.4 Removal of Improvements by Demolition Contract*

When the region decides to hire a contractor to demolish the improvement, the following procedures are followed in addition to those provided in the *Purchasing Manual* M 72-80:

A. Contact the Contract Ad and Awards Office for a list of "On Call Contractors" for the area in which the demolition may occur. ***Note:*** You do not have to advertise if you contact all of the on call contractors and send them a bid packet. If on call contractors are not available in your area, the region must advertise for the demolition.

B. Prepare Scope of Work and necessary documents required by Contract Ad and Awards Office. ***Note:*** If unfamiliar with the demolition process and what is to be included, contact the project engineer or capital facilities to aid in preparation of the Scope of Work.

C. If the demolition has not been satisfactorily performed, the region continues to work with the demolition contractor to resolve all of the remaining issues. It may be necessary to retain the bond held under the contract terms if resolution is not achievable.

D. If a region uses Washington State Department of Corrections (DOC) the region must use the Preapproved State Interagency Agreement and fill in the appropriate boxes at the top of the form. The Interagency Agreement requires the use of a task order for each parcel demolition.

E. The region updates IRIS.

F. Make sure property is posted "WSDOT No Trespassing."

### 11-5.5 Removal of Improvements by Project Contractor

The project engineer determines if the improvement(s) is to be removed by the project contractor. The region posts (no trespassing), secures the improvement(s), and inspects regularly until the contractor takes possession of the property and/or improvement(s). (Property Management does not recommend this procedure unless the contractor takes possession of the improvement within 60 days of vacancy. Removal of improvements by contractor is done when the demolition by PM cannot be done prior to certification.)

The region updates IRIS accordingly.

### 11-5.6 Removal of Improvements for WSDOT Use

Improvements and personal property (see Section 11-5) may be removed for department use. The region must document the parcel file and update IRIS accordingly. If the improvements and/or personal property are removed from a federal participating project and are not used for another federal project, the region must determine the value of the items and credit the Federal Highway Administration (FHWA) accordingly.

### 11-5.7 Mobile Homes

As detailed in Chapter 4, the department may acquire mobile homes as real or personal property. The acquisition is accomplished as outlined in Chapter 6. Appropriate documentation regarding the acquisition must be provided to Region Property Management. The Region Property Management Specialist handles the ongoing management and disposition of the mobile home as detailed in this chapter in those subsections titled: "Acquisition of Improvements," and "Disposal of Improvements/Personal Property Within Right of Way."

## 11-6 Disposal of Timber

### 11-6.1 General

A. WSDOT has the ability to sever and sell timber and other personalty pursuant to RCW 47.12.140. Maintenance is responsible for issuing permits allowed pursuant to subsection (2) of this statute which states: The department may issue permits to residents of this state to remove specified quantities of standing or downed trees and shrubs, rock, sand, gravel, or soils that have no market value in place and that the department desires to be removed from state-owned lands that are under the jurisdiction of the department. An applicant for a permit must certify that the materials so removed are to be used by the applicant.

B. RCW 47.12.140 authorizes the department to dispose of timber. When WSDOT has fee title to, and jurisdiction over, any lands upon which timber is located, the timber may be disposed by any of the methods listed below. If timber is located on a federal aid project and is not used for the same or another federal aid project, appropriate credit must be given to FHWA.

1. Sale at public auction.
2. Sale to an abutting landowner, for cash at full appraisal value.
3. Direct sale of timber or logs to any interested party having an appraised value of $1,000 or less.
4. Removal for WSDOT use.
5. Issuance of permit
6. Sale of salvage rights to former owner from whom the state purchased the timber.
7. Removal by a contractor as part of a construction project.

C. Actual approval of disposal, method of disposal, and value of the timber will be determined by HQ RES.

### *11-6.2 Timber Disposal Processing*

A. **Region Processing** – In order to dispose of timber a surplus property review is completed in the same manner as for real property. All concerned offices should be included in the review process (always include Landscape Architect, Operations Engineer, Real Estate Services, and Regional Administrator).

Upon receipt of an approved surplus property review, the region processes the disposal as follows:

1. A disposal package is prepared and submitted to HQ RES for further action. The disposal package includes the following information:
   a. The original copy of the Surplus Property Report (DOT Form 261-005 EF).
   b. Any pertinent correspondence including diary.
   c. Any photographs, map, and any other relevant information from the region file.

B. **HQ Processing** – Upon receipt of the disposal package from the region, HQ RES will process the disposal package as follows:

1. Verify ownership, type of interest held, and any restrictions affecting the property from which the timber is to be removed.
2. Request a timber cruise/value estimate from Region Maintenance and Operations (M&O) or Department of Revenue (DOR). If region M&O or DOR is unable to perform timber cruise, HQ may contract for a fee cruise value estimate as necessary.

3. Make field inspection of timber sale area. Request that regional personnel flag timber sale boundaries if necessary.
4. Recommend method of disposal considering the requirements of RCW 47.12.140 and establish any special conditions, restrictions, and/or terms for disposal.
5. Determine whether a Forest Practice Application (FPA) is required (timber harvesting inside of an active right of way usually does not require a FPA). If an FPA is required, contact Department of Natural Resources (DNR) office to obtain forms and gather necessary information to complete FPA form. Submit completed FPA to DNR for approval along with application fee. If necessary meet with DNR personnel to discuss sale proposal. In cases that require an FPA, it is always necessary for WSDOT to obtain the FPA in advance of the timber sale. After the timber sale is completed, the FPA is transferred to the purchaser.
6. Complete any required IRIS entries.
7. A review of the terms and conditions of the sale. If a performance deposit/bond is required, the extent of the cleanup required to qualify for refund of the deposit/bond is explained.

### *11-6.3 Methods of Timber Disposal*

HQ conducts the sale of timber in the following three instances: (1) sale at public auction, (2) sale to an abutting landowner, and (3) direct sales of timber.

The region disposes of timber in the following four instances: (1) sale of salvage rights to former owner from whom the state purchased the timber, (2) removal by a contractor as part of a construction project, (3) removal for WSDOT use, and (4) issuance of a permit.

#### 11-6.3.1 Timber Disposal, Sale at Public Auction

Auction sales may be conducted by either oral bidding or sealed bids. HQ will determine the type of auction sale and will schedule and conduct said sale.

A. **Presale Processing for Both Oral and Sealed Bid Auctions**

1. HQ will prepare a “Notice of Auction” which includes:
   a. Date, place, and exact time of auction.
   b. Location and site description sufficient to enable field location of the timber. Brief description of the timber and any conditions of sale.
   c. Detailed terms of the sale, including any deposit amounts.
   d. Inventory Control Number of the timber.
   e. Minimum bid.
   f. Address and telephone number for securing further information or obtaining answers to questions about the sale.

g. Statement that "The state reserves the right to postpone or cancel all sales or to reject any and all bids" and the timber is export restricted and may not be exported until processed.

h. For sealed bid auctions, the address, and telephone number for obtaining bid forms and detailed instructions.

2. HQ will give notice of the sale by publication of the "Notice of Auction" on the same day of the week for two consecutive weeks, with the first publication at least two weeks prior to the date of auction, in a legal newspaper of general circulation in the area where the timber is located.

3. HQ will prepare the following documents (1) Timber Sale and Removal Agreement, (2) Bid format for purchase of timber, and (3) Purchaser Certification for Export Restricted Timber.

4. Set minimum bid price of timber.

5. HQ will post the timber "For Sale" with a copy of the "Notice of Auction" at least two weeks prior to the scheduled sale and inspect sale area.

6. HQ will mail copies of the Notice of Auction, Bid for Purchase of Timber, Timber Sale and Removal Agreement, and Purchaser Certification for Export Restricted Timber to all parties on the appropriate mailing list, abutting owners, and any interested parties as disclosed in the property file.

7. For sealed bid auctions, HQ will also complete the following tasks:

   a. Record all requests for sale packets. The record shall include name, address, date of request, specific timber of inquiry, and date packet is mailed to requester.

   b. Answer any questions or inquiries not explained in packet.

   c. Receive the sealed bids. The bids shall remain sealed until the bid opening. The bids will be date-time stamped and logged onto a bidder sheet. The bidder sheet will show the name, address, date, and time of bid receipt and minimum bid before the bid opening with the official bid amount to be noted upon opening.

B. **Sale Procedure for Oral Bid Auctions**

1. At the advertised time and place, the auctioneer begins the auction sale by making the following announcements:

   a. Names of any WSDOT employees authorized by the Secretary of Transportation to bid as a private citizen.

   b. A description of the timber being sold and a statement that it is export restricted.

   c. Asks for and answers any questions before beginning the bidding.

2. The auctioneer begins the sale by asking for the minimum bid.

3. Upon completion of the bidding, the auctioneer (or assistant) will record the name, address, telephone number, and bid amount of the successful bidder. Any required deposit/bond is collected and a receipt is issued.

C. **Sale Procedure for Sealed Bid Auctions**

1. The auctioneer begins the auction at the time and place advertised as follows:
   a. Announces the names of the persons who will be opening the bids and recording the bids.
   b. States that the bids are organized in order received.
   c. Reads the "Notice of Auction" and announces any changes, withdrawals, or variations from normal procedures.
   d. States that WSDOT may waive minor informalities or irregularities in bids received or may reject any or all bids in whole or in part.
2. The bid opener opens the first sealed bid, verifies that the minimum bid requirement has been met, that the bid form is complete and signed, and that the deposit/bond payment meets minimum requirements. This opened bid is handed to the auctioneer.
3. The auctioneer reads the bidders name and bid amount aloud. The bid is handed to the bid recorder who records the necessary information on the bidder sheets.
4. The auctioneer asks for and responds to any final questions before declaring the auction closed.
5. The auctioneer issues receipts to any successful bidders and deposits/bonds all purchase payments into the proper accounts.

D. **Post Sale Processing**

1. If the sale can be completed, HQ:
   a. The purchaser's signature is obtained on the following documents: Timber Sale and Removal Agreement, Purchaser Certification for Export Restricted Timber (PCERT) (DOT Form 410-100 EF), and Notice of Transfer of Approved Forest Practice Application (NTAFPA) if required. Distributes originals and copies of documents as required.
   b. Receive Certificate of Insurance naming the state of Washington as additional insured in the amounts set forth in the Timber Sale and Removal Agreement.
   c. Collects bid amount and collects any performance/damage deposit/bond and provides written receipts of all collections.
   d. Meets with the purchaser to review the contract and examine the sale area.
   e. Gives written approval to the successful bidder to begin logging operations.

2. If the sale cannot be completed, HQ:
   a. Will notify the bidder that the sale is canceled and that payments are forfeited, if appropriate.
   b. Will notify Accounting of the forfeiture and sale cancellation.
   c. May offer the timber to the next highest bidder provided said bid is acceptable.
3. If two or more bidders submit identical high bids, HQ will:
   a. Notify each bidder of the tie and return any deposits/bonds by certified mail within 24 hours of the bid opening.
   b. Request a new bid with appropriate deposit from each tied bidder to be submitted within 30 days after the original bid opening.
   c. Award the bid to the new high bidder.
4. If any timber/logs are not sold at auction, HQ may:
   a. Hold the timber for sale at a later auction.
   b. Negotiate a sale for the timber for no less than the last advertised minimum bid price.

E. **Contract Administration** – During the purchaser's operations, inspects the site to ensure compliance with all the provisions of the Timber Sale and Removal Agreement.

### 11-6.3.2 Timber Disposal – Sale to an Abutting Owner

A. **Sale to Abutting Owner(s)** – The department may sell timber or logs to an abutting landowner for cash at full appraised value but only after each other abutting owner(s) (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting owner requests in writing the right to purchase the timber within 15 days after receiving notice of the proposal sale, the timber must be sold at public auction.

1. A written offer to sell the timber is mailed to all abutting owners as shown in the records of the county assessor. Waivers are obtained from any abutting owners who are not interested in purchasing the timber.
2. If a prospective purchaser makes a counter offer, the negotiating specialist must review the offer with the supervisor before proceeding as follows:
   a. If the counter offer is acceptable, notifies the purchaser in writing of said acceptance and proceeds to complete the sale.
   b. If the counter offer is not acceptable, notifies the prospective purchaser that the counter offer is not acceptable and requests an increased offer. If another counter offer at an increased amount is received that is acceptable, notifies the purchaser in writing of said acceptance and proceeds to complete the sale.
   c. If the counter offer is not acceptable and the prospective purchaser does not wish to make another offer, the timber is designed for another approved method of disposal.

3. The purchaser's signature is obtained on the following documents: Timber Sale and Removal Agreement, Purchaser Certification for Export Restricted Timber (PCERT) (DOT Form 410-100 EF), and Notice of Transfer of Approved Forest Practice Application (NTAFPA), if required. Distributes originals and copies of documents as required.
4. Certificate of Insurance naming the state of Washington as additional insured in the amounts set forth in the Timber Sale and Removal Agreement.
5. Collects bid amount and collects any performance/damage deposit/bond.
6. Meets with the purchaser to review the contract and examine the sale area and gives final approval to the successful bidder to begin logging operations.
7. During the purchaser's operations, inspects the site to ensure compliance with all the provisions of the Timber Sale and Removal Agreement.

### 11-6.3.3 Timber Disposal, by Direct Sale

A. The department may sell timber or logs having an appraised value of $1,000 or less directly to interested parties for cash at the full appraised value without notice or advertising. If the timber is attached to state-owned land, the department shall issue a permit to the purchaser of the timber to allow for the removal of the materials from state land. The permit fee is $2.50.

1. All direct sales will be conducted by HQ and negotiated by letter and/or telephone.
2. The purchaser's signature is obtained on the following documents: Timber Sale and Removal Agreement, Purchaser Certification for Export Restricted Timber (PCERT) (DOT Form 410-100 EF), and Notice of Transfer of Approved Forest Practice Application (NTAFPA) if required. Distributes originals and copies of documents as required.
3. Certificate of Insurance naming the state of Washington as additional insured in the amounts set forth in the Timber Sale and Removal Agreement.
4. Collects bid amount and collects any performance/damage deposit/bond.
5. Meets with the purchaser to review the contract and examine the sale area.
6. Gives written approval to the successful bidder to begin logging operations.
7. During the purchaser's operations, inspects the site to ensure compliance with all the provisions of the Timber Sale and Removal Agreement.

### 11-6.3.4 Removal of Improvements for WSDOT Use

Timber may be removed for department use. The use must be documented in the parcel file and the computer database updated accordingly. If the timber is removed from a federal participating project and not used for another federal project, the value of the items must be determined and FHWA credited accordingly.

### 11-6.3.5 Timber Disposal by Permit

A. **General** – RCW 47.12.140 authorizes the department to issue a permit for the removal of timber having no market value in place and that the department desires to have removed. A permit to remove timber should only be issued when the total merchantable timber volume is no more than 5,000 board feet or one truck load of logs. Permits should not be issued for the removal of timber from properties located off of operating right of way (removal of timber off operating right of way will require an approved Forest Practice Application).

1. Such cases are referred to the Region Operations Office for issuance of a general permit.
2. If the timber volume is over 5,000 board feet or one truck load of logs, the matter should be referred to HQ Real Estate Services. A determination will be made by HQ as to the appropriate disposal option. If HQ determines that the timber has no sale value, a general permit may be issued by the Region Operations Office for its removal. The operator who removes the timber will be required to sign a Purchaser Certification for Export Restricted Timber (DOT Form 410-100 EF), and comply with applicable regulations. HQ will determine whether a Forest Practice Application is necessary.

### 11-6.3.6 Timber Disposal, Sale of Salvage Rights to Grantor

A. The region prepares a Salvage Appraisal Report (DOT Form 263-003 EF) for the timber to be disposed of as salvage. HQ should be included in the determination of a salvage value for timber. When the salvage appraisal report has been completed, the original is forwarded to HQ.

B. The region transmits the following to HQ.

1. Executed Fixtures and Improvements Agreement (F&I). Processed in accordance with 11-2.5.2. Includes the following statement on the F&I:

   The timber salvaged is prohibited from export until processed. Purchaser must comply with all regulations regarding export restricted timber as detailed in WAC 240-15. Purchaser shall also be responsible for compliance with the regulations of the Department of Natural Resources and the payment of the Department of Revenue taxes on timber harvested. Purchaser shall obtain a Forest Practice Application before harvesting any timber and is responsible for payment of any fees for the permit.

2. Executed Purchaser Certification for Export Restricted Timber (DOT Form 410-100 EF). All copies transmitted to HQ.

C. HQ verifies that the acquisition agent has placed the F&I and Purchaser Certification for Export Restricted Timber in the transmittal package:

D. HQ confirms that the Acquisition Specialist has made appropriate adjustments on the Real Property Voucher including but not limited to:

1. Deduction of the timber salvage value (DOT Form 261-023 EF).
2. Deduction of a performance bond, as necessary, to enforce removal of timber and compliance with any requirements noted in the Fixture and Improvement Agreement.
3. Appropriate "hold-back" voucher for return of the performance bond upon satisfactory removal of the timber, payment of taxes, and compliance with regulations. (See Chapter 10 Performance Bond.)

E. Proceeds according to Section 11-2.5.

#### 11-6.3.7 Timber Disposal, Removal by Project Contractor

When the region has determined that the timber is to be removed by the project contractor, the region must make sure that the project engineer is advised and the timber is included in the project contract prior to the ad date. The region updates IRIS accordingly.

## 11-7 Disposal of Surplus Property

### *11-7.1 General*

A. Whenever WSDOT determines that any real property owned and under the jurisdiction of WSDOT is no longer required for transportation purposes and that it is in the public interest to do so, WSDOT may dispose of the property. WSDOT may sell the property or exchange the property for other lands needed for fair market value. In accordance with RCW 47.12.063, any such sale or exchange may be made to any of the following entities or parties:

1. Any other state agency.
2. City or county in which the property is situated.
3. Any other municipal corporation.
4. Former owner of the property from whom the state acquired title. (Per Section 215 (1) of the 2010 Transportation Budget, properties deemed surplus within 10 years of acquisition through condemnation must be offered to the owner from whom WSDOT acquired title. For additional information see the above referenced section.)
5. Tenant of the department of a residentially improved property who has resided thereon for not less than six months and who is not delinquent in paying rent to the state.
6. Any abutting private owner, but only after all other abutting owners (if any) as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within 30 days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283.

7. Any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.12.283.
8. Any other owner of real property required for transportation purposes.
9. In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 is eligible to receive assistance through the Washington Housing Trust Fund created in Chapter 43.185 RCW.

B. Property may be conveyed to another governmental agency without monetary consideration if the property will be used for highway purposes (as defined by 18th Amendment/case law/AGO). Conveyances of any such property shall be subject to reversionary clauses or deed restrictions as to use.

C. Upon receipt of an application, the region will inspect the property to determine if the property could be declared surplus to WSDOT needs. If such a determination is made, the region shall complete a disposal review. ***Note:*** For further information regarding inspections, see Section 11-4.)

D. Final approval for disposal, method of disposal, and value of the surplus property will be determined by HQ.

### *11-7.2 Disposal Processing*

A. **ICN Assignment** – When declaring a portion of a "larger parcel" as surplus, the original ICN shall remain with the portion of the inventory that is being retained. A new ICN shall be established for the disposal area whether that disposal is fee or easement. Upon creation of the new inventory, the Property Management Specialist must be sure to update the original inventory to reflect the smaller size, and make sure that comments are made in the file and IRIS, reflecting the activity that has occurred, and tying the old ICN with the new ICN. ***Note:*** Region Property Management Specialist must confirm that WSDOT can separate the surplus area from the larger parcel without the county requiring a subdivision.

B. **Region Processing** – The region determines that a property is no longer needed by WSDOT by completing an electronic disposal review.

**Disposal Review Process** – The Region Property Management Agent (PMA) will be responsible for the following:

- Application for each proposal.
- Title verification.
- Legal description should be drafted once the plan revision is completed.
- Upon approval of package, region should request the necessary plan revision. Once the revision has been completed, an updated plan sheet will added to the package.
- Completing the review, including any necessary HQ reviewers.
- Provide value determination using tools available (appraisal or value memo).

- Notifying Region Environmental Services office when NEPA is triggered because the proposed disposal area is located on an interstate highway, or if the parcel was purchased with federal funding and the parcel will be sold for less than fair market value. If any of these conditions are met, a federal nexus is created, and NEPA, NHPA, and ESA documentation must be completed during the Real Estate Services Electronic Review System (RES-ER) process.

The Region PMA will select reviewers based upon the facility types detailed below. For additional information on creating a review package in RES-ER, please see the document titled "PMA updated CheatSheet.pdf" located in the Outlook Public Folders directory for Property Management Forms (path: All Public Folders/HQ/Environmental & Engineering/Real Estate Services/ FORMS/PROPERTY MANAGEMENT).

**Non-Limited Access Facilities and Specific Sundry Sites (Pit Sites, etc.)** – Reviewed and approved by Region staff and HQ Access review staff with no HQ Approving Authority required.

Every proposal must be reviewed (unless noted) by the following disciplines. Region staff should be available for each of the disciplines shown below:

- Environmental
- Public Transportation/Planning
- Roadside Services/Landscape
- Local Programs (as determined by region)
- Area Operations Manager for specific county (primarily NWR)
- Developer Services (as determined by region)
- Region Access
- HQ reviewers for all Managed Access reviews:
  - NCR, SCR, ER, OR, and All Utility Breaks Statewide: Rickman, Trent
  - NWR and SWR: Patterson, LeRoy
- Utilities
- Maintenance
- Hydraulics (Hillsides, Slopes, Water issues)
- Traffic (in NWR ARA Maintenance/Traffic, Maintenance)
- Region right of way plans (see note regarding HQ plans and access)

May also require review by the Special Circumstance Reviewers shown below if region does not have staffing that specializes in the needed area:

- Foundations (bridge structures, retaining walls, sloping issues, tiebacks and similar situations): Cuthbertson, Jim
- Bridge: Al-Salman, Mohamad
- Homeland Security (Infrastructure and Bridges): Himmel, John
- Ferries: Deardorf, Ray
- Bicycle and Pedestrian:
  - Claybrooke, Charlotte (Schools)
  - Macek, Ian (Non-Schools)

- Radio Ops: McDowell, Tim
- Aviation: Wolf, Paul
- Project specific engineers (or field experts), as determined by region.
- Facilities: Medina, Yvonne (in the case of a Facilities site – HQ Facilities must be included in the review) Facility sites include the following property types: Pit Sites, Stockpile Sites, Rest Areas, Waste Sites, and Capital Improvements.

Upon completion of the package review:

Upon completion of all of the necessary reviews and approvals by region staff, plan revision and determination of the value of the property, HQ will notify the required local jurisdictions, prepare and complete the conveyance document(s), and complete any other tasks necessary to finalize the transaction.

**Limited Access Facility (Non-Interstate – Established or Planned)** – Standard Region Reviewers as well as the HQ Access reviewer assigned to that region as shown:

Access:

- NCR, SCR, ER, OR, and All Utility Breaks Statewide: Rickman, Trent
- NWR and SWR: Patterson, LeRoy

Package will automatically go to the following queues. Please **do not** choose the following as reviewers:

- HQ Approving Authority: De Ste Croix, Barb
- HQ Plans Review: Berry, Brad

Region staff will facilitate the entire review (including any HQ reviewers), and complete the other elements of the transaction as detailed above.

**Interstate Facilities** – Standard reviewers, Special Circumstance Reviewers, HQ Access, HQ R/W Plans and FHWA.

As part of all FHWA reviews, appropriate NEPA documentation is required. This environmental documentation requires the help of Region Environmental staff to be sure that all areas of the federal nexus are covered. NEPA is triggered if the property being considered for disposal is located on an interstate highway, or if the parcel was purchased with Federal funding and the parcel will be sold for less than fair market value. If any of these conditions are met, a Federal nexus is created, and NEPA, NHPA, and ESA documentation must be completed prior to lease or disposal (23 CFR 771.11(d)(6)). When a local jurisdiction is acquiring the property for a project, they often have this completed when applying to purchase the property.

The remaining process will be the same as stated above, however, upon completion of the review. The HQ PMA will verify with HQ Access that FHWA approval is necessary for an access break. If an FHWA access break approval is necessary, the disposal package will be delivered concurrently with the HQ Access break request.

FHWA requires a minimum of 60 days to complete their review. Upon approval, finalization of the process will be facilitated by Region/HQ Property Management staff.

The disposal review package should include the following items:

***Note:*** If a 'J account' is created to cover the expense of the review and disposal process, please include the appropriate J account information in the PMA Comments field found on the General Information Tab.

1. Regional Administrator's (or designee) electronic approval attesting that the following statements are true:
   a. The lands will not be needed for transportation purposes in the foreseeable future.
   b. The right of way being retained is adequate under present day standards for the transportation facility.
   c. The release will not adversely affect the facility or the traffic using it.
   d. The lands to be disposed of or relinquished are not suitable for retention to restore, preserve, or improve the scenic beauty adjacent to the highway.
   e. The lands to be disposed of or relinquished are not suitable for inclusion into our wetlands inventory.
   f. The lands to be disposed of or relinquished are not needed for a park and ride lot, flyer stop, or similar facility to accommodate high-occupancy vehicles.
   g. No hazardous material or highway waste is present on the site and any necessary cleanup has been completed.
   h. Specific information regarding rights to be reserved.
   i. If interstate, NEPA documentation is signed and/or approved by Region Environmental Services.
2. If the property was acquired with federal funding, the federal aid number is supplied.
3. All regional review and comment documents as entered in the Electronic Review. Any "no" responses and questions received during the region review need to be addressed before the package is forwarded to HQ.
4. The NEPA document for a typical disposal is the Environmental Checklist for Surplus Property Disposals (Form 220-015 EF). The Environmental specialist will determine if this form is sufficient, or if the ECS form is required. Check to ensure all fields are completed and the form is signed.
5. Region shall complete a title check verifying ownership, type of interest held, and any restrictions affecting the property.
6. Prepared legal description for the disposal area.
7. Completed Property Inspection Status Report.

8. Photographs of the property together with a map showing the direction of the photos.
9. An 11x17 copy of the right of way plan sheet with the property to be disposed of outlined in red or hachured. Once the property is approved for disposal, region will request the necessary plan revision. Upon completion of the revision, an updated plan sheet will be attached to the disposal package and forwarded to HQ Disposal.
10. Tax parcel number of this parcel, if assigned.
11. Names, addresses, telephone numbers, and tax parcel numbers for each abutting property owner including contract purchasers.
12. All correspondence from interested abutting owners and/or other potential purchasers and any responses.
13. Notation of any special features or conditions on the property, such as encroachments, utility availability, access, boundaries, improvements, similarities, and differences to adjacent properties, etc., that could affect sale or value.
14. Written directions to the property to enable locating and inspection of the property.
15. Notation of the right of way project number, acquisition parcel number, and federal aid number (if applicable) on which the property was originally acquired.
16. Diary of Right of Way Activities.
17. If the property to be disposed of is or was a pit site, the following documentation needs to be submitted:
    a. Reclamation plan, if appropriate. The reclamation plan shall be obtained from the Region Materials Lab or appropriate office.
    b. Hazardous Materials Assessment and Remediation Report, if appropriate.
18. Information from county assessment records showing assessed value and property size for the disposal area as well abutting properties.
19. Recommendation of property value based on available information. If the value of the property appears to be $25,000 or less, as determined by the Region RES Manager or designee, the region specialist, in either Property Management or Appraisal, should prepare a value memorandum citing the rationale and evidence obtained for the conclusion of value. Information to be included in the memorandum would be:
    - Size of parcel
    - Current use of parcel
    - Anticipated highest and best use
    - Support

The conclusion may indicate a range of value rather than a single dollar amount. Value Memos prepared in the region need to be approved by the Region RES Manager (or designee). Value memos prepared at Headquarters need to be approved by the PMPM (or designee).

If the value of the property appears to be over $25,000, an appraisal will be required.

a. Each disposal file submitted to Appraisal will contain an assignment sheet (RES-445) completed by the HQ Property Management Disposal Section and submitted to the HQ Appraisal Program Manager. The form will provide the appraisal section with the following information:
   - Type of Assignment (Appraisal or Value Memo)
   - Scope of Work (Abutter Value and/or Auction Value)
   - Dollar Amount HQ PM has available to pay for the appraisal work
   - Due Date

   Upon receipt of this form, the HQ Appraisal Program Manager will assign the appraisal.
   - If the HQ Appraisal Program Manager does not believe adequate funding has been provided in order to complete the assignment the issue will be discussed with the HQ PM Disposal Section. HQ PM Disposal will decide whether there are additional funds available for this assignment or if the appraisal will need to be placed on hold.
   - If there is not current staff available (within HQ or Region) to complete the task by the due date provided, the HQ Appraisal Program Manager will submit a request for an appraisal contract.
   - If at any time during the appraisal process it becomes apparent that the assignment will not be completed within the funding or timeframe provided, the individual assigned the appraisal will need to put in writing why additional funds or time is necessary. It will be up to the HQ PM Disposal Section to decide how they would like to proceed (i.e. provide additional funding, extend the due date or place a hold on the appraisal).

b. A formal "Determination of Value" review will no longer be required. Appraisal Reviews will only be required on a case-by-case basis and typically only on those appraisals that are complex, and/or multi-premise. Once the appraisal/value memo has been completed the file will be returned to the individual that completed the assignment sheet.
   - For appraisals that are non-complex (see the Appraisal Section of the *Right of Way Manual* M 26-01 for definition of non-complex), HQ PM Disposal will move forward with their standard process (i.e., no Determination of Value).
   - For appraisals that are of a complex nature, a copy of the appraisal will be given to the PMPM or the Region Real Estate Services Manager for approval of value(s). When necessary the PMPM will work with the appropriate region for an Administrative Desk Review (RES-446) to be completed.

20. The Region Property Management Specialist is responsible for inputting the following disposal information in IRIS:
    - Disposal activation date
    - Disposal to Regional Administrator date
    - RA decision
    - Date of Regional Administrator decision
    - Disposal to Headquarters Approving Authority date
    - Headquarters Approving Authority decision
    - Date of Headquarters Approving Authority decision
    - Disposal to HQ date
    - Comments (diary entries)
21. At the beginning of each month, HQ will email status updates for disposal files currently being processed at HQ. The Region Property Management Specialist is responsible for relaying that information to the requester. This should be done at least once a month and continues until the property is sold or placed in auction. The Property Management Specialist closes the region file once the property is sold and notes it on the Property Management's right of way plan sheets. The Property Management Specialist will note the type of deed, the date, and color the property appropriately on the plan sheet(s).

C. **HQ Processing** – Upon completion of the Electronic Review disposal package and the revised plan sheet, region will attach the revised plan sheet and send the package from the "Region PMA Final Queue" by selecting "Finish" and "Complete," The Electronic Review System will automatically send an email to HQ letting them know that a new package has been approved.

Upon receipt of this email, HQ will complete the following tasks:

1. Review title check and legal description provided by region.
2. Review submitted value information; approve, concur, or order full appraisal as needed.
3. Verify that the required plan revisions have been completed and a copy of the revised plan has been provided
4. Prepare and mail 60-day notice to city/town and county as required by RCW 47.12.055. Whenever possible, this notification will be sent by email.
5. Request FHWA approval for the disposal when the property was acquired for an interstate facility or purchased with federal funds and being sold for less than fair market value. If the plan revision requires that the limited access hachures be relocated, the FHWA disposal package and Access Break Package must be submitted together. Per the Programmatic Agreement, federally funded non-interstate disposals to local jurisdictions for continued highway purpose, does not require FHWA approval.

***Note:*** FHWA requested review and approval is in letter format and the response in letter format as well. Be sure to keep these items in the Disposal file.

A. The review package to FHWA must be in the following order:
   - Cover Letter-Include IC Number and use template located on the G Drive under Property Management (FHWA Formal Request Letter)
   - R/W Plan Sheet & Vicinity Map
   - RES-ER Property Details Report
   - RES-ER Reviewer Details & any paperwork addressing issues raised in the review
   - RES-ER Environmental Checklist
   - Aerial & Property Photos
   - Legal Description
   - NEPA Document
   - Additional/Misc. information pertaining to the request
   - Access Break Package (Prepared by LeRoy Patterson and Trent Rickman)

B. Log request into the FHWA Sharepoint Site (create link) under the Property Management tab.

6. Develop a negotiation range based on appraisal/DV or value information.
7. Recommend method(s) of disposal considering the requirements of RCW 47.12.063 and any region recommendations.
8. Establish special conditions, restrictions, and/or terms for disposal.
9. Obtain necessary approvals for disposal by completion of a Surplus Property Report and prepare package for appropriate method of disposal.
10. Assure that all IRIS entries, including completion of the comment screen, are correct and current.
11. See Section 11-7.4.2 for further instruction on document preparation.

D. Any disposal file that has been on hold (no activity) for two years or more will be terminated, closed and the HQ file will be sent to the vault. The ICN will remain open, the disposal will be terminated in IRIS and comments will be entered by HQ explaining the termination of the disposal. A new region disposal package will be required for any files closed pursuant to this procedure.

## *11-7.3 Methods of Disposal*

### 11-7.3.1 Trade or Exchange

A. Project related lands to be traded or exchanged must be reviewed and approved by the Region Real Estate Services Manager (RES Manager). The RES Manager will have an appraisal or value memo prepared and approved to determine the value of the parcel to be traded or exchanged.

B. Before any WSDOT-owned lands may be traded or exchanged, a surplus property review must be completed and approved.

C. HQ will notify the region once they have reviewed and approved the parcel and established value for the trade or exchange. Upon this approval, the region may proceed with negotiation of the trade or exchange. Upon successful completion of negotiations, the Region Acquisition Specialist will have prepared, with the assistance of the Property Management Specialist, the Exchange Agreement. The Acquisition Specialist will deliver for execution the agreement and the acquisition documents to the property owner that is a party to the agreement.

D. Trades or exchanges of surplus WSDOT property for other property needed for transportation purposes in a project will be negotiated by the region in accordance with Chapter 6. The procedure for such a trade or exchange will follow the above noted steps.

   Upon completion of the Electronic Review, execution of the agreement and acquisition document, HQ will complete the trade by issuing the proper conveyance document.

E. WSDOT also has the ability to enter into exchange agreements for environmental mitigation pursuant to RCW 47.12.370. This authority stipulates that the department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations as defined in RCW 64.04.130, to convey properties under the jurisdiction of the department that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.

   These transactions also require department review and approval, execution of an agreement and ultimately a quitclaim deed which must provide for automatic reversion if the site not used as a mitigation site or not maintained in a manner that complies with applicable permits, laws, and regulations.

### 11-7.3.2 Direct Sale

A. All direct sales will be negotiated by HQ Property Management staff. The property will be sold in accordance with the approved Surplus Property Report. Under special circumstances, the file may be directed to the region for negotiation of the sale. If a parcel is assigned to the region for negotiation, the region should consult with Headquarters for proper procedures for payment processing and file documentation.

B. **Cash Sale Terms**

   1. If the agreed upon sale price is $1,000 or less, the purchaser must pay the full amount at the time of sale.

   2. If the agreed upon sale price is below $2,500, a deposit of 10 percent of the sale price on unimproved properties and 15 percent of the sale price on improved properties must be paid at the time of sale with the remaining balance to be paid within 60 days. If the purchaser decides not to complete the transaction, their deposit will be forfeited.

C. **Contract Sale Terms**

1. Contract terms may be offered on a purchase balance of $2,500 or more upon approval of the purchaser's credit. Once the credit report has been reviewed, a diary entry will be made stating the credit score and whether or not the entity has been approved for a Real Estate Contract. A copy of the credit report will not be kept in the disposal file.
2. The normal deposit of 10 percent of the sale price for unimproved property and 15 percent for improved properties may serve as the down payment. A larger down payment is required if payments other than monthly are requested, as detailed below:

| | | |
|---|---|---|
| Quarterly | 15% Unimproved | 20% Improved |
| Semi-Annual | 20% Unimproved | 25% Improved |
| Annual | 25% Unimproved | 30% Improved |

   If the purchaser decides not to complete the transaction, their deposit will be forfeited.
3. The contract term is not less than one year or greater than 20 years. Normally, the term will be one year for every $1,000 owed.
4. The interest rate will be established by HQ.
5. Contracts may be assigned only upon written approval by HQ. A fee of 1 percent of the principal balance or $500.00, whichever is greater, at the time of the assignment will be charged. If an assignment of the contract occurs without HQ approval, this fee will be charged and collected at the time of payoff and before a Quitclaim Fulfillment Deed is processed.
6. WSDOT will not refinance or renegotiate terms of executed contracts.
7. Only one Partial Fulfillment Deed will be processed per contract.

D. **Sale to Abutting Owner(s)**

1. A written offer to sell the property is mailed to all abutting owners as shown in the records of the county assessor. If the deadline provided in the offer letter expires with no response, HQ will proceed with other disposal options. If more than one abutting owner indicates an interest in purchasing the property, the property will be sold at public auction.
2. If a written agreement signed by all abutting owners is provided, the property may be sold to multiple abutting owners under one instrument.
3. If a prospective purchaser makes a counter offer that is within the approved negotiation range shown on the Surplus Property Report, the Negotiating Specialist must review the offer with the Property Management Program Manager before proceeding as follows:
   a. If the counter offer is acceptable, HQ notifies the purchaser in writing of said acceptance and proceeds to complete the sale.

b. If the counter offer is not acceptable, HQ notifies the purchaser that the counter offer is not acceptable and requests an increased offer. If another counter offer at an increased amount is received that is acceptable, HQ notifies the purchaser in writing of said acceptance and proceeds to complete the sale.

c. If the counter offer is not acceptable and the purchaser does not wish to make another offer, the parcel is assigned for the next approved method of disposal.

### 11-7.3.3 Auction Sales of Real Property

Auction sales may be conducted by either oral bidding or sealed bids in accordance with RCW 47.12.283. HQ will determine the type of auction sale and will schedule and conduct said sale.

A. **Presale Processing for Both Oral and Sealed Bid Auctions**

1. HQ will prepare a Real Property Notice of Auction (see Appendix 11-3) which includes:

   a. Date, place, and exact time of auction.

   b. Abbreviated legal description of the property.

   c. Location and site description sufficient to enable field location of the tract.

   d. Detailed terms of the sale including deposit amounts.

   e. Inventory Control Number of the parcel.

   f. Minimum bid.

   g. Type of instrument that will convey title.

   h. Address and telephone number for securing further information or obtaining answers to questions about the sale.

   i. Statement that "The state reserves the right to postpone or cancel all sales or to reject any and all bids."

   j. The address for the auction Web page, which includes the general sales terms and bid form.

2. HQ will give notice of the sale by publication of the "Notice of Auction" on the same day of the week for two consecutive weeks, with the first publication at least two weeks prior to the date of auction, in a legal newspaper of general circulation in the area where the property is located. A notice shall be placed in both the legal notice section and the real estate classified section of the newspaper.

3. HQ will post the property with a "For Sale" sign at least three weeks prior to the scheduled sale.

4. HQ will mail a postcard "Notice of Auction" to all parties on the auction mailing list. The postcard will include the date and time of the auction, the counties in which the properties are located, the auction Web address and

contact information for the auction agent. An e mail "Notice of Auction" will be sent to all parties on the electronic mailing list containing the same information as the postcard notice. Abutting property owners and others who previously expressed an interest in the property will be mailed a copy of the complete Notice of Auction brochure.

5. For sealed bid auctions, HQ will also complete the following tasks:
   a. Answer any questions or inquiries.
   b. Receive the sealed bids. The bids shall remain sealed until the bid opening. The bids will be date-time stamped and logged onto a bidder sheet. The bidder sheet will show the name, address and date of bid receipt and minimum bid before the bid opening with the official bid amount to be noted upon opening.

B. **Sale Procedure for Oral Bid Auctions**

1. At the advertised time and place, the auctioneer begins the auction sale by making the following announcements:
   a. Announces the number of WSDOT employees who requested permission to bid and the number that have received approval, subject to the information provided to the HQ staff performing the auction.
   b. The type of interest being sold.
   c. Conveyance of the property will be by Quitclaim Deed with no title insurance or survey.
   d. Any guarantees, restrictions, reservations, or special contingencies that apply to any of the parcels being sold.
   e. Asks for and answers any questions before beginning the bidding.
2. The auctioneer begins the sale by asking for the minimum bid on the first parcel and continues until all bidding is completed on that parcel.
3. Upon completion of the bidding for a parcel, the auctioneer (or assistant) will record the name, address, telephone number, and bid amount of the successful bidder. The required deposit is collected and a receipt is issued.
4. Bidding will continue until all parcels have been offered.

C. **Sale Procedure for Sealed Bid Auctions**

1. The auctioneer begins the auction at the time and place advertised as follows:
   a. Announces the names of the persons who will be opening the bids and recording the bids.
   b. States that the bids are organized in order of ICN and in order received.
   c. Announces sale procedures and any changes, withdrawals, or variations from those procedures.

d. States that WSDOT may waive minor informalities or irregularities in bids received or may reject any or all bids in whole or in part.

e. Announces the number of WSDOT employees who requested permission to bid and the number that have received approval, subject to the information provided to the HQ staff performing the auction.

2. The bid opener opens all sealed bids for a parcel, verifies that the minimum bid requirement has been met, that the bid form is complete and signed, and that the deposit payment meets minimum requirements. The opened bids are handed to the auctioneer.

3. The auctioneer announces each bidder's name and bid amount aloud. The bids are handed to the bid recorder who records the necessary information on the bidder sheets.

4. After all bids for a parcel have been opened and announced, the auctioneer then announces the apparent successful bidder (highest bid received). This process continues until all parcels have been sold. The auctioneer asks for and responds to any final questions before declaring the auction closed.

5. The auctioneer issues receipts to all successful bidders and deposits all purchase payments into the proper accounts.

D. **Post Sale Processing**

1. If the sale cannot be completed by the successful bidder, HQ:

a. Will notify the bidder that the sale is canceled and that their surety deposit has been forfeited.

b. Will notify the HQ RES Financial Analyst of the forfeiture and sale cancellation.

c. Due to past issues, the property will NOT be offered to the next highest bidder.

d. Return the parcel to the auction drawer until the next auction is scheduled.

2. If the sale cannot be completed by WSDOT, HQ will notify the bidders that the sale is cancelled and return all bids unopened.

3. If two or more bidders submit identical high bids, HQ will:

a. Notify each bidder of the tie and return any surety deposits by certified mail within 24 hours of the bid opening.

b. Request a new bid with appropriate deposit from each tied bidder to be submitted within 30 days after the original bid opening.

c. Award the bid to the new high bidder.

4. If any parcel or parcels are not sold at auction, HQ may:

a. List the parcel with a real estate agent at the minimum bid price in accordance with RCW 47.12.283(4).

b. Hold the parcel for sale at a later auction.

c. Negotiate a sale for the property for no less than the property's appraised fair market value pursuant to RCW 47.12.283(4-5).

E. Per RCW 47.12.063, the department may withhold or withdraw properties from an auction at the request of one the entities or persons listed in subsection 3 of this statute but only after:

1. Receipt of a nonrefundable deposit equal to 10 percent of the fair market value or $5,000; whichever is less.

2. The conveyance of the property must be completed within 60 days, or the property will be put back up for auction.

### *11-7.4 Final Processing and Document Preparation*

#### 11-7.4.1 Real Estate Contract

A. A purchaser who wishes to enter into a real estate contract for the payment of any remaining balance due on a purchase of property must complete an Application for Real Estate Contract (DOT Form 263-008 EF).

B. HQ will order and review a credit report on the purchaser. If the credit report is not acceptable, the applicant will be informed of the disapproval and that the property may still be purchased for cash with payment in full being due 60 days from the date of notification of credit disapproval. If the purchaser/applicant cannot complete this sale for cash, the sale to that purchaser will be canceled and all surety deposits will be retained. If the purchaser/applicant can complete the sale for cash, the final processing will take place as described in Section 11-7.4.2.

C. When the purchaser's credit is approved, HQ will prepare a real estate contract and send it to the purchaser for signature together with a request for a check for recording fees, excise tax fee, other applicable fees, and additional down payment. When the contract has been signed and returned to HQ along with the requested checks, the Property Management Section Manager will execute the contract and it will be mailed to the appropriate county for recording.

D. When the recorded contract is returned to HQ, copies will be distributed to the purchaser and the region; the original document will be retained in the HQ PM file and the file submitted to the HQ Title Section for posting.

E. HQ will collect and enter all payments into IRIS until the contract is paid in full. Per the Office of Financial Management (OFM), all payments will be transmitted to HQ Accounting within 24 hours of receipt.

F. If a purchaser defaults on a real estate contract, HQ will take the following steps, in accordance with RCW 61.30.070:

1. Where the payment is past due and no arrangements have been made for late payment, a reminder letter will be sent to the purchaser (Delinquency Letter #1).

2. If no response is received to Delinquency Letter #1, a payment demand and notice that forfeiture proceedings will commence will be sent to the purchaser (Delinquency Letter #2).

3. If the contract is not brought current by the date specified in Delinquency Letter #2, or as agreed upon by WSDOT and the purchaser, forfeiture proceedings will commence. HQ will order a title guarantee for court proceeding purposes. Based on the title guarantee, a "Notice of Intent to Declare Forfeiture" will be prepared, signed, and recorded in the county where the property is situated. Within ten days after recording, a copy of the "Notice" is sent to all interest holders and occupants by certified mail, return receipt requested, and regular mail. If unable to locate mailing addresses for all impacted parties, a copy is posted on the property either by HQ or Region PM. A photo of the posted notice on the property shall be retained in the HQ PM file.
4. If the default is not cured within the statutory time period (at least 90 days), a "Declaration of Forfeiture" is prepared, signed, and recorded in the proper county.
5. Within three days after recording the "Declaration," a copy is sent to all interested parties and occupants by both certified mail, return receipt requested, and regular mail.
6. After the forfeiture is completed and a 30-day appeal period has expired, the parcel may be resold.
7. HQ may make adjustments to the schedule of letters and notifications on delinquent payments.

G. A purchaser may request a partial fulfillment deed. If such a request is received, HQ will prepare a map showing the total area under the contract and the area covered by the request for partial fulfillment deed. This map is submitted to the Appraisal section with a request for a determination as to how much additional payment, if any, is needed to facilitate the request. The purchaser is advised of any additional payment needed. Upon receipt of the additional payment, document preparation will be commenced.

### 11-7.4.2 Cash Sale, Final Contract Payment, and Conveyance

Upon receipt of full payment of the sales price either at the time of sale or in fulfillment of a real estate contract, HQ will prepare the appropriate conveyance document and send it to the AAG for approval. Upon receipt of approval by the AAG, the document is sent to the grantee for approval as to form along with a request for checks for payment of recording fees and an excise tax fee. When the document and the appropriate fees are returned to HQ, the document is executed by the Secretary of Transportation and is sent to the proper county for recording. After the document is returned from recording, the original is sent to the grantee and a copy is scanned and e mailed to the region. A copy is also placed in the HQ file and the appropriate IRIS entries are made to close the disposal and ICN. The closed file is submitted to the Title Section for posting and filing.

### 11-7.5 Modification of Limited Access

A. The process and standards for requests for access modification are described in Section 530.10 of the *Design Manual* M 22-01.

B. A conceptual approval of a modification in access must be obtained from the Access and Hearings Engineer.

C. Upon preliminary approval of a modification in access, the region will process a disposal package as described in Section 11-7.2. Upon completion of the disposal package and notification via email to HQ RES, HQ RES will submit a disposal package concurrently with the HQ Access Management Office to FHWA.

D. Final approval of a modification in access is denoted by a signature on the right of way/access plan by the Deputy State Design Engineer.

E. HQ will negotiate the access modification, collect the payment, and prepare and record the proper conveyance document.

#### 11-7.5.1 Turnback to Local Agency

A. **General** – Properties for relinquishment (turnback) are shown on the right of way plan as areas of right of way, road, and/or streets that WSDOT acquires for the improvement or construction of roads that will not remain a part of the highway system, but will be conveyed to a city, town, or county. The rights transferred may be fee, easement, or a combination of both.

B. **Rules** – The Turnback Agreement is used to facilitate the transfer of jurisdiction and ownership of right of way from WSDOT to a city, town, or county for highway purposes. Upon completion of the project, WSDOT will convey certain properties to the local agency by Quitclaim Deed.

Resources:

- RCW 36.75.090, RCW 47.52.210, RCW 65.08.095, RCW 47.24.020(15), RCW 47.12.080, Chapter 47.50 RCW, Chapter 47.52 RCW, Chapter 47.24 RCW
- WAC 468-18-040, WAC 468-30-070, WAC 468-30-75
- *Agreements Manual* M 22-99, Chapter 5
- Local Agency Agreement Summary (Master Deliverables List)

C. **Procedures** – The region maintains control of the original documents and monitors the agreement and construction of the highway. Copies of documents and notes are retained in a folder at HQ RES for each turnback agreement. Through the course of the turnback process entries are made into IRIS. Up front, is the time to obtain the appropriate charge code that HQ RES staff will use to charge their time against in completing the turnback process.

1. **Preliminary Review**

   a. Agreements are reviewed prior to signing by the local agency.

   b. **Standard Turnback Agreement** – The region agreement writer (or other as may be designated by the region) requests the Agreement be reviewed by HQ RES. The review is to assure consistency with the HQ right of way plans and title records.

c. **Nonstandard Agreement** – The Agreement Units of HQ Utilities, Railroad, and Agreements Section requests a review to be done by HQ RES of all nonstandard turnback agreements. The review is to assure consistency with the HQ right of way plans and title records.

d. The agreement is checked for accuracy against the right of way plans:

(1) Plan revisions and dates, most recent, are those that become the exhibit to the agreement.

(2) Turnback lines (weight and location) and informational notes (easement and fee and area is noted for relinquishment).

(3) Verifies color designations on exhibits are in compliance with the agreement and right of way plans, access to be retained, fee, and/or easement to be transferred.

(4) State ownership – title may not be acquired at this time. Communicate findings.

(5) Sufficient right of way plan detail is available to prepare legal description to be put in the conveyance deed to the local agency.

(6) Right of way outside an incorporated city or town (county) of both managed and limited access facilities: Property acquired by the state from a third party that will ultimately be maintained or operated by a county as a county road. A turnback agreement is needed.

Determine if existing county roads will be acquired by deed or will work be performed by construction permit. If it is to remain a county road, work is performed under a permit. If any portion of the existing county road lies within the new state highway, a deed is required from the county for that portion of the county road within the facility and will become part of the highway. A nonhighway property acquired by the state as an uneconomic remainder must be surplused and cannot be part of a turnback agreement.

(7) Right of way within an incorporated city or town:

(a) **Limited Access** – For city/town turnbacks of right of way that is a limited access facility, WSDOT may relinquish any portion of the improvements acquired by the state and outside the limited access facility. Title to streets, roads, alleys, etc., in a city or town that are within the limits of a limited access facility become the property of the state without the need for a deed from the city or town pursuant to RCW 47.24.020(2) and RCW 47.52.090.

(b) **Managed Access** – Property acquired from a third party by the state for right of way within a city/town becomes the property of the city pursuant to RCW 47.24.020(15) and so noted on the right of way plans. No turnback agreement is needed.

e. Communicate with Agreement Writer and/or HQ Utilities Agreement unit regarding acceptance of the agreement as is or provide guidance as to what changes are required. This is documented in e mail or other writing.

2. Final process upon completion of project construction. Per the terms of the turnback agreement, the deed must be recorded within one year of transfer of jurisdiction and maintenance to the local agency:

   a. The region (Construction PE's Office) will send to HQ RES the executed final Turnback Agreement and Transfer of Maintenance and Operations Letter as sent to the local agency and requests processing of the deed.

   b. The right of way plans are reviewed against the agreement checking:

      (1) Right of way plan revision dates. A revision to the right of way plan after the date of the agreement that effects the area to be turned back to the local agency must be documented. This is accomplished with a modification or amendment to the Agreement.

      (2) Make note from the right of way plan details to prepare the legal description including, location of limited access, the quarter quarter, section, township, and range of all areas to be turned back. These will be used in preparation of the deed.

      (3) Assure all property rights for transfer to the local agency have been acquired, both fee and easement and that those areas match the color designations shown on exhibit to the agreement.

      (4) If an area identified for turnback to a local agency is also noted as an area of an easement is to be transferred to "others," the deed cannot be processed until the easement transfer is complete and recorded. If and when that is done, the turnback deed will be prepared subject to the recorded easement.

      (5) If any irregularities or discrepancies are discovered, work with the Agreement Writer and or the Construction P.E. to resolve. When these occur, it is usually due to a design change that resulted in a plan revision requiring a modification to the agreement.

   c. Determine if the agreement is a standard turnback agreement or nonstandard agreement. This is necessary for preparation of the appropriate deed.

   d. Prepare the legal description of the property to be transferred, that includes the quarter, quarter, section, township, range, plan title and name, and date and number of the turnback agreement. If the conveyance is of both fee and easement, such recital is made in the deed.

e. Prepare conveyance deed

(1) All deeds will require review and approval by an AAG.

(2) Do not use Quitclaim Deed (RES-411) as the RCW referenced is not appropriate for turnback deeds. Turnbacks are authorized by either RCW 36.75.090, RCW 47.12.080, or RCW 47.52.210.

(3) Caution must be used in preparing all Quitclaim Deeds.

(a) If the relinquishment is pursuant to a Standard Turnback, the deed format is similar from deed to deed.

(b) If the deed is a result of a Nonstandard Turnback Agreement or other agreement, the exceptions (clauses) in the deed must mirror those of the agreement.

(c) Be aware of limited access locations.

(d) Determine if special exception will be included in the deed such as, easements to "others" granted by WSDOT. These will be noted in the deed.

(e) All turnback deeds will contain the following clause:

"The Grantee accepts said deed subject to all matters of record."

f. After the deed is prepared, transmit it together with the corresponding agreement and modification(s) if any to AAG for review and approval.

g. After gaining approval from an AAG, the deed requires the local agency approval it as to form. It may be necessary to contact region staff to obtain the local agency contact. Prepare a letter requesting the local agency approve the deed and return the signed deed and funds sufficient for recording and payment of excise processing fee per (RCW 65.08.095). Send deed to local agency.

h. Certain local agencies, most frequently counties, request that the deed after final processing be returned to them for recording. They do not provide funds. That is acceptable.

i. Upon receipt of the signed deed from the local agency, the deed is sent to the Secretary of Transportation for signature.

j. When the fully executed deed is returned from the Secretary's office, prepare the deed for recording:

(1) If the local agency has requested that they record the deed,

(a) Prepare Real Estate Excise Tax Affidavit and sign for the WSDOT (grantor).

(b) Send a letter to local agency with the affidavit and deed, request the deed be recorded, and have a recorded copy returned to HQ RES.

(2) WSDOT to record deed with funds from the local agency,

(a) Prepare Real Estate Excise Tax Affidavit and sign it on behalf of the local agency (grantee) and the WSDOT (grantor) by two different WSDOT personnel.

(b) Send letter with the deed and Tax Affidavit by U.S. Mail to county treasurer/auditor to record; include the checks from local agency. Request the recorded deed be returned to HQ RES.

k. When in receipt of the recorded deed, send a copy to the local agency (unless they recorded it); create a PDF image and e mail it to the Region Construction P.E., region agreement writer, Region RES Manager, WSDOT HQ Bridge Preservation, and WSDOT HQ Right of Way Plans personnel. Make one copy for the turnback file.

l. Post the recorded deed to HQ right of way plans making note of the posting number(s). Prepare a posing sheet and send deed and sheet to be scanned and indexed for retrieval in Oracle.

m. Complete notes to the turnback file, prepare the Property Management cover sheet, and prepare the file for storage. Turnback files are retained with the Property Management closed records. They are placed in files marked "Turnback" at the end of the closed property management files by the county where the property is located.

## 11-8 Leasing

### *11-8.1 General*

Leases are generally used when an applicant's proposed use is for a nonhighway purpose.

A. **Types of Leases Used by WSDOT**

1. **Residential/Commercial Displacee Lease (NA)** – Used when WSDOT acquires an occupied property and the displaced grantor or tenant remains in tenancy until relocated. The tenant-signed displacee lease should be sent to HQ as soon as it is signed by the tenant. (Residential Displacee Lease – RES-415, Commercial Displacee Lease – RES-416)

2. **Airspace Lease (AA, AC)** – Used when tenancy lies within the right of way lines of the constructed facility. Be sure to check the approved right of way plan instead of using fence location or maintained area to denote constructed facility. "Airspace" is defined as the space above, at, and below the gradeline of all completed highways, as well as the area alongside the traveled way, which would include any proposal to lease property that straddles the right of way line. RES-ER Review Required. (Standard Airspace Lease – RES-420)

3. **Ground Lease (RA, RC)** – Used when premises lies outside the operating right of way or lies within unconstructed right of way. ***Note:*** Operating right of way is that land lying within the right of way lines of a constructed highway facility. Therefore, ground leases will be used when leasing pit sites, stockpile sites, unconstructed rights of way and other similar properties. RES-ER Review Required (RES-418)

4. **Trail Lease (AA, RA, TR)** – Used when an applicant wishes to place a trail on WSDOT-owned property, either inside or outside the operating right of way. RES-ER Review Required (RES-419). Refer to Appendix 11-7 for Trail Lease information.

   ***Note:*** If a trail is constructed by WSDOT as part of its highway project and the trail is operated and maintained by an outside entity, even though the obligation to maintain that trail is WSDOT's, a Maintenance and Operation Agreement (M&O) is acceptable. If the trail is constructed after the highway is complete and the local jurisdiction will own the trail, then a trail lease is required.

   Additionally, funding sources must be confirmed in trail or recreational leases as there has been an increase in Recreation and Conservation Office (RCO) grants approved that impact WSDOT right of way. Allowing project construction using RCO grant dollars can have a significant impact on future WSDOT projects. These costs include increased environmental review and mitigation (including the expense of relocating the trail if impacted by 6f), denial of federal funds relating to additional construction activity required as a result of allowing an RCO funded project, and additional review and overall project timelines. For these reasons, FHWA and the AAG strongly recommend against WSDOT allowing any construction within right of way using these funds. If WSDOT makes the business decision to allow these uses of these funds within the right of way, specific grant information must be included in lease documents to make it clear WSDOT does not have any financial or legal obligations regarding the grant.

5. **Commercial Lease (AA, AC, RA, RC)** – Used when a commercial use is proposed by the applicant. The Airspace Lease Short Form format is used; however, the title of the lease is changed to fit the use. RES-ER Review Required (RES-441 – just change the header to read "Commercial Lease")

6. **Cooperative Agreements (CA)** – Used pursuant to RCW 47.28.140. Primarily used in Real Estate Services when writing an agreement with a Transit Organization to operate and maintain a Park and Ride Lot in exchange for operating their transit amenities on the Park and Ride. RES ER Review Required. (RES-428)

7. **Event Lease (EV)** – Used for short term (for an event up to five days in duration). The minimum rental rate is $100 per day up to five days. WSDOT may charge more for rent depending on individual event details. (RES-433)

8. **Monitoring Well Agreement (MW)** – Used when an applicant places monitoring wells on WSDOT property. Each request shall have a separate MW Agreement which may in-clude one or more wells. Rent for monitoring wells is an annual rate consisting of a base rate of $500, plus $100 per well. Rent will be increased annually throughout the term of the Agreement by Four percent (4%) of the rent amount in effect at the time of the ad-justment. Rent may be adjusted every Five (5) years, at WSDOT's discretion, by an amount that reflects changes in comparable rents as identified in an appraisal or market research conducted by WSDOT. If appropriate, Leasehold Excise Tax (LET) will be charged in addition to the above stated rental amounts. The MW Agreement is not modifiable by the tenant. RES-ER Review Required. (RES-438)
9. **Transit Shelter Facility Lease (TF)** – *WSDOT is still investigating and determining its process for Transit Facilities on WSDOT owned rights of way.*
10. **Interagency Agreement (IA)** – Typically used when dealing with another governmental agency. Used primarily (at this time) for arrangements between WSDOT and WSP. RES-ER Review Required (This lease type uses the appropriate form for the location – Airspace or Ground. Does not have its own RES form.)
11. **Single Family Residential Lease (RA, RC)** – Used for nondisplaced residential occupancy. RES-ER Review Required. (RES-417).

    Rental of state-owned housing must comply with RCW 59.18 Residential Landlord Tenant Act. Deposits shall be collected from tenants to help cover any cleaning and damage repair expenses incurred during the tenancy. All residences leased after the initial 90 day displacee tenancy will need proper smoke and carbon monoxide detectors, as well as asbestos, lead, and mold notifications.

    ***Note:*** Rental of state-owned housing to state employees is the same as for any rental of any other improved property. A state employee who rents a state-owned rental may not be obligated to pay Leasehold Excise Tax (LET) if it is determined that the state benefits from the employee residing on the leased premises.
12. **Wireless Lease (WF) (see Section 11-8.8.3). (Wireless Lease with no Attachments – RES-422, Wireless Lease with Attachments** – RES-421, Wireless Lease for Utility Pole Attachment – RES-432, Wireless Lease Application with process instructions – RES-429, Wireless Ground Lease – RES-424, Airspace Lease for Access to Communication Facility – RES 425) RES-ER Review Required.
13. **Crane Weathervaning Lease (AA)** – Used when free swinging, unloaded cranes enter into the right of way. This form is to be used only when the swing of the crane is outside of traveled lanes and clear zones. If the crane's swing enters either of these areas, this form will need to be modified to include additional protective language that fits the situation RES-ER Review Required.

14. **Aviation Lease (AR, AV)** – Used when preparing a lease document for the Aviation Division of WSDOT. Typically will be either a Hangar Lease or Tiedown Lease. (Again use appropriate lease document related to where the premises is located, but classify as AV. AR is only for those leases written prior to IRIS.)
15. **Ferries Lease (MA)** – Used when preparing a lease document for the Ferries Division. Since they typically do their own leasing, there is not a large call for these types of lease documents. They typically do their leasing activity as concessions. Contact the Ferries Division. (Again use appropriate lease document related to where the premises is located, but classify as MA.)
16. **Rail Lease (RL)** – Typical document used is a Ground Lease format. (These are used very rarely.)
17. During the 2011 legislative session, the legislature passed into law RCW 47.04.295. This law has specific language related to leases impacting park and ride lots. Most of the leases written here in RES utilize RCW 47.12.120 for leasing authority. Do not anticipate a situation where the authority will change to the new statute. However, public transportation currently working with Starbucks on a proposal. Further updates regarding policy will follow.

B. **Engineering Review Process** – Electronic Review (RES-ER) commonly referred to as Oracle or Stellent Review. Certain leased premises require an engineering review to be routed through RES-ER, as delineated above with their appropriate lease description (see Section 11-8.1.A).

The Region PMA will need to gather the following documentation to route the review through RES-ER:

***Note:*** If a 'J account' is created to cover the expense of the review and lease process, please include the appropriate J account information in the PMA Comments field found on the General Information Tab.

- Tenant application for proposed lease location (additional information can be found in Section 11-8.2).
- Aerial delineating the leased premises.
- Hachured RW Plan sheet of the leased premises.
- Acquisition documents (title verification of WSDOT ownership).
- Two property photographs from different angles. Only one photograph may be aerial.
- Region RW Diary.
- Tenant's proposed use of the property (including any construction plan sets).
- Environmental review checklist (see additional requirements below based on property location – Limited Access or Interstate).
- Tenant's Ad Date, if applicable
- Funding source information (for Trails or other improvements that may be using grant funds for construction)

Notifying Region Environmental Services office when NEPA is triggered because the proposed lease area is located on an interstate highway. If any of these conditions are met, a federal nexus is created, and NEPA, NHPA, and ESA documentation must be completed during the Real Estate Services Electronic Review System (RES-ER) process. At a minimum, when NEPA is triggered, a completed Environmental Checklist for Surplus Properties form is required (DOT Form 220-015 EF). Frequently with large projects, the tenant has an appropriate document that will suffice for FHWA's environmental concerns. This may be a Findings of No Significant Impact (FONSI), Categorical Exclusion (CAT C) or a full NEPA study.

The Region PMA will select reviewers based upon the facility types detailed below. For additional information on creating a review package in RES-ER, please see the document titled "PMA updated CheatSheet.pdf" located in the Outlook Public Folders directory for Property Management Forms (path: All Public Folders/HQ/Environmental & Engineering/Real Estate Services/ FORMS/PROPERTY MANAGEMENT).

**Non-Limited Access Facilities and Specific Sundry Sites (Pit Sites, etc.)** – Reviewed and approved by Region staff and HQ Access review staff with no HQ Approving Authority required.

***Note:*** If the property is located on a state route within incorporated city or town limits, jurisdiction falls to the city or town pursuant to RCW 47.24.020. The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. Also, as stated under 47.24.020(15) no rental or any other non-transportation use of any unused portion of any such street may be made by the city or town without the prior written approval from WSDOT, and all revenue derived from the rental or any non-transportation use of the right of way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared.

Every proposal must be reviewed (unless noted) by the following disciplines. Region staff should be available for each of the disciplines shown below:

- Environmental
- Public Transportation/Planning
- Roadside Services/Landscape
- Local Programs (as determined by Region)
- Area Operations Manager for specific county (primarily NWR)
- Developer Services (as determined by Region)
- Region Access – Dale Severson, OR
  Jeff Barsness, SWR
  Roland Storme, NWR (Skagit & Whatcom Counties)
  Ramin Pazooki, NWR (Snohomish & King Counties)
  Bill Gould, NCR
  Rick Holstrom, SCR
  Greg Figg, ER

- HQ reviewers for all Managed Access reviews:
  - NCR, SCR, ER, OR, and All Utility Breaks Statewide: Rickman, Trent
  - NWR and SWR: Patterson, LeRoy
- Utilities
- Maintenance
- Hydraulics (hillsides, slopes, water issues)
- Traffic (in NWR ARA Maintenance/Traffic, Maintenance)
- Region right of way plans (see note below regarding HQ plans and access)

May also require review by the Special Circumstance Reviewers shown below if region does not have staffing that specializes in the needed area:

- Foundations (bridge structures, retaining walls, sloping issues, tiebacks and similar situations); Per Jim Cuthbertson and region materials engineers: if anybody will be doing Civil work involving cuts, fills, walls, bridges, ponds, or anything that is built in the ground or on the ground, we should be involved. Simple rule is, if it touches dirt… you need geotechnical eyes looking at it. That sounds simple enough, but we can't look at everything, so we have an agreement with the Region Materials Engineer that they will handle some of the less complex stuff. Include the Region Materials Engineer in whichever region the work is occurring and the WSDOT Chief Foundations Engineer in the review.: Cuthbertson, Jim and respective Region Materials Engineer
- Bridge: Al-Salman, Mohamad
- Homeland Security (Infrastructure and Bridges): Himmel, John
- Ferries: Deardorf, Ray
- Bicycle and Pedestrian:
  - Claybrooke, Charlotte (Schools)
  - Macek, Ian (Non-Schools)
- Radio Ops: McDowell, Tim
- Aviation: Wolf, Paul
- Project specific engineers (or field experts), as determined by region.
- Facilities (in the case of a Facilities site – HQ Facilities must be included in the review) Facility sites include the following property types: Pit Sites, Stockpile Sites, Rest Areas, Waste Sites, and Capital Improvements.
  - Reviewer: Medina, Yvonne

**Limited Access Facility (Non-Interstate – Established or Planned)** – Standard Region Reviewers as well as the HQ Access reviewer assigned to that region as shown:

Access:

- NCR, SCR, ER, OR, and All Utility Breaks Statewide: Rickman, Trent
- NWR and SWR: Patterson, LeRoy

The review is routed to all the necessary reviewers/field experts. Upon completion of their reviews, the Region PMA reviews their comments for concerns that limit our ability to lease this property and determine if the review is at a stage to be finalized by the Region Approving Authority and HQ Approving Authority.

Package will automatically go to the following queues. Please do not choose the following as reviewers:

- HQ Approving Authority: De Ste Croix, Barb
- HQ Plans Review: Berry, Brad

Region staff will facilitate the entire review (including any HQ reviewers), and complete the other elements of the transaction as detailed above.

**Interstate Facilities** – Standard reviewers, Special Circumstance Reviewers, HQ Access, HQ R/W Plans and FHWA.

As part of all FHWA reviews, appropriate NEPA documentation is required. This environmental documentation requires the help of Region Environmental staff to be sure that all areas of the federal nexus are covered. NEPA is triggered if the property being considered for lease or disposal is located on an interstate highway, or if the parcel was purchased with Federal funding and the parcel will be sold for less than fair market value. If any of these conditions are met, a Federal nexus is created, and NEPA, NHPA, and ESA documentation must be completed prior to lease or disposal (23 CFR 771.117(d)(6)). When a local jurisdiction is acquiring/leasing the property for a project, they often have this completed when applying to purchase/lease the property. An FHWA review is also required when an existing lease is being updated with a change in use or increase in the area being leased.

The remaining process will be the same as stated above, however, upon completion of the review. The HQ PMA will verify with HQ Access that FHWA approval is necessary for an access break. If an FHWA access break approval is necessary, the lease/disposal package will be delivered concurrently with the HQ Access break request.

FHWA requires a minimum of 60 days to complete their review. Upon approval, finalization of the process will be facilitated by Region/HQ Property Management staff.

Upon completion of the package review:

In the case of Airspace Leases, region staff will prepare lease documents for review by HQ RES and AAG if appropriate. (AAG review is required for Standard Airspace lease documents.)

***Note:*** If Region wishes to begin the lease document prior to completed review, the Region PMA must provide HQ leasing staff with electronic lease and sufficient documentation to review proposed use.

C. **Consideration/Economic or Market Rent** – All leases must be based on economic or market rent or consideration equivalent to economic or market rent. Each appraisal for properties acquired should include information related to the appropriate rental rate for remaining tenants. If no rental rate provided, then the procedure for determining short term rent for residential properties will be done as detailed in the memo attached as Appendix 11-6.

There are three approved ways to determine the rental rate of WSDOT property.

1. **Appraisal** – An appraisal is the most accurate determination of fair market rent. Appraisals are required on all leases that have an annual total rent of $25,000 or more.
2. **Value Memo** – A value memo is acceptable for all rental rate determinations under $25,000/year for rent.
3. **Formula Method** – The formula method is used on properties expected to bring in less than $10,000/year in rent. The formula method uses the True Value Calculator. The PM Agent is required to gather abutting properties' tax assessed values in order to create an average price per square foot value. The calculator takes the inputted assessed values and uses the latest percentage adjustment provided by the Department of Revenue (DOR) to adjust the assessed value to a price per square foot or acre to the DOR's 'true value' of the land. This 'true value' is then applied to the size of the leased premises and factored with the applicable capitalization rate (which can be requested from the region's appraisal staff).

   ***Note:*** If the Formula Method determines that the annual rent will be over $10,000, a value memo or appraisal will be required.

   Non-payment of rent, except in those instances of consideration in lieu of economic/market rent, is considered illegally gifting an asset of the Motor Vehicle Fund. Exceptions to collecting economic rent may be considered where:

   - Displacee Lease – Pursuant to WAC 468-30-060, the rental rates are based on the following: the rental rate is economic rent as determined by either a market data report of rentals or a written determination by appraisal (if subject to LET, that must be charged as well), where the acquired improvement is tenant occupied, the rental rate in effect at the time of acquisition shall continue for ninety days. Thereafter the rental rate shall be economic rent. Should the tenant be paying more than economic rent, the rent is to be immediately lowered to economic rent. ***Note:*** If the tenant is making no rental payment, then the consideration is something other than money. An appropriate rental rate must be established upon possession.
   - Property is leased for a "highway purpose" or when the economic rent can be justifiably offset by benefits to the motoring public which equal rent value and is so documented. Rent-free occupancy of improved properties may be offered as an inducement to settlement only with prior written approval from the Property Management Program

Manager or designee. If approved, both region and HQ files must be appropriately documented.

- Oftentimes, economic rent is less than WSDOT's costs to perform management activities throughout the term of the lease. Therefore, a minimum rental rate has been established based on property location (urban versus rural based on the WSDOT Highway Log). For rural properties, the minimum rental rate will be $350 per year (to be paid annually) plus LET. For urban properties, the minimum rental rate will be $500 per year (to be paid annually), plus LET.

D. **Document Review** – The document review, first by the Region PM supervisor, if one is available, then HQ leasing staff, consists of:

- Reviewing the comments made in the RES-ER by the PMA, reviewers and approving authorities (Region, HQ and FHWA) and making sure they are addressed in the lease/agreement.
- Confirming the requested use has the appropriate language limiting the use of the premises to the use approved in the RES-ER.
- Checking to see if any additional language is needed in the document to protect WSDOT.
- Creating a finalized lease/agreement that properly reflects the intent of the use of WSDOT owned lands.

1. WSDOT has worked with the Attorney General's Office and created several boilerplates that are ready for Region PMAs to complete and have signed if no material modifications to the document are required. No review is required by HQ RES or AAG on the following documents:

   a. Residential Displacee Lease

   b. Commercial Displacee Lease

   c. Event Lease

   ***Note:*** When WSDOT acquires an occupied property, a Displacee Lease will be entered into with the tenant if they remain in occupancy. The lease may be prepared by the region and signed by the tenant without prior approval of the form if there are no material modifications. Any material modification requires Headquarters review and approval prior to signature. If the region wishes to allow a displacee lease to continue beyond the standard 90-day term, documented approval from the project office must be provided to HQ and additional language added to the displacee lease (HQ assistance required until standardized). Additionally, after the initial 90-day term, if the rents paid are below market, rents must be adjusted to market and remain at market for the remaining lease term.

2. Lease documents (without material modification) that require HQ RES PM review only:

   a. Ground Lease

   b. Single Family Residential

c. Commercial Lease (outside constructed facility)

d. Airspace Lease Short Form (RES-441)

3. Lease proposals and documents that require HQ and AAG document review:

   a. Commercial Lease (within constructed facility)

   b. Standard Airspace Lease

   c. Wireless Lease

   d. Trail Lease

   e. Monitoring Wells

   f. Cooperative Agreements (typically used for park and ride lots)

   g. Interagency Agreements

   h. Crane Lease *(creation of lease in progress as well as appropriate processing information)*.

4. Any leases falling within interstate must be approved by the Federal Highway Administration (FHWA). NEPA documentation must be included in the package sent to FHWA for review and approval.

### How to Create a New Lease in IRIS When You Have Existing IC #

1. Click on PM Tab.
2. Click on IC # pull down menu.
3. Click on "Find related items" to the right.
4. Click on Search.
5. Go to top header to "PM" in red drop down to "Leases" click on leases.
6. Go to the bottom of the screen click on "New."
7. Enter data.
8. Tenant not on list:
9. Click on add tenant.
10. Enter tenant data.
11. Click on "Save."
12. Click on "Insert."

***Note:*** You may fill in the Lease Effective Date field when creating the lease number, but DO NOT ENTER A DATE IN THE PAYMENT COMMENCEMENT DATE FIELD. This information is entered by the HQ Fiscal Analyst when the lease has been executed.

## 11-8.2 Application for Lease

### 11-8.2.1 Initial Application

A. An application has been created to address a proposal to lease or purchase. The form is identified as the RES Application (RES-436). The region will provide the application to any person or party who is interested in leasing any property owned by or under the control of WSDOT. The Single Family Residential Supplement form should only be sent to applicant if they are applying to rent a department owned residence; this is very uncommon. The application must be completed by the applicant and returned to the region prior to any reviews or drafting of documents.

B. Once the application has been completed by the applicant and submitted to the region, the application will be reviewed for completeness, clarity of the proposal, eligibility of the applicant, credit history of the applicant, and availability of the property for lease. For trails, Section 4 must be completed, including evidence that the trail is part of a Comprehensive Trail Plan adopted by a federal, state, or local governmental authority.

C. Applications for Wireless Communication Leases will be handled pursuant to Section 11-8.8.3.

### 11-8.2.2 Review/Approval of Application

A. **The Region Process** (for Airspace Leasing Request on Nonlimited Access Highway Facilities)

1. Upon initial acceptance of the application by the region, the lease proposal or application is routed electronically through the Real Estate Services Electronic Review (RES ER) to the appropriate Region and Headquarter's divisions or sections for review, comment, and approval/disapproval. Please see Section 11-8.1.B, Airspace Lease Review Process, for the steps necessary to complete the Region and Headquarter's engineering review. If the site has been leased previously for the same or similar purpose, a full engineering and electronic review may not be needed. The region should verify that no present or future construction or maintenance projects will conflict with the proposed lease use. If so, region project staff shall provide written approval for extended use of premises.

2. Update IRIS as appropriate.

B. **The Region Process** (for Airspace Leasing Request on Established or Planned Limited Access Facilities)

1. Upon initial acceptance of the application by the region, the lease proposal or application is routed electronically through the Real Estate Services Electronic Review (RES ER) to the appropriate Region and Headquarter's divisions or sections for review, comment, and approval/disapproval. Please see Section 11-8.1.B, Airspace Lease and Disposal Review Process, for the steps necessary to complete the Region and Headquarter's engineering review. If the site has been leased previously for the same or similar purpose, a full engineering and electronic review may not be

needed. The region should verify that no present or future construction or maintenance projects will conflict with the proposed lease use. If so, region project staff shall provide written approval for extended use of premises.

2. Once the region review is completed, the lease proposal is electronically submitted to the Regional Administrator or designee for approval/ disapproval.
3. Update IRIS as appropriate.
4. The region then electronically submits the draft lease to HQ for review using the WSDOT RES Lease-Agreement Review mailbox

C. **The HQ Process** – When the electronic review has been completed and a draft lease prepared, the application package will be forwarded to HQ Property Management. Limited access breaks will require coordination with the HQ WSDOT Access office. FHWA approval is necessary if the proposed lease area is associated with the interstate. If FHWA review is required, any limited access breaks must be completed and sent to FHWA in coordination with the lease review package. The FHWA application package shall include access break and NEPA documentation. Minimum timeframe to allow for FHWA review is 60 days.

### *11-8.3 Lease Preparation*

#### 11-8.3.1 Region Process

A. The region establishes economic rent for the lease. Rent shall be paid from the time the tenant starts using WSDOT property or upon Region discovery of a non-highway use and the provision of written notice from WSDOT regarding unlawful use. Non-payment of rent, except in those instances of consideration in lieu of economic/market rent, would be considered illegally gifting an asset of the Motor Vehicle Fund. If the property is valued under $10,000, the formula method may be used. This method utilizes assessed values plus a risk premium established by the Department of Revenue. If the property is valued between $10,000 and $25,000/year and is not complex, as determined by the Region RES Manager or designee, a value memorandum can be completed to determine economic rent. The region prepared value memorandums must be reviewed and approved by the RES Manager or designee. Approvals can also be provided by Appraisal Review staff statewide. If the property is valued over $25,000 an appraisal must be completed and reviewed by HQ Appraisal Review staff.

   ***Note:*** Maintenance savings alone cannot constitute consideration. Extraordinary maintenance may be allowed as consideration but not without considering rental value.

   Owner-occupied displacee lease rental rates are established by the appraiser and are referenced in the parcel acquisition appraisal.

Tenant-occupied rent for the initial 90 days shall be based on current rate. After the initial 90-day period, rent shall be adjusted to market rent. See WAC 468-30-060 regarding displacement rentals.

If no rent is being charged by previous owner, the region must determine economic rent and, upon WSDOT ownership, a lease and payment of economic rent must commence.

B. The region determines whether the lease is subject to Leasehold Excise Tax (LET) pursuant to RCW 82.29A.020 and RCW 82.29A.130. If LET is appropriate, the region obtains the "County Location Code" and "Levy Code" (Tax Area Code). The "County Location Code" can be obtained from the Department of Revenue Office or website. The "Levy Code" can be obtained from the county assessor's office or website. To enable the assessor to locate the property, the tax parcel number, subdivision, lot, block, section, township, range, or other information will likely have to be provided by the region. All this information must be entered into IRIS. If there are any questions, problems, or discrepancies, HQ should be consulted.

C. The region prepares a draft lease using the appropriate lease document. HQ maintains all lease formats and the region *must* access and use the most current lease formats, available in the Property Management forms folder in Microsoft Outlook and on the WSDOT intranet page. All RES ER comments must be addressed in the lease or in writing with the package submittal of the lease to HQ.

D. The region assures all permits are issued as necessary for leasing activities. An Access Connection Permit is required for all leases where a lessee enters into managed access right of way to occupy or gain access to the leased premise.

E. The region submits the draft lease and all required documentation listed on the PM Lease Review Checklist (RES-437) via email to WSDOT RES Lease-Agreement Reviews mailbox, including:

- All exhibits – pictures.
- Right of way maps showing the location of the parcel and improvements.
- All covenants or other documents that create restrictions or encumbrances on the property.
- Underlying leases, licenses, permits (e.g., if the property is being subleased or if there are multiple tenants).
- Acquisition documents.
- All documents referenced in the agreement including electronic copy of existing lease.
- Pertinent facts that may have some bearing on the agreement.
- Emails, including those with engineers.
- Value memo/appraisal.
- Permits, if required (general permit, access connection permit).
- Completed application form.
- If a legal description is included in document, legal description *must* be reviewed and approved by a Region Title Specialist.

***Note:*** To lessen duplication of information submittal, the region should include in the email submittal a reference to any information listed above that is found in the electronic review package. Additionally, please remember to send the above detailed information regarding any lease submitted to HQ, whether or not an electronic review was completed (e.g., Ground Lease, Displacee Lease).

HQ reviews lease document, including terms, rent, and special provisions before final approval is granted.

F. Upon receipt of the approved lease, the region will secure tenant signature. If the lease is for a single family residence built prior to 1978, appropriate lead base paint/asbestos information will be supplied to the tenant with receipt acknowledged in writing by the tenant. Additionally, WSDOT must provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold.

### 11-8.3.2 HQ Process

A. HQ will review the draft lease form submitted via email by the region together with all other required documentation. If applicable, a credit check will be processed by HQ. If the lease form is acceptable, and if necessary, it will be forwarded to the AAG for approval. Upon approval, the lease form and any exhibits will be returned to the region via email or campus mail to obtain the signatures of the tenant. Region may deliver the document to tenant in paper or electronic form. If electronic delivery is selected, document should be delivered to tenant in PDF form to minimize alterations to the document.

B. Once the lease has been executed by the tenant, the signed lease should be reviewed by region to assure no changes have been made and that all signatures, notary actions, and documents have been properly processed, after which the lease should be returned to HQ with the following attachments:

1. Completed Rental Agreement Transmittal (DOT Form 263-009 EF) including federal aid information.
2. A completed Property Inspection Status Report (PISR) (to close out the existing lease if the new lease is superseding an existing lease with a different rental agreement number).
3. Completed lease application with Regional Administrator or designee's approval and regional review comments/recommendations.
4. Right of way plan sheet showing leased premises hachured and labeled as Exhibit "A" as shown on Appendix 11-4.
5. Declaration of Acceptance as to Form (RES-408).
6. Tenant executed Memorandum of Lease, if appropriate.
7. Cross sections showing elevations of leased area, the roadway, and abutting lands. (If lease requires vertical limitations, e.g., under bridge structure.)

   ***Note:*** This information is required if not already provided via electronic review and/or with the PM Lease Review Checklist (RES 437).

C. HQ will secure the appropriate HQ signatures. If necessary, the lease or a Memorandum of Lease will be recorded. Current procedure is to record the Memorandum when the lease benefits the appurtenant owner. The original lease will be kept in HQ with copies of the fully executed lease being sent to the region and the tenant.

D. HQ assures that all data entered into IRIS is correct and complete.

## *11-8.4 Rent Collection*

### 11-8.4.1 Procedure

A. In compliance with accounting requirements, all rental payments must be deposited within 24 hours of receipt. The initial rental payment, which may be paid at the time the rental agreement is signed, may be paid and deposited in the region or mailed directly to HQ by the tenant.

   1. If the initial rental payment is paid in the region, the Property Management Specialist issues a receipt for said payment to the tenant and immediately delivers the payment to the Region Accounting Office for handling.
   2. The Region Accounting Office deposits the payment into a suspense account and immediately forwards a copy of the payment receipt, a cash receipt from TRAINS, and any other supporting information describing the rental payment to HQ.
   3. HQ then redistributes the rental payment into the proper accounts.

B. All other rental payments after the initial rental payment are to be paid directly to HQ. Computer generated Rental Statements are obtained through IRIS twice a month in advance of the rental due date. Rental Statements are reviewed for correctness and mailed to the tenant (along with a return envelope) approximately ten days prior to the due date.

C. The rental payment is processed by HQ upon receipt and appropriate entries are made in IRIS.

### 11-8.4.2 Rent Adjustments

When a lease contains a provision for rent review or adjustment, rent should be adjusted as follows:

A. Adjust the rent every year by either: (1) the percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for All Urban Consumers (U.S. CPI-U), using the data as published by the United States Department of Labor's Bureau of Labor Statistics; or (2) in an amount that reflects changes in comparable rents as identified in an appraisal/market evaluation. After the fifth year, rent should be reviewed and revised based on an appraisal/market evaluation.

B. Wireless Lease adjustments: Rent will be increased annually throughout the term of this Lease, on the second Payment Date by four percent (4%) of the rent amount in effect at the time of the adjustment.

C. Monitoring Well Agreement adjustments: Rent will be increased annually throughout the term of the Agreement by Four percent (4%) of the rent amount in effect at the time of the adjustment. Rent may be adjusted every Five (5) years, at WSDOT's discretion, by an amount that reflects changes in comparable rents as identified in an appraisal or market research conducted by WSDOT.

### 11-8.4.3 Refunds for Early Vacation

A. If a tenant vacates prior to the end of the rental period, the region confirms the following:

1. All rent payments are current.
2. The tenant gives proper notice as required by the lease prior to vacating.
3. The premises are left reasonably clean and in a condition similar to that which existed prior to leasing.

B. The region initiates a refund by transmitting a Property Inspection and Status Report (PISR) (DOT Form 263-007 EF) to HQ and photos of the vacated premises.

1. For displacee leases, the region agent must verify in IRIS the tenant has submitted payment. Rent shall be refunded if tenant vacates within the first 30 days and meets the requirements of Section 3. Refund, subsections 1) and 2) of the Standard Residential and Commercial Displacee Lease.
2. For nondisplacee leases, rent may be refunded based on the terms of the individual lease.

C. HQ reviews and approves, if appropriate, the refund request, prepares and processes an appropriate voucher, and mails the refund to the tenant when it becomes available. Once processed, a copy of the final PISR will be forwarded to the region.

### 11-8.4.4 Delinquent Rentals

A. An IRIS generated rental delinquency/default report is available which lists all leases that are more than 15 days delinquent. With the aid of this report, and in conjunction with the region, HQ:

1. Prepares and mails a delinquency letter to each tenant listed that is more than 15 days delinquent requesting payment.
2. Attempt to contact tenant by either region or HQ staff.
3. Follows up on the delinquency in the next billing cycle and checks IRIS to determine if the delinquent rent has been paid. Final attempt to collect rents due and owing by mailing a certified letter to the tenant setting forth goals and deadlines for payment of the delinquent rent. The Certified Mail Receipt number must be noted in the letter to the tenant. Copies of this letter must reside in the region and HQ file.

4. If tenant remains on the premises and does not submit rental payment, follow procedures titled "How to Prepare For Unlawful Detainer Actions." See Appendix 11-5.
5. Inspects the property after a completed unlawful detainer action to verify that the property has been vacated and left in an acceptable condition. The region and HQ will work together to enforce any court judgment.
6. Prepares a detailed report with photos of the premises and damaged items, including a list of any missing items. The report should include a description of any abandoned personal property, excessive debris, or hazardous materials.

B. If a property is vacated and rent is still due and owing, HQ may turn the delinquent account over to a private collection agency for further handling.

C. If the debt is uncollectible, HQ proceeds to write off the debt and makes appropriate entries in IRIS.

### 11-8.5 Monitoring the Lease

The region shall be responsible for monitoring the lease during the tenant's occupancy. Monitoring shall include:

A. Acting as liaison between the tenant and WSDOT by answering questions and resolving any problems which arise.

B. Inspecting the leased premises as necessary to ensure compliance with lease terms.

C. Adjusting rental rates, in accordance with lease provisions in Section 11-8.4.2, excluding HQ initiated annual CPI adjustments.

### 11-8.6 Assignment of Lease

A. A tenant may make a written request for WSDOT approval to assign the lease to another party. HQ and the region jointly review the request and determine whether an assignment of the lease is appropriate or if a new lease is necessary. The review should include a property inspection to determine if the present tenant is in compliance with the lease terms, a rental rate adjustment, if appropriate, and a credit check if applicable. Existing rental account must be current with no outstanding balance prior to completion of assignment of lease to new tenant.

B. Once the review is complete and determined to be acceptable, the region prepares an Assignment of Lease (RES-426) or examines any other assignment form submitted by the requesting parties. Any assignment form other than an approved WSDOT form must be approved by HQ and the AGO and must include the following:

1. Release by the present tenant (Assignor).
2. Assumption by new tenant (Assignee).
3. Approval by WSDOT.
4. The assignee's address for notification and rental statement purposes.

C. Once the assignment form has been approved, the region secures the signatures of the old and new tenants and submits the assignment to HQ for further handling together with a PISR. The PISR shall include the new tenant's notification and billing addresses and current photo(s) of the leased premises.

D. HQ obtains the appropriate WSDOT signatures. Once the assignment is fully executed, the original will be placed in HQ file and copies will be sent to the region, the assignor, and the assignee.

### *11-8.7 Termination of Lease*

A. Leases may be terminated for the following reasons:

1. Expiration of the term of the lease.
2. Noncompliance with the terms of the lease (default).
3. As requested by tenant or as otherwise allowed in the lease document.

   ***Note:*** Prior to any lease termination requiring notice, care must be taken to ensure that all parties having any interest in the lease are identified and given notice.

B. To complete the termination process, the region:

1. Provides written notification to tenant of lease termination if WSDOT is initiating lease termination. Submits draft termination letter to HQ for review.

   Upon review and approval, written notification should be signed by the Region Property Management Supervisor.
2. Reviews lease termination language and, if appropriate, moves to next step in process if tenant is initiating lease termination.
3. Inspects the property to verify it has been vacated and the condition of the site conforms to the lease. If it has not been vacated, an unlawful detainer may be required.
4. Completes a PISR and submits it, along with photos of the vacated leased premises, to HQ. The completed form shall include the signature of both region specialist and region approving authority.
5. Updates IRIS comments accordingly. Region **should not** enter close date or tenancy end date.

C. Upon receipt of the PISR from the region, HQ:

1. Reviews the report and obtains signature authority approval.
2. Ensures that the last month's rent is credited, if appropriate.
3. Requests payment of any rent due, refunds overpayments, or initiates collection actions, if necessary.
4. Closes lease file unless collection action has been initiated.

## 11-8.8 Airspace Lease Specifics

### 11-8.8.1 Coordination

Since airspace leases involve the shared use of operating right of way and land use issues, a greater degree of coordination is required between Real Estate Services, Engineering, Traffic, Maintenance, FHWA, and local governmental agencies. Early involvement of all interested parties, as well as communication between the region and HQ, should facilitate a successful lease.

### 11-8.8.2 Rental Income

Income from airspace leases with effective dates after April 3, 1987, and covering right of way in which federal funds participated in any phase of the project (preliminary engineering, right of way acquisition, or construction) is to be used as part or all of the state's portion of any project eligible for federal assistance under Chapter 1 of Title 23 United States Code. Any such income is to be deposited into two separate accounts (one state and one federal) in the same proportion as the state and federal participation in the project. Rental income is NOT to be commingled.

### 11-8.8.3 Wireless Leasing

Key RCWs 47.04.045, 47.12.120, and 47.12.125.

Things to keep in mind when having an initial conversation with a wireless site developer:

- Encourage collocation whenever possible.
- When the site is on an interstate or if you need FHWA approval for anything, the developer must complete NEPA.
- There is no access to the communications site from the interstate mainline in urban areas.
- No access to communications sites will be provided from ON or OFF ramps.
- Any trenching in the right of way requires a WSDOT Utility Permit.
- The communications site developer must include a utility trench cross section with their construction drawings.
- Towers and monopoles must be painted "Washington Gray" (an actual paint color).
- Diesel back-up generators must have double wall fuel tanks.
- Construction drawings (CDs) must show/describe fuel tank details.
- CDs must include the location of spill containment materials and the parking location of the fuel truck when refueling the tank.
- CDs need to specify the decibels of the generator when running under full load.
- Developer must use native vegetation to conceal fenced compound, no Douglas fir trees.
- Provide communications site developer with lease application and process instructions (RES 447 - Wireless Lease Application with Process Instructions)

and e-mail address to submit the application to (WirelessRequests@wsdot.wa.gov). This information is also available on our website at www.wsdot.wa.gov/realestate.

- Let the communications site developer know they can submit their plans for a no cost "Conceptual Review" to the email address listed above. No cost conceptual reviews are a quick review for the location only. This is to let the communications site developer know if WSDOT is against the site location. WSDOT does not review much beyond that unless we feel that it could lead to a "no" answer.
- $3,500 application fee Site Upgrade or New Sites. RCW 47.04.045 pertains to right of way only.

### *Service Provider Reimbursable Account Set Up*

Conceptual review is completed.

### *Wireless Application on Utility Pole*

The following will happen on each pole with a wireless application:

- **Permit With Utility** – This should already be in place, so no changes will be made.
- **WSDOT Lease With Utility** – This lease allows the utility to have a wireless application on their pole. Non-utility use.
- **WSDOT Lease With Wireless Company** – This lease allows the wireless company to operate in the right of way. The wireless company will pay a ground lease to locate equipment on the pole. The utility company will not be charged.
- **Wireless Company and Utility Lease** – The Utility should enter into a lease with the Wireless Company to allow them to attach to their pole.

If this is a new request, Region Utilities must approve the install.

### *You Receive a Request for a Conceptual Review*

Conceptual reviews are provided by WSDOT at no charge.

### *You Receive a Complete Lease Application Package*

1. Fill Out the Reimbursable Agreement: Real Estate Services Review and Approval of Personal Wireless Services Facilities (DOT Form 224-031 EF) and Create UCB Number in Agreement Review Transmittal (ART) system.

   A. Only the information in the box at the top of the form can be entered. No changes to the body of the document are acceptable without AG approval. The requester, entity on the invoice and refund entity and address must match.

   B. The UCB number is created in the Agreement Review Transmittal (ART) system. DO NOT use NA in fields that need to be left blank. DO NOT use capital letter unless needed, such as the first letter of your name or UCB.
      - Sign into ART and select "Add New."
      - Choose "Add New".
      - In the Select Prefix, select UCB and select continue, then OK.

- Task and Amendment are left blank, unless you are amending the UCB for additional funds to complete your review.
- Region: Select HQ-RES
- Agreement Manager: Enter your name
- Org Code: Enter your Org Code
- Agreement Type: Select WSDOT Standard Form
- Form No.: Select 224-031
- Agreement Retention; Check six (6) years
- Payee Name and Address: Should match what you entered in the top box of the Reimbursable Agreement.
- Project Title: Use site location name – This is usually a combination of WSDOT location, rental agreement number, and the wireless companies site ID or location name, which is found on their plans.
- Project Description: Use what was entered on the Reimbursable Agreement. This should accurately describe how, who, what, where, why and when.
- Federal ID #: This is the wireless provider or contractor submitting for the upgrade or new site.
- Project Location: DO NOT enter SR or I, but only the numerical number that corresponds to the roadway found in the plan title.
- Allowed Overrun Percent: Enter 25%, per Section 2.3 of the Agreement
- Amount payable to WSDOT: Usually $3,500.
- Advance Payment Amount: Leave Blank
- Under "Reportable Under Performance Based Contracting Policy" leave it blank. The blank selection is after the other options.
- Notes to HQ: Leave Blank
- Initialed By: Enter your name
- Date: Enter date.
- Phone: Enter your phone number

**Forms Search** – If you search for a form number, the search format is three letters (UCB), space, four numbers (1234), (ex. UCB 1234)

Processing Signed UCB Agreement – Transmitting to HQ Accounting – Establishing Charge Numbers

HQ RES will submit the signed and executed UCB Agreement along with an Agreement Review Transmittal directly to Laura Sanborn (ext. 7108) via Lorri Riches (ext. 7112). Laura's accounting group will complete data entry into ART and create charge code information. The following outlines the process from Program Analysis and Management Services (PAMS).

These procedures outline the process between Real Estate Services (RES) and PAMS to create reimbursable charge codes for Real Estate's Wireless Leases.

**RES** – A Private Entity contacts Real Estate Services with a request for a Wireless Lease which may include a variety of activities including site upgrade.

**Private Entity** – The Private Entity submits a Wireless Lease Application to the Real Estate Services Office.

**RES** – The Real Estate employee will then initiate the creation of an agreement (UCB prefix) by:

- Accessing the Agreement Review Transmittal (ART) system to assign the next sequential UCB agreement number to the applicant.
- Creating a Wireless Lease that outlines the terms of the lease between WSDOT and the Private Entity.

**RES** – The Real Estate employee will send one original UCB agreement to the Private Entity for execution and signature.

**Private Entity** – The Private Entity signs the original UCB agreement document, and mails 1 (one) original Task Agreements to the Real Estate employee.

**RES** – The Real Estate employee will one original Task Agreements to the RES Program Administration for signature along with a cover page (memorandum) explaining why you are requesting his/her signature. Send one original UCB agreements to the PAMS Office for work order creation and a color copy to the Private Entity for their records.

**PAMS** – The PAMS Office will:

- Create a new reimbursable work order (RO) for the amount of the UCB Agreement.
- Complete the customer's Agreement Review Transmittal system record for the reimbursable agreement by keying:
  - RO work order number
  - Bill Code - 5490
- Send one signed original to:
  Accounting and Financial Services Office
  Project Support and Receivables Unit

Once the work order has been added to TRAINS, a copy of the work order authorization will be sent to a predetermined list of Real Estate Services staff notifying them of the work order/work order group number.

**RES** – The Real Estate Services Office will charge the work order group for activities related to the Private Entity.

***Please Note:*** An increase to the UCB agreement will be required in those instances where the amount of expenditures exceed the amount of the agreement. The Real Estate Services Office will be responsible for supplementing the UCB Agreement, including obtaining Private Entity signature, if necessary.

**Private Entity** – The Entity will submit payment(s) to the Headquarter Accounting, Cashier as indicated on the remittance letter.

**RES** – The Real Estate Services Office will notify the PAMS Office Staff when the work has been completed.

**PAMS** – The PAMS staff will audit the work order and reimbursable activity to determine if any refund is due to the Private Entity or if any additional expenditures should be invoiced. The PAMS staff will notify the Accounting and Financial Services Office, Project Support and Receivables Unit of their findings.

The PAMS staff will then notify the Real Estate Services Office when the final work order and UCB Agreement closures have processed.

2. Review the construction drawings to make sure they included/identified the items described above in the initial conversation with a developer.
   - Review for the following items: Access to the site, are they locating equipment on a PSE Pole (see PSE Pole Section if so), size of site is limited to 400 sf which includes utility trench area. Most trenches are approximately 18″ – 24″ deep and a 6″ conduit will require 1′ width or more to accommodate it. If conduit is located within the parameter of the site, ex. 20′ x 20′, then the conduit trench is not an issue. ***Note:*** Most power is trenched from a utility cabinet. From the cabinet to the site is considered private use and not a public utility. This area should be included in the site square footage assessment.
3. Is the project located within an interstate? If so, notify Region Environmental that a NEPA review will be necessary and provide charge numbers. If project is not within interstate, NEPA is not required.
4. Prepare the review package in ORACLE for distribution.
5. Reviewers have 30 business days to review and email their comments. Failure to respond in 30 business days is an automatic approval. With the exception of region and HQ Environmental and HQ Access, you must have these.
6. Write the lease and email it to AAG for review and approval.

   There are three primary leases used in wireless leasing:
   - **Wireless Lease With Attachments** (RES-421) – To be used when a tenant wants to attach anything to WSDOT's tower (mostly used on mountain top locations).
   - **Wireless Lease, No Attachments** (RES-422) – To be used for a new cell site in the WSDOT right of way.
   - **Wireless Ground Lease** (RES-424) – To be used when a new tenant wants to collocate at an existing cell site in the WSDOT right of way.

   And two that are used less frequently:
   - **Airspace Lease for Access to Communication Facility** (RES-425)
   - **Wireless Lease for Utility Pole Attachment** (RES-432)

7. Send lease to tenant so they can start their review. This should be done concurrently as the region and HQ review of the project is taking place. If the lease application is denied by region or FHWA, then notify tenant and do not let WSDOT execute lease.
8. Review the comments as they come in and answer any questions to keep the review process moving.
9. If the project is not on interstate, you are ready to lease the property.
10. If the property is on interstate and you have region approval to lease, you must wait until you have NEPA approval (interstate only) before you forward the following items to FHWA for approval to lease:
    - NEPA approval letter from region.
    - Region approval to lease.
    - Reviewer comments with answers to questions.
    - Original Oracle Review package.
11. Wait for FHWA letter granting permission to lease. Once received, notify tenant.
12. The lease language negotiations should be done or nearly done at this point and you will need an AAG signature on the original.
13. Take the lease with the AAG's original signature and attach all the exhibits and make two copies. Mail all copies to the tenant for signature.
14. Once signed and notarized by tenant, then have WSDOT execute.
15. Mail one fully executed original lease to tenant.
16. Process one fully executed WSDOT original lease as provided herein.

### *Wireless Rent Schedule*

See the Tower Rate Calculator V4_2012. Instructions are imbedded in the document.

### *How to Enter a New Lease Into IRIS When You Have Existing IC #:*

1. Click on PM Tab.
2. Click on IC # pull down menu.
3. Click on "Find related items" to the right.
4. Click on Search.
5. Go to top header to "PM" in red drop down to "Leases" click on leases.
6. Go to the bottom of the screen click on "New."
7. Enter data.
8. Tenant not on list:
9. Click on add tenant.
10. Enter tenant data.

11. Click on "Save."
12. Click on "Insert."
13. Scroll back up and get the WF #.
14. Enter new lease into spreadsheet.
15. Create label for file folder.
16. Provide Leasing Manager and/or RES Fiscal Analyst with the Location and Levy Codes.
17. Send file to Leasing Manager and/or RES Fiscal Analyst to enter rent schedule.
18. Make sure the assistant to the Leasing Manager and/or RES Fiscal Analyst enters the lease into the CPI list.
19. Make a label for the HQ file.

### *How to Do a WSDOT Land Acquisition When a Communications Leasehold Interest Must Be Cleared*

Communications sites are not considered a utility because they are not regulated by the UTC. They are also not eligible to receive relocation benefits under the Uniform Act.

Communications sites are eligible to receive compensation in the acquisition process, e.g., moving a sign.

In a situation where a WSDOT project is purchasing land with an existing communications site, the acquisition specialist must get each tenant at the communications site to sign a full release of lease; this will clear the tenant's leasehold interest in the land WSDOT is acquiring.

Examples of situations:

1. If the cellular site is located on land not needed for the WSDOT project, then WSDOT should enter into a new lease with all the tenants who want to stay at the site. Ideally if WSDOT does not need the property WSDOT will not include it in the purchase.
2. If the communications site is located on land needed for a WSDOT project, but the project construction isn't scheduled, five years, WSDOT can enter into a very short term lease with all tenants who want to remain; the project is still responsible to pay compensation to move the communications site when they have to relocate.
3. If the communications site property (land) is needed for an immediate WSDOT construction project, the tenants are eligible to receive compensation to relocate through the acquisition process (not relocation). No new lease would be executed.
   - Statutory authority covering wireless leases is covered by either RCW 47.12.120 or RCW 47.04.045.

- All wireless lease matters are the responsibility of HQ RES PM and are handled by the Leasing and Special Projects Manager. In order to process requests in an orderly and timely manner, an application procedure has been developed.
- Requests to locate wireless equipment on WSDOT-owned or controlled property, either inside of a right of way or outside, requires the execution of one of four wireless communication site leases.
- In order to assist wireless providers in determining the feasibility of a particular location a "Conceptual Review" process is available upon request.

## 11-9 Right of Way Encroachments

A. **Purpose** – All real property, including airspace (e.g., operating highways, pit sites, mitigation sites, park and ride lots) owned by WSDOT acquired for highway purposes is devoted to public highway purposes. Right of way includes the property rights necessary to meet the needs of construction, operation, and maintenance of the highway. WSDOT is responsible for preserving the right of way free of public and private installations or facilities that are not a part of the highway facility and are not consistent with its safe operation, maintenance, and use.

The purpose of this encroachment policy is to ensure safe conditions on the highway facility, to allow for efficient and effective maintenance, and to protect the public investment in the original cost of the right of way and of the highway facility. This policy sets out a process for protecting WSDOT rights of way from unauthorized use. This is necessary to avoid delays to transportation projects caused by clearing encroachments prior to project construction bids and to maintain the safety and operations of the highway facility.

This policy is not intended to suggest that the regions must allow existing encroachments but it is merely a tool that provides options for how to handle encroachments whether the decision is made to remove or authorize their existence. Upon proper review and authorization as further described in this chapter, certain encroachments may be permitted to remain on the right of way. These must be under agreement with the Department and are subject to removal if they subsequently interfere with the safe operation and maintenance of the highway.

B. **Authority** – In establishing and enforcing its encroachment policy, WSDOT's actions conform with the legal authorities listed below. The full text of legislative enactments and regulations should be read for a complete understanding of the provisions. These legal authorities include:

- RCW 47.32.010, *Order to remove obstructions – Removal by state*
- RCW 47.32.020, *Notice of order, contents, posting – Return*
- RCW 47.32.120, *Business places along highway*
- RCW 47.32.130, *Dangerous objects and structures as nuisances – Logs – Abatement – Removal*
- 23 CFR 1.23(b), *Use for Highway Purposes*

All real property, including airspace, within the right of way boundaries of a project must be devoted exclusively to public highway purposes. Exceptions are permitted for informational sites and for uses defined in 23 CFR 1.23(c) below.

23 CFR 1.23(c), *Other Use or Occupancy*. Temporary or permanent occupancy or use of right of way for nonhighway purposes, or reservation of subsurface mineral rights, may be approved if it is determined that it is in the public interest and that it will not impair the highway or interfere with the free and safe flow of traffic.

C. **Definitions**

**Authorized Use** – The occupation of WSDOT's right of way may be allowed by an executed permit, lease or other appropriate document.

**Monitoring** – Systematic and purposeful observation that occurs on a regular basis to determine if any changes to the right of way have occurred.

**Encroachment** – An encroachment is any installation, device, object or occupancy that is located at, above or below the grade line of the highway and within the right of way limits, and that is not installed as part of the highway facility and which has not been authorized by the execution of a permit, lease or other appropriate document.

Encroachments include but are not limited to the following within the right of way:

- Overhanging projections of signs, where the base is installed off the right of way.
- Fences, walls, and gates.
- Abandoned vehicles and equipment.
- Advertising devices, including political banners.
- Buildings or structures.
- Projections from buildings (e.g., stoops, decks, porches).
- Tree plantings or landscaping.
- Driveways/approaches in violation of WSDOT's Access Control Policy.
- Crane booms.
- Excavations or fill material.
- Private signs, emblems, symbols, posters, monuments.
- Highway memorials, i.e., crosses, flowers.
- Stormwater or surface runoff from abutting lands directed to the highway.
- Mailboxes that are considered a safety hazard.

The following installations are not encroachments:

- Utility facilities that were installed pursuant to WSDOT's Utility Accommodation Policy.
- Private approaches (including residential, commercial, and farm) that were installed in compliance with WSDOT's Access Management Policy.
- Trails or pathways that were installed in compliance with WSDOT's Airspace Leasing Policy.

WSDOT reserves the authority to remove any public or private installation on the public right of way without notice if it presents a hazard to public safety, or interferes with traffic operations as allowed by RCW 47.32.130.

### *11-9.1 General*

The basic principle underlying this policy is that no person or entity may lawfully occupy or use the department's rights of way without authorization to do so. This policy provides guidance for how the region will prioritize their efforts to cure encroachments (unless state legislature provides new law). This policy also will describe the expectations when creating a master region inventory, and the expected level of monitoring to maintain the inventory.

### *11-9.2 Identifying and Managing Encroachments*

#### 11-9.2.1 Monitoring and Inspections

All WSDOT employees should be alert to the possible existence of encroachments.

When identified, the encroachment should be reported to the appropriate office for handling. Historically, the following offices have been delegated responsibility:

- **Advertising/Business Signs** – Region Traffic and Region Real Estate Services if necessary.
- **Periodic, Intermittent, and/or Temporary Encroachments** (e.g., vendors, parked vehicles) – Region Maintenance Office and/or Region Real Estate Services Office.
- **Permanent Improvements** – Region Real Estate Services Office.
- **Unauthorized Accesses** – Development Services, Maintenance, Region Real Estate Services Office and Access and Hearings Unit.

Each region has the authority to vary or establish different areas of responsibility to meet the region's operational needs.

#### 11-9.2.2 Encroachments Discovered During Project Development

All WSDOT employees involved in delivering a highway project should be alert to the possible existence of encroachments. When an employee identifies an encroachment, they should report it to the Region Real Estate Office as early as possible. Encroachments can affect project delivery timeframes and budgets.

#### 11-9.2.3 Encroachment Inventory

A master inventory should be created for each region and will be managed by the appropriate location, either at the region or HQ. This inventory should be regularly updated to include encroachments discovered during routine monitoring and inspections and through project development activities.

It is not expected that the regions will go out and perform a survey to create a master inventory. All offices in the regions will submit their known/confirmed encroachments on (date) and it will be updated as project lists are created and regular surveillance/monitoring/inspections are performed.

At a minimum, the inventories should include the following information:

| SR# | IC# | Location on SR | Description of Encroachment | Priority of Encroachment | Status/Cure |
|---|---|---|---|---|---|
| 999 | 99-99-99999 | East side of roadway. | Espresso building encroaches into ROW by 2 feet, for a total of 16 square feet. | Select 1-5 as listed in 11-9.3 below when type is known | Lease, disposal, request owner to remove, etc., depending on the situation. |

This information is fictional and is for illustrative purposes only.

IRIS (or the latest electronic data management) or other appropriate application is used to generate the master inventory. It is recommended that IRIS be used.

### 11-9.3 Developing an Action Plan

WSDOT will utilize a prioritized approach when determining the timing for curing encroachments per the order listed below:

1. Encroachments determined to be a safety hazards shall be removed as soon as possible (under statutory authority previously referenced).
2. Encroachments determined to be an operational impediment will be removed as soon as possible (under statutory authority previously referenced).
3. Encroachments discovered during project development activities will be cured or removed as part of the project.
4. An encroachment on property that will be needed for transportation purposes within the near future will likely be cured or removed as part of the future project.

Other encroachments as discovered during monitoring and/or inspections will be cured or removed as resources become available.

### 11-9.4 Removing the Encroachment

If the encroachment has been determined to be immediately or eminently dangerous to the traveling public, it may be removed immediately per RCW 47.32.130(1).

For other encroachments that WSDOT determines need to be removed, a notice will be posted upon any and all structures, buildings, improvements, and other means of occupancy of the state highway with the support of region management. WSDOT will also notify the AGO of the encroachment and their intention to post a notice. The notice needs to include the date of the posting and the encroachment owner. The notice states the encroachment owner must remove all property from the ROW within ten days following the posting of the notice.

If the encroachment is not removed within ten days following the posting of the notice, WSDOT will submit this file to the AGO for action.

### 11-9.5 Curing the Encroachment

When a determination has been made to allow an encroachment to remain, a decision must be made as to the appropriate document to be used. Each decision should be coordinated between the appropriate staff. If there is a question on how to cure the encroachment, the region should contact Property Management staff at HQ to discuss.

#### 11-9.5.1 Determining the Appropriate Document for Allowing the Encroachment

Selecting the appropriate document for authorizing uses of WSDOT rights of way depends on the purpose, type, and duration of the use. The following may be used as a guide:

- Permits, airspace leases, ground leases, easements, cooperative agreements, or conveyance documents.
- If there is real property encroaching on WSDOT property, leases will be recorded.

#### 11-9.5.2 Market Value

RCW 47.12.063 and WAC 468-30-060 and 110 require that department property must be leased or sold at market value. Market value may be established through an appraisal, a value memorandum for properties valued between $10,000 and $25,000, and the formula method for leased properties valued under $10,000.

In addition to the rent, the lessee may be responsible for paying the Leasehold Excise Tax (LET).

- There are exemptions to the LET, please see RCW 82.29A.130.

## 11-10 Assessments Against State-Owned Lands

A. **General**

1. Even though the state is exempt from the payment of general real estate taxes, it enjoys no such exemption from the lien and charge of certain assessing districts. Some assessments are collected as part of the real estate taxes and are generally for administrative and operational costs of the districts, not capital improvement costs. Assessing districts with statutory authority to assess department-owned lands include: diking, drainage, sewerage, storm water, fire protection, irrigation, fire patrol, and weed districts.

2. Other assessing districts have no authority to assess department-owned lands but may assess such lands when they follow the legal requirements to establish the district and the assessment values and the proposed improvement “specially benefits” the assessed lands. Such districts include: local improvement districts (LID), utility local improvement districts (ULID), water districts, sewer districts, sanitary sewer districts, port districts, public utility districts, reclamation districts, park districts, river and harbor improvement districts, and rodent extermination districts.

3. All assessment statements are received in the region and must be quickly checked to see if they are for an existing obligation, or if they represent a new improvement or proposal along with the region recommendation. Because appeal periods are so short (road improvement districts have a 10-day appeal period after mailing, most others have a 30-day period), prompt review and processing for payment is essential.
4. Generally, this section applies to assessments against parcels in the Real Property Inventory. The obligation of the department for storm water control assessments is detailed in RCW 90.03.525 and these are processed by the HQ Operations Division.

B. **Rules**

1. Chapter 79.44 RCW provides that any region proposing a new improvement/assessment must provide a Hearing Notice to the Office of Financial Management with a copy to the head of the impacted agency at least 30 days prior to the date of the required public hearing.
2. Any such hearing notices received by the region are to be promptly directed to the HQ Real Estate Services Manager for further processing. The notice is to include the region recommendation to either honor or protest the assessment.

C. **Procedures for Processing Assessments**

1. Most assessment statements are mailed to region offices; those mailed to HQ are returned to the region and processed.
2. After preliminary review, the statements are routed to the appropriate region office for the following actions:
   a. Verifies that the assessment is for lands still owned by WSDOT and that the benefit provided by the assessment still exists.
   b. Prepares a payment voucher including coding for the charges and routes it to the region accounting office to process the payment.

D. **Payment of Assessment on WSDOT-Owned Property**

1. All assessments will be mailed by the assessing district to the appropriate WSDOT region organization (Operations or Real Estate Services).
2. The Region Operations or Real Estate Services Office will:
   a. Prepare the voucher distributions, including the required expenditure coding and purchase authorities. Care should be taken to ensure that:
      (1) The assessments are only for property WSDOT owns.
      (2) The assessments are valid.
      (3) The payments are processed in batches small enough (contact the region accounting office for batch sizes) to be paid on a timely basis without causing an extraordinary workload impact on the region accounting staff.

b. Make two copies of the voucher distribution and attachments plus whatever copies the originating office requires.

c. Forward the original and one copy to the region accounting office for processing.

3. The region accounting office will:

a. Perform the normal voucher audit process.

b. Process the original through the normal voucher process and maintain one copy (as usual) of the voucher in the region accounting office.

## 11-11 Facilities

Disposing of Capital Facilities Properties

A. **Introduction**

1. **Purpose** – To provide a procedure for WSDOT to follow which will ensure that surplus HQ Facilities Office properties are disposed of properly and with "just compensation."

2. **Definitions**

a. HQ Facilities Office properties include all real property, buildings, and structures used for the planning, design, construction, maintenance, or administration of WSDOT's construction management and support program. Excluded are Marine, Aviation, and infrastructure support facilities.

b. Just compensation is the equivalent reimbursement value for the loss of the property owned by WSDOT. The dollar amount shall be established by approved real estate methods.

c. RES-ER (Real Estate Services – Electronic Review) (Oracle) is the computerized electronic review system to track Disposal and Lease Reviews administered by WSDOT Property Management section.

B. **Policy**

1. All HQ Facilities Office properties must be disposed of for "just compensation."

2. Proceeds from the sale of any HQ Facilities Office properties shall be deposited into Fund 108 (the Motor Vehicle Fund).

3. Prior to surplus, the facility must be deemed ready for release by the Fields Operations Support Service Center Environmental Support Branch Manager.

C. **Responsibilities**

**Disposal Review Process**

The Region Property Management Agent (PMA) will be responsible for the following:

- Application for each proposal.
- Title verification.
- Legal description - should be drafted once the plan revision is completed.
- Upon approval of package, Region should request the necessary plan revision. Once the revision has been completed an updated plan sheet will be added to the package.
- Completing the review, including any necessary HQ reviewers.
- Provide value determination using tools available (appraisal or value memo).
- Region PMA will provide the HQ PMA with an email stating that the approved completed review and all of the necessary documentation is available in the RES-ER system.
- Notifying Region Environmental Services office when NEPA is triggered because the proposed disposal area is located on interstate, or if the parcel was purchased with federal funding and the parcel will be sold for less than fair market value. If any of these conditions are met, a federal nexus is created, and NEPA, NHPA, and ESA documentation must be completed during the RES-ER process.

The Region PMA will select reviewers based upon the facility types detailed below. For additional information on creating a review package in RES-ER, please see the document titled "PMA updated CheatSheet.pdf" located in the Outlook Public Folders directory for Property Management Forms (path: All Public Folders/HQ/Environmental & Engineering/Real Estate Services/ FORMS/PROPERTY MANAGEMENT).

**Non-Limited Access Facilities and Specific Sundry Sites (Pit Sites, etc.) –** Reviewed and approved by Region staff and HQ Access review staff with no HQ Approving Authority required.

Every proposal must be reviewed (unless noted) by the following disciplines. Region staff should be available for each of the disciplines shown below:

- Environmental
- Public Transportation/Planning
- Roadside Services/Landscape
- Local Programs (as determined by region)
- Area Operations Manager for specific county (primarily NWR)
- Developer Services (as determined by region)

- Region Access - Dale Severson, OR
  Jeff Barsness, SWR
  Roland Storme, NWR (Skagit & Whatcom Counties)
  Ramin Pazooki, NWR (Snohomish & King Counties)
  Bill Gould, NCR
  Rick Holstrom, SCR
  Greg Figg, ER
- HQ reviewers for all Managed Access reviews:
  - NCR, SCR, ER, OR, and All Utility Breaks Statewide: Rickman, Trent
  - NWR and SWR: Patterson, LeRoy
- Utilities
- Maintenance
- Hydraulics (hillsides, slopes, water issues)
- Traffic (In NWR ARA Maintenance/Traffic, Maintenance)
- Region right of way plans (see note below regarding HQ plans and access)

May also require review by the Special Circumstance Reviewers shown below if region does not have staffing that specializes in the needed area:

- Foundations (bridge structures, retaining walls, sloping issues, tiebacks and similar situations): Cuthbertson, Jim
- Bridge: Al-Salman, Mohamad
- Homeland Security (Infrastructure and Bridges): Himmel, John
- Ferries: Deardorf, Ray
- Bicycle and Pedestrian:
  - Claybrooke, Charlotte (Schools)
  - Macek, Ian (Non-Schools)
- Radio Ops: McDowell, Tim
- Aviation: Wolf, Paul
- Project specific engineers (or field experts), as determined by region.
- Facilities: Medina, Yvonne (in the case of a Facilities site – HQ Facilities must be included in the review) Facility sites include the following property types: Pit Sites, Stockpile Sites, Rest Areas, Waste Sites, and Capital Improvements.

Upon completion of the package review:

Upon completion of all of the necessary reviews and approvals by region staff, plan revision and determination of the value of the property, HQ will notify the required local jurisdictions, prepare and complete the conveyance document(s), and complete any other tasks necessary to finalize the transaction.

**Limited Access Facility (Non Interstate - Established or Planned)** – Standard Region Reviewers as well as the HQ Access reviewer assigned to that region as shown below:

Access:

- NCR, SCR, ER, OR, and All Utility Breaks Statewide: Rickman, Trent
- NWR and SWR: Patterson, LeRoy

Package will automatically go to the following queues. Please do not choose the following as reviewers:

- HQ Approving Authority: De Ste Croix, Barb
- HQ Plans Review: Berry, Brad

Region staff will facilitate the entire review (including any HQ reviewers), and complete the other elements of the transaction as detailed above.

**Interstate Facilities** – Standard reviewers, Special Circumstance Reviewers, HQ Access, HQ R/W Plans and FHWA.

As part of all FHWA reviews, appropriate NEPA documentation is required. This environmental documentation requires the help of Region Environmental staff to be sure that all areas of the federal nexus are covered. NEPA is triggered if the property being considered for disposal is located on an interstate highway, or if the parcel was purchased with Federal funding and the parcel will be sold for less than fair market value. If any of these conditions are met, a Federal nexus is created, and NEPA, NHPA, and ESA documentation must be completed prior to lease or disposal (23 CFR 771.11(d)(6)). When a local jurisdiction is acquiring the property for a project, they often have this completed when applying to purchase the property.

The remaining process will be the same as stated above, however, upon completion of the review. The HQ PMA will verify with HQ Access that FHWA approval is necessary for an access break. If an FHWA access break approval is necessary, the disposal package will be delivered concurrently with the HQ Access break request.

FHWA requires a minimum of 60 days to complete their review. Upon approval, finalization of the process will be facilitated by Region/HQ Property Management staff.

The disposal review package should include the following items:

***Note:*** If a 'J account' is created to cover the expense of the review and disposal process, please include the appropriate J account information in the PMA Comments field found on the General Information Tab.

1. Regional Administrator's (or designee) electronic approval attesting that the following statements are true:
   a. The lands will not be needed for transportation purposes in the foreseeable future.
   b. The right of way being retained is adequate under present day standards for the transportation facility.

c. The release will not adversely affect the facility or the traffic using it.

d. The lands to be disposed of or relinquished are not suitable for retention to restore, preserve, or improve the scenic beauty adjacent to the highway.

e. The lands to be disposed of or relinquished are not suitable for inclusion into our wetlands inventory.

f. The lands to be disposed of or relinquished are not needed for a park and ride lot, flyer stop, or similar facility to accommodate high-occupancy vehicles.

g. No hazardous material or highway waste is present on the site and any necessary cleanup has been completed.

h. Specific information regarding rights to be reserved.

i. If interstate, NEPA documentation is signed and/or approved by Region Environmental Services.

2. If the property was acquired with federal funding, the federal aid number is supplied.
3. All regional review and comment documents as entered in the Electronic Review. Any "no" responses and questions received during the region review need to be addressed before the package is forwarded to HQ.
4. Region shall complete a title check verifying ownership, type of interest held, and any restrictions affecting the property.
5. Prepared legal description for the disposal area.
6. Completed Property Inspection Status Report.
7. Photographs of the property together with a map showing the direction of the photos.
8. An 11 x 17 copy of the right of way plan sheet with the property to be disposed of outlined in red or hachured. Once the property is approved for disposal, region will request the necessary plan revision. Upon completion of the revision, an updated plan sheet will be attached to the disposal package and forwarded to HQ-Disposal.
9. Tax parcel number of this parcel, if assigned.
10. Names, addresses, telephone numbers, and tax parcel numbers for each abutting property owner including contract purchasers.
11. All correspondence from interested abutting owners and/or other potential purchasers and any responses.
12. Notation of any special features or conditions on the property, such as encroachments, utility availability, access, boundaries, improvements, similarities, and differences to adjacent properties, etc., that could affect sale or value.

13. Written directions to the property to enable locating and inspection of the property.
14. Notation of the right of way project number, acquisition parcel number, and federal aid number (if applicable) on which the property was originally acquired.
15. Diary of Right of Way Activities.
16. If the property to be disposed of is or was a pit site, the following documentation needs to be submitted:
    a. Reclamation plan, if appropriate. The reclamation plan shall be obtained from the Region Materials Lab or appropriate office.
    b. Hazardous Materials Assessment and Remediation Report, if appropriate.
17. Information from county assessment records showing assessed value and property size for the disposal area as well abutting properties.
18. Recommendation of property value based on available information. If the value of the property appears to be $25,000 or less, as determined by the Region RES Manager or designee, the region specialist should prepare a value memorandum citing the rationale and evidence obtained for the conclusion of value. Information to be included in the memorandum would be:
    - Size of parcel
    - Current use of parcel
    - Anticipated highest and best use
    - Support

    The conclusion may indicate a range of value rather than a single dollar amount. Value Memos prepared in the region need to be approved by the Region RES Manager (or designee). Value memos prepared at Headquarters need to be approved by the PMPM (or designee).
19. The Region Property Management Specialist is responsible for inputting the following disposal information in IRIS:
    - Disposal activation date
    - Disposal to Regional Administrator date
    - RA decision
    - Date of Regional Administrator decision
    - Disposal to Headquarters Approving Authority date
    - Headquarters Approving Authority decision
    - Date of Headquarters Approving Authority decision
    - Disposal to HQ date
    - Comments (diary entries)

20. At the beginning of each month, HQ will email status updates for disposal files currently being processed at HQ. The Region Property Management Specialist is responsible for relaying that information to the requester. This should be done at least once a month and continues until the property is sold or placed in auction. The Property Management Specialist closes the region file once the property is sold and notes it on the Property Management's right of way plan sheets. The Property Management Specialist will note the type of deed, the date, and color the property appropriately on the plan sheet(s).

D. **HQ Processing** – Upon completion of the Electronic Review disposal package and the revised plan sheet, region will attach the revised plan sheet and send the package from the "Region PMA Final Queue" by selecting "Finish" and "Complete". The Electronic Review System will automatically send an email to HQ letting them know that a new package has been approved.

Upon receipt of this email, HQ will complete the following tasks:

1. Review title check and legal description provided by region.
2. Review submitted value information; approve, concur, or order full appraisal as needed.
3. Verify that the required plan revisions have been completed, and a copy of the revised plan has been provided
4. Prepare and mail 60-day notice to city/town and county as required by RCW 47.12.055. Whenever possible, this notification will be sent by email.
5. Request FHWA approval for the disposal when the property was acquired for an interstate facility or purchased with federal funds and being sold for less than fair market value. If the plan revision requires that the limited access hachures be relocated, the FHWA disposal package and Access Break Package must be submitted together. Per the Programmatic Agreement, federally funded non-interstate disposals to local jurisdictions for continued highway purpose, does not require FHWA approval. (added link to agreement). ***Note:*** FHWA requested review and approval is in letter format and the response in letter format as well. Be sure to keep these items in the Disposal file.
6. Recommend to HQ PMPM a negotiation range based on appraisal/DV or value information.
7. Recommend method(s) of disposal considering the requirements of RCW 47.12.063 and any region recommendations.
8. Establish special conditions, restrictions, and/or terms for disposal.
9. Obtain necessary approvals for disposal by completion of a Surplus Property Report and prepare package for appropriate method of disposal.
10. Assure that all IRIS entries, including completion of the comment screen, are correct and current.
11. See Section 11-7.4.2 for further instruction on document preparation.

E. Any disposal file that has been on hold (no activity) for two years or more will be terminated, closed and the HQ file will be sent to the vault. The ICN will remain open, the disposal will be terminated in IRIS and comments will be entered by HQ explaining the termination of the disposal. A new region disposal package will be required for any files closed pursuant to this procedure.

## Radio Site Acquisition

A. **Introduction**

1. Purpose – To provide a procedure to document the steps necessary to acquire radio/communications sites at locations where required to provide uninterrupted coverage for WSDOT's statewide emergency radio operations network.

2. **References**

   a. RCW 47.12.010 *Acquisition of property authorized*

   b. D 58-03 (MO) *Radio Communications and Radiating Devices*

   c. Department of Transportation Facilities Operating Procedure #8a.03, "Site Selection."

   d. Department of Transportation Facilities Operating Procedure #9.28, "Facilities Project Identification and Prioritization."

   e. *Facilities Inventory System Manual*

   f. *Right of Way Manual* M 26-01, Chapter 6 Acquisitions

3. **Definitions**

   a. **Acquisition** – The acquisition of real property in fee or by leasehold interest.

   b. **Request to Lease Form (RTL Form)** – The form used by ITS Communications and Wireless Technology to request work be funded in the Facilities Office Radio Projects Delivery Plan.

   c. **Facilities Control Record Number (FCR#)** – The number assigned to each site and building owned and/or operated by WSDOT.

   d. **Real Estate Services (RES)** – The department responsible for the acquisition of land acquired in fee or by leasehold interest for placement of radio communications towers or radio communications buildings to support the office of ITS Communications and Wireless Technology.

   e. **Integrated Realty Information System (IRIS)** – The computerized inventory system used by RES to track all real property owned and leased for the benefit of ITS Communications and Wireless Technology.

f. **Propagation Study** – A computerized analysis carried out by ITS Communications and Wireless Technology as an initial test to determine the area of coverage a specific radio signal is capable of radiating from a given location.

g. **Path Analysis Study** – A computerized analysis carried out by ITS Communications and Wireless Technology as an initial test to determine the feasibility of point to point communications between radio facilities.

h. **Right of Way Work Order (RW Work Order)** – Job numbers used to accumulate costs for appraisal, review appraisal, title information, land purchase, acquisition costs, necessary related labor expenses, production of sundry site plan, and document recording.

i. **ITS Communications Strategic Plan** – The 10-year strategic plan to identify the direction of the wireless program. One of the objectives of the strategic plan is to create individual regional communications plans. The regional communications plans will provide detailed regional communications projects. The ITS communications project process will provide proposed schedules, general scopes, and budgets for each project.

j. **ITS Communications and Wireless Technology Site Comparison Form** – A form used to document all of the pertinent date for site comparison purposes.

B. **Responsibilities**

If facility is to be leased:

1. ITS Communications and Wireless Technology will be responsible for the following:

   a. Submitting the Request to Lease Form (RTL) for funding by the HQ Facilities Office.

   b. Perform testing via propagation study, path analysis, and/or field survey.

   c. Documenting all pertinent data on the ITS Communications and Wireless Technology Site Comparison Form for site comparison purposes.

   d. Utilizing the ITS Communications and Wireless Technology Site Comparison Form to perform complete comparison study.

   e. Once the lease is executed and ITS has been notified by the RES Liaison, ITS may move in and make site operational.

2. HQ Facilities Office will be responsible for the following:
   a. Add newly identified project to the ITS Communications and Wireless Project Delivery Plan.
   b. Assign a Facilities Control Record Number (FCR#) and add the project to the ITS Projects Spreadsheet with the designation "Proposed."
   c. Create and provide a work order number to fund the site selection work.
   d. Notify HQ Accounting Office to add FCR# to tax table.
   e. Add charge numbers to the RTL Form and submit to HQ Facilities Real Estate Liaison.
   f. After lease is executed begin payment process and distribute copies of executed lease.
   g. If lease is not for land, but is for space in building, update existing FCR# and data.
3. HQ Real Estate Services Liaison will be responsible for the following:
   a. Contact land/facility owner to begin negotiations for a lease in accordance with Chapter 6.
   b. Create an Inventory Control Number (ICN) by adding the leased parcel to IRIS and cross-reference to appropriate FCR#.
   c. After lease has been drafted, any operations or policy concerns are reviewed by ITS Communications and Wireless Technology.
   d. Transmit to the Assistant Attorney General for review and signature.
   e. Transmit to HQ Facilities Office for signature.
   f. Transmit to WSDOT Title section for processing and signature, including the Memorandum of Lease to be signed at the same time as the lease document.
   g. Once fully executed and copied of lease have been returned to RES, transmit to HQ Facilities Office to begin payment process.
   h. Notify ITS Communications and Wireless Technology that facility can now be occupied.

If facility is to be purchased:

1. ITS Communications and Wireless Technology will be responsible for the following:
   a. Submitting the Request to Lease Form (RTL) for funding by the HQ Facilities Office.
   b. Notify the HQ RES Liaison of the decision to purchase the site and request that the Liaison begin the acquisition of the property.
   c. Move in and make site operational.

2. HQ Facilities Office will be responsible for the following:
   a. Creating and provide a work order number to fund the site selection work.
   b. Notifying HQ Accounting Office to add FCR# to tax table.
   c. Updating the existing work order used for the comparison study to fund the site development, tower construction, and building installation.
3. HQ Real Estate Services Liaison will be responsible for the following:
   a. Securing the right of entry permit from property owner and transmitting to Region Facilities Planner.
   b. Arranging for detailed site investigations to include:
      - Random soil testing for chemical contaminants (analysis by a Department of Ecology (DOE) certified independent laboratory).
      - Ground water tests for contaminants (analysis by DOE certified independent laboratory).
      - Test borings to determine soil bearing capacity (typically by state force).
      - Determination of highest and lowest groundwater levels for impact to foundations, drain fields and water wells (typically by state force).
      - Inventory level assessment for wetlands, endangered species and biology.
   c. If none of the results from above preclude the intelligent purchase of the prime site send all results to HQ Facilities office for concurrence. If not, repeat steps a and b for the number two site.
   d. Order an appraisal.
   e. Procuring services of local land surveyor to provide:
      - Recorded site boundary survey.
      - Legal description.
      - Formatted on current WSDOT electronic media.

      ***Note:*** Advise surveyor that additional tasking will be forthcoming at a later date to augment boundary survey with site utilities, topography, contours, etc.
   f. Acquiring parcel with funding program's approval.
   g. Contacting land owner and begin negotiations for a purchase in accordance with Chapter 6.
   h. Creating an Inventory Control Number (ICN) by adding the purchased parcel into IRIS and cross reference to appropriate FCR# in FIS.
   i. Notifying ITS Communications and Wireless Technology that purchase has been finalized.

4. Region Facilities Planner will be responsible for the following:
   a. Arrange for detailed site investigation to include:
      - Random soil testing for chemical contaminants (analysis by a Department of Ecology (DOE) certified independent laboratory).
      - Ground water tests for contaminants (analysis by DOE certified independent laboratory).
      - Test borings to determine soil bearing capacity (typically by state force).
      - Determination of highest and lowest groundwater levels for impact to foundations, drain fields and water wells (typically by state force).
      - Archaeological investigation.
   b. When deed is recorded, update existing FCR# and data.

# Appendix 11-1 WSDOT Owned Land – Property Types

Land owned by the Washington State Department of Transportation (WSDOT) is divided into two categories—infrastructure and non-infrastructure. Infrastructure is all land located inside the right of way of operating state highways. The state's highway system consists of approximately 7,043 miles. Infrastructure is generally not included in our inventory, except that airspace, rest areas, park and ride lots, landscape areas, and wetland mitigation sites may be within the highway right of way limits but are inventoried due to their special uses.

Non-infrastructure land includes all land outside the rights of way which the department owns. These lands are categorized into 22 property types, as follows (including the above property types that may be within the highway right of way):

1. **Access Rights (AR)** – An acquired right to restrict direct access onto a state highway facility from adjoining property.

   ***Example:*** Access to and from I-5.

2. **Airspace (AS)** – That property below, at or above grade within the right of way lines of an operational highway, excluding the traveled roadway.

   ***Example:*** Area above I-5 where the Washington State Convention Center is located.

3. **Aviation (AV)** – Emergency airstrips and their corresponding access roads.

   ***Example:*** Skykomish State Airport

4. **Capital Improvements (CI)** – Administrative offices, maintenance facilities, radio sites, and other properties developed for specialized department use. Improvements used for department purposes (offices, maintenance sheds, etc.) are inventoried by HQ Facilities.

   ***Example:*** Olympic Region Headquarters Facility

5. **Encroachment (ENC)** – Installation, device, object or occupancy that is located at, above or below the gradeline of the highway and the right of way limits and that is not installed as part of the highway facility, and which has not been authorized by the execution of a permit, lease or other appropriate document.

6. **Excess Property (ER)** – Property that was originally acquired for a highway purpose, but due to a change to highway alignment or design, is now outside the highway right of way.

   ***Example:*** That portion left over after the realignment of a curve.

7. **Landscape Area (LA)** – That portion of the right of way used to improve and preserve highway esthetics. These areas are specifically designated on the right of way plan.

   ***Example:*** A vegetation buffer

8. **Ferries (MA)** – Ferry terminals and parking facilities to serve ferry riders.

   ***Example:*** Colman dock

9. **Mitigation Site (MS)** – Property other than Wetland purchased for specific highway mitigation.

   ***Example:*** Stormwater detention facility

10. **Other (XX)** – For those properties that do not fall under any other type.

11. **Park and Ride Lots (PR)** – Property acquired and dedicated to park and ride purposes pursuant to RCW 47.12.270.

    ***Example:*** Martin Way Park and Ride Lot

12. **Easements (PE)** – Ownership less than fee title in support of operation of a state highway.

    ***Example:*** Acquisition from the Forest Service (portions of I-90).

13. **Pit Sites (PS)** – Land acquired and used for removal of materials for highway construction and maintenance. Properties include quarry and common barrow sites.

    ***Example:*** Carr Road Pitsite

14. **Potential Wetlands (PW)** – Properties retained by WSDOT as possible wetland mitigation sites.

    ***Example:*** Locations that appear to have potential to provide mitigation for wetland impacts.

15. **Rest Areas (RA)** – A Safety Rest Area as defined in Title 47.30 RCW.

    ***Example:*** Scatter Creek Rest Area

16. **Radio Site (RS)** – A site inventoried specifically for the placement of WSDOT's radio tower and antennae.

17. **Stockpile Sites (SP)** – Property used for storage of processed materials for highway maintenance and often used in conjunction with pit sites. When a parcel has both designations, it should be inventoried as a pit site (PS).

    ***Example:*** Eli Hill Stockpile Site (10.25 acre site adjacent to SR 410 just west of Bonney Lake).

18. **Surplus Land (SL)** – Property purchased by WSDOT outside the right of way which has no specified use.

    ***Example:*** A remainder that would be useless or of little value to the owner after WSDOT acquisition.

19. **Temporary Construction Easement (TCE)** – A temporary right acquired to allow construction. Normally this right will expire upon completion of construction.

20. **Unconstructed Right of Way (UR)** – Property acquired for a highway project that has not yet been funded for construction.

    ***Example:*** Recently acquired SR 509 alignment for which there are no monies to construct.

21. **Waste Sites (WS)** – Property used to deposit waste materials from highway construction projects or highway maintenance.

    ***Example:*** A site used to place scarified asphalt

22. **Weigh Station (WT)** – Property adjacent to travel way used for placement of truck scales. Typically shared use between WSDOT and Washington State Patrol (WSP).

23. **Wetlands (WL)** – Land acquired to mitigate wetland areas disturbed or destroyed by highway construction projects

    ***Example:*** Wetlands that are enhanced or expanded to replace wetlands impacted by WSDOT projects.

# Appendix 11-2 Notice of Auction for Improvements

***Note:*** This form is an example of what the Notice of Public Auction looks like. Not all parcels will be the same depending on the complexities and status of the parcel improvements.

Name of Legal Newspaper
Address

RE: Legal Advertisement

Washington State Department of Transportation
Real Estate Services Office

NOTICE OF PUBLIC AUCTION
Sale No.

Item to be auctioned:

The Washington State Department of Transportation will sell by oral bid:

TIME, DATE, AND PLACE OF SALE:

Assessor Parcel Number:

WSDOT Parcel Number:

IC No.:

Description of item(s) to be auctioned:

SALE TERMS

1. At the time of sale, the successful bidder (the Purchaser) shall immediately upon demand execute the Personal Property Sale and Removal Agreement provided by the Washington State Department of Transportation (the State) and make payment in full plus Washington State sales tax, plus a refundable performance bond or deposit; otherwise the State may accept the second high bid or negotiate a sale for no less than the established minimum bid. A performance bond or deposit of $7,500 is required by the successful bidder. The performance bond/deposit is to ensure timely removal of the improvement(s), and that the State's property is left in a condition satisfactory to the State. Such satisfactory condition shall include, but not be restricted to, removal of the improvement(s) sold, and removal of any equipment, debris or contamination resulting from the Purchaser's activities. The performance bond or deposit will be returned to the successful bidder upon final inspection by the State and upon the Purchaser complying with the sale terms.

2. Payments to be made by cashier's check, certified check, or money order are to be made payable to Department of Transportation.

3. Purchaser shall agree to remove all the above-described improvement(s) from the State's property and clean up all resultant debris in accordance with the State's instructions prior to six (6) months after date of sale. Such instructions may include, but not be restricted to:

   (A) designating the location(s) at which the Purchaser may access the State's property,

   (B) approving the method of removal of the improvement(s) sold,

   (C) approving the days and hours in which the removal and cleanup activities may take place,

   (D) requiring removal of any equipment, debris or contamination resulting from Purchaser's activities.

   (E) sewer and water lines will be capped, any septic tanks will be pumped

   (F) foundation walls do not have to be removed

   (G) location of the move is subject to agency approval. None of the structures will be moved to another location proposed for a Public Agency project

   The State accepts no liability for protection of the improvement(s) after the sale has been consummated. It shall be the Purchaser's responsibility to comply with all federal, state, county or city regulations that apply to any activity resulting from the award of this sale, including but not limited to the removal of any item purchased, and shall agree to obtain all necessary permits.

4. The purchaser may not assign any right acquired by this sale without the written permission of the State. Title to the improvement(s) remains in the State until the improvement(s) is (are) severed and removed from State's property. The Purchaser may not store any equipment or other personal property on the State's property that is not required to comply with the terms of this sale.

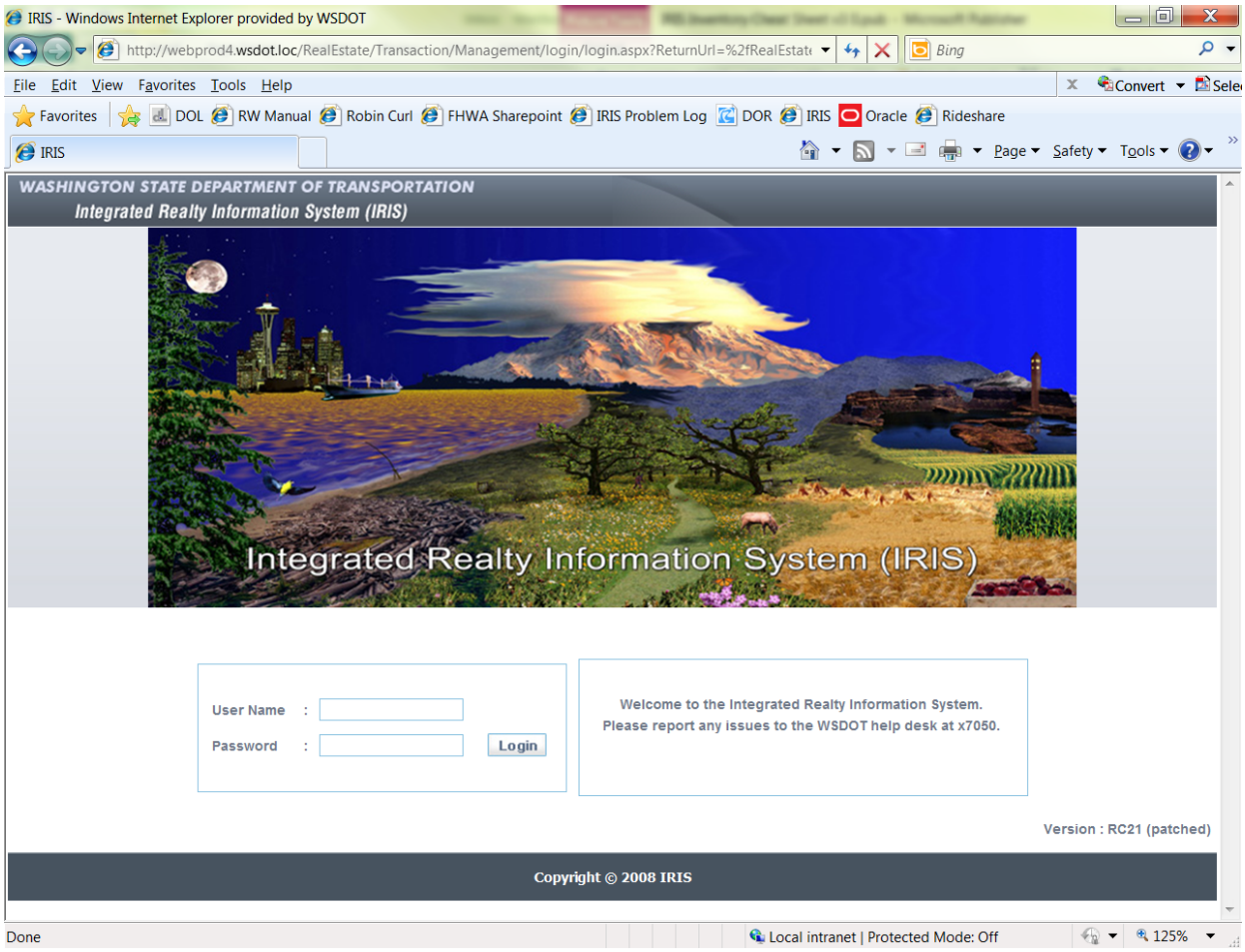
5. Washington State Department of Transportation employees must request and receive the written permission of the Secretary of Transportation prior to bidding on Department owned property.

6. The State makes no warranty, expressed or implied, including but not limited to the quantity and quality of improvements and suitability for any use. All improvements offered "as is" and "where is" without representation, warranty or guarantee as to quantity, quality, character, condition, size or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for any allowance or deduction upon such grounds will be considered after bids have been awarded. All sales are subject to matters that would be disclosed by inspection of the improvement(s) purchased, special conditions contained herein, and as may be named in other materials distributed by the State including the Personal Property Sale and Removal Agreement, a copy of which will be made available upon request. The State reserves the right to cancel any or all sales at any time without notice and reject any and all bids. All sales are subject to approval by the Secretary of Transportation.

7. None of the improvements have been inspected for lead paint. Due to the age of these structures, there is also the potential for asbestos containing building materials.

   Direct all inquiries to:

   Washington State Department of Transportation
   Real Estate Services, Attn:
   Address
   Phone Number


IRIS - Windows Internet Explorer provided by WSDOT
http://webprod4.wsdot.loc/RealEstate/Transaction/Management/login/login.aspx?ReturnUrl=%2fRealEstate
File Edit View Favorites Tools Help
Favorites DOL RW Manual Robin Curl FHWA Sharepoint IRIS Problem Log DOR IRIS Oracle Rideshare
IRIS
Page Safety Tools
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Integrated Realty Information System (IRIS)
Integrated Realty Information System (IRIS)
User Name :
Password :
Login
Welcome to the Integrated Realty Information System.
Please report any issues to the WSDOT help desk at x7050.
Version : RC21 (patched)
Copyright © 2008 IRIS
Done
Local intranet | Protected Mode: Off
125%

# Why Inventory all Land and Land Rights?

- By state law, all state agencies must comply with Generally Accepted Accounting Principles (GAAP) in recording accounting transactions and producing annual financial statements.

- All assets are required to be reported in the financial statements at historical cost and depreciated as appropriate.

- Land is an asset. Doesn't matter if it is within or without the right of way. GAAP requires all land to be recorded in an inventory/tracking system capable of reporting historical cost in a manner to ensure inclusion in the financial statements.

- In addition, Land Rights such as easements are also assets of the agency. Temporary easements may also be subject to depreciation whereas permanent easements are not.

# Why Inventory all Land and Land Rights?

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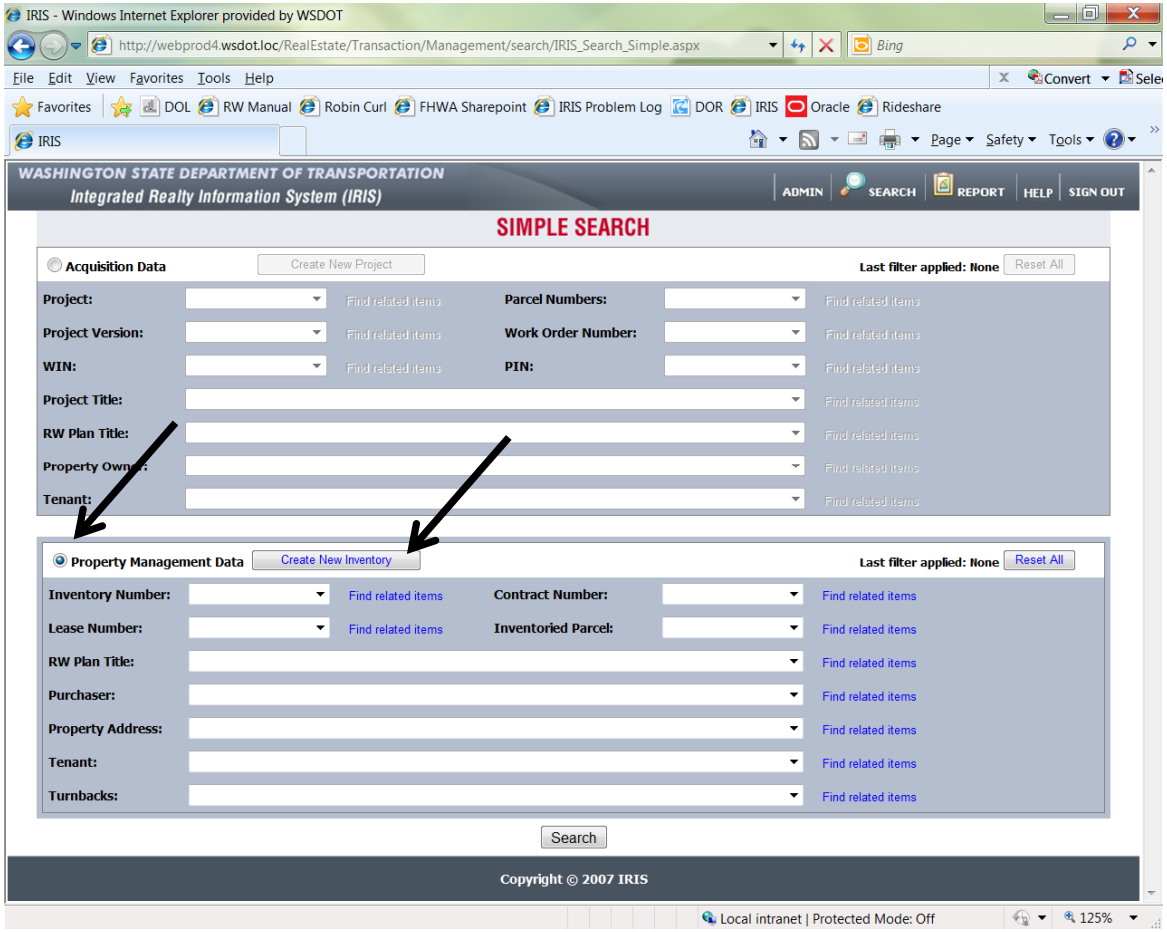
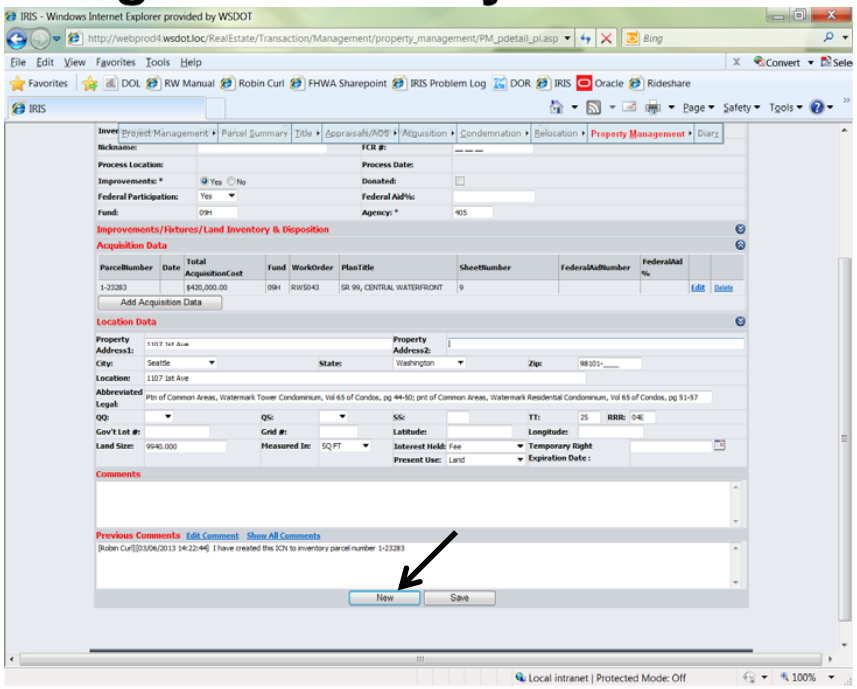
# Creating an Inventory Control Number




- After logging in, you will arrive at a screen that looks like the one above.
- Click on the circle next to "Property Management Data".
- The system will refresh and then you will be able to Create New Inventory.

# Creating an Inventory Control Number




**You can also create a Inventory Control Number (ICN) by clicking "New" at the bottom of the Property Inventory Screen.**

**Be aware that by using this feature IRIS will create the new ICN in the Region and County you were previously working in.**

**If you create an ICN using the wrong county, please e-mail Robin Curl (curlr@wsdot.wa.gov) with the following information:**

- **Current ICN**
- **Correct County**

# Creating an Inventory Control Number

To create the Inventory Control Number (ICN) the following fields need to be filled in:

1. Region
2. County
3. Property Type (Right of Way Manual - Chapter 11, Appendix 11-1)
4. Inventory Date (usually the date of entry)
5. Improvements (Choose Yes or No)
6. Federal Participation (Choose Yes or No)
7. Fund
8. Property Address
9. City
10. Zip
11. Location
12. Abbreviated Legal (this information can be found on the front page of the deed)
13. SS—Section
14. TT—Township
15. RRR—Range
16. Land Size
17. Measured In (Choose Acres or SQ FT (square feet))
18. Interest Held (Choose Fee, Lease, Permanent Easement, Permit, or Temporary Easement)
19. Present Use (Right of Way Manual - Chapter 11, Appendix 11-?)
20. Enter Comments (Why are you creating this ICN?)

The following information should be entered if applicable:

1. Site Number (if inventorying a Capital Improvement)
2. FCR # (if inventorying Facilities property)
3. Donated (click the box to mark)
4. Federal Aid %
5. QQ (Quarter Quarter)
6. QS (Quarter Section)
7. Gov't Lot # (Government Lot Number)
8. Grid #
9. Latitude
10. Longitude
11. Temporary Right Expiration Date (enter the date the Temporary Right will expire by clicking on the calendar)

# Creating an Inventory Control Number

## Example of the Property Inventory Screen like if the property is inventoried correctly.

IRIS - Windows Internet Explorer provided by WSDOT

http://webprod4.wsdot.loc/RealEstate/Transaction/Management/property_management/PM_pdetail_pi.asp

File Edit View Favorites Tools Help

Favorites | DOL | RW Manual | Robin Curl | FHWA Sharepoint | IRIS Problem Log | DOR | IRIS | Oracle | Rideshare

IRIS

Project Management | Parcel Summary | Title | Appraisals/AOS | Acquisition | Condemnation | Relocation | Property Management | Diary

**Property Inventory** | **Maintenance / Demolition**

| | | | |
|---|---|---|---|
| Region: * | Northwest | County: * | King |
| IC #: * | 01-17-09952 / 01-17-09952 | Lease #: | |
| Contract #: | | | |
| Property Type: * | Unconstructed R/W | Site Number: | __-_-____ |
| Inventory Date: * | 03/06/2013 | IC Close Date: | |
| Nickname: | | FCR #: | __ __ __ |
| Process Location: | | Process Date: | |
| Improvements: * | Yes No | Donated: | |
| Federal Participation: | Yes | Federal Aid%: | |
| Fund: | 09H | Agency: * | 405 |

Improvements/Fixtures/Land Inventory & Disposition

Acquisition Data

Location Data

| | | | |
|---|---|---|---|
| Property Address1: | 1107 1st Ave | Property Address2: | |
| City: | Seattle | State: | Washington |
| Zip: | 98101-____ | | |
| Location: | 1107 1st Ave | | |
| Abbreviated Legal: | Ptn of Common Areas, Watermark Tower Condominium, Vol 65 of Condos, pg 44-50; pnt of Common Areas, Watermark Residential Condominium, Vol 65 of Condos, pg 51-57 | | |
| QQ: | | QS: | |
| SS: | | TT: | 25 |
| RRR: | 04E | | |
| Gov't Lot #: | | Grid #: | |
| Latitude: | | Longitude: | |
| Land Size: | 9940.000 | Measured In: | SQ FT |
| Interest Held: | Fee | Temporary Right Expiration Date : | |
| Present Use: | Land | | |

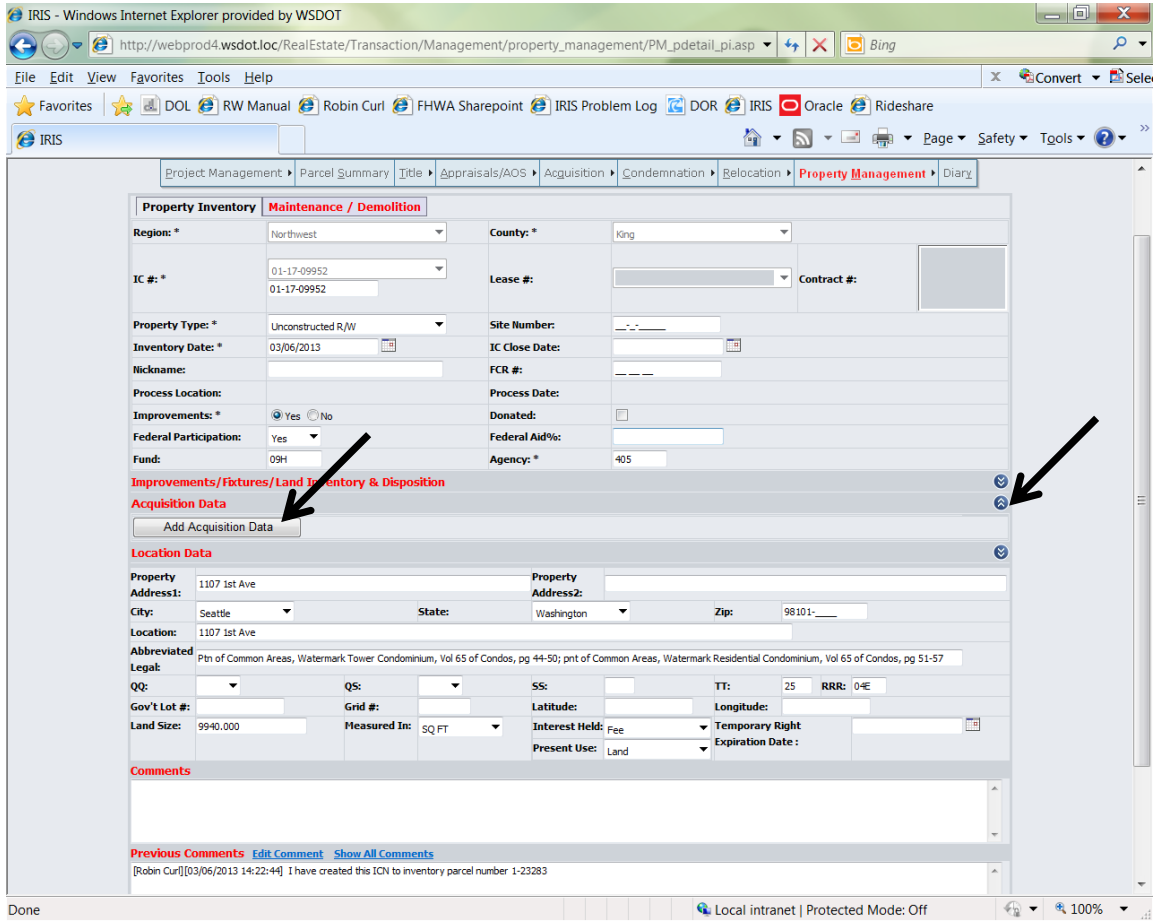
Comments

Previous Comments Edit Comment Show All Comments

[Robin Curl][03/06/2013 14:22:44] I have created this ICN to inventory parcel number 1-23283

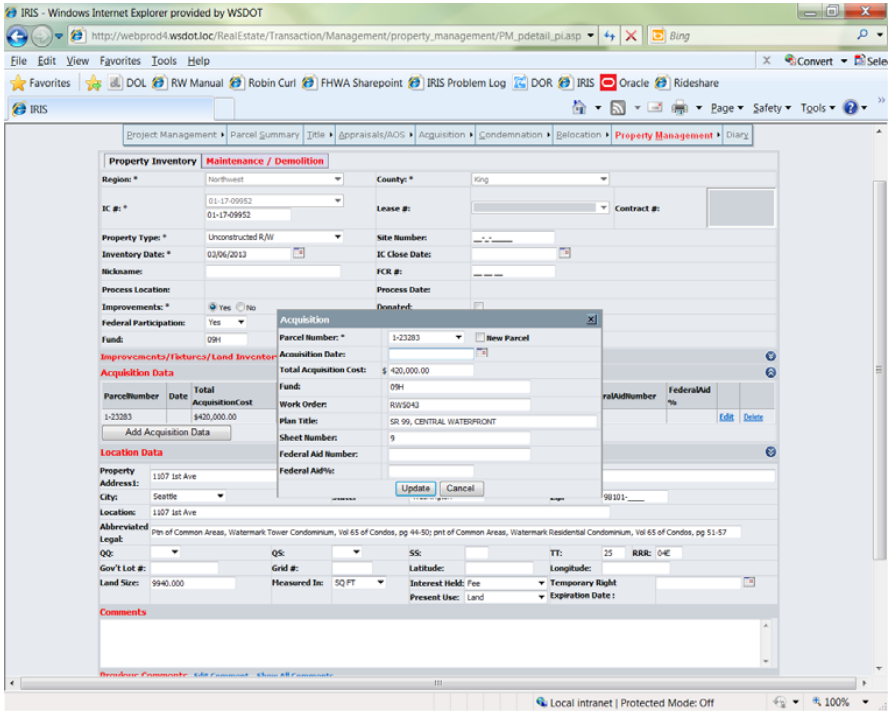
Local intranet | Protected Mode: Off 100%

# Inventorying a Parcel Number



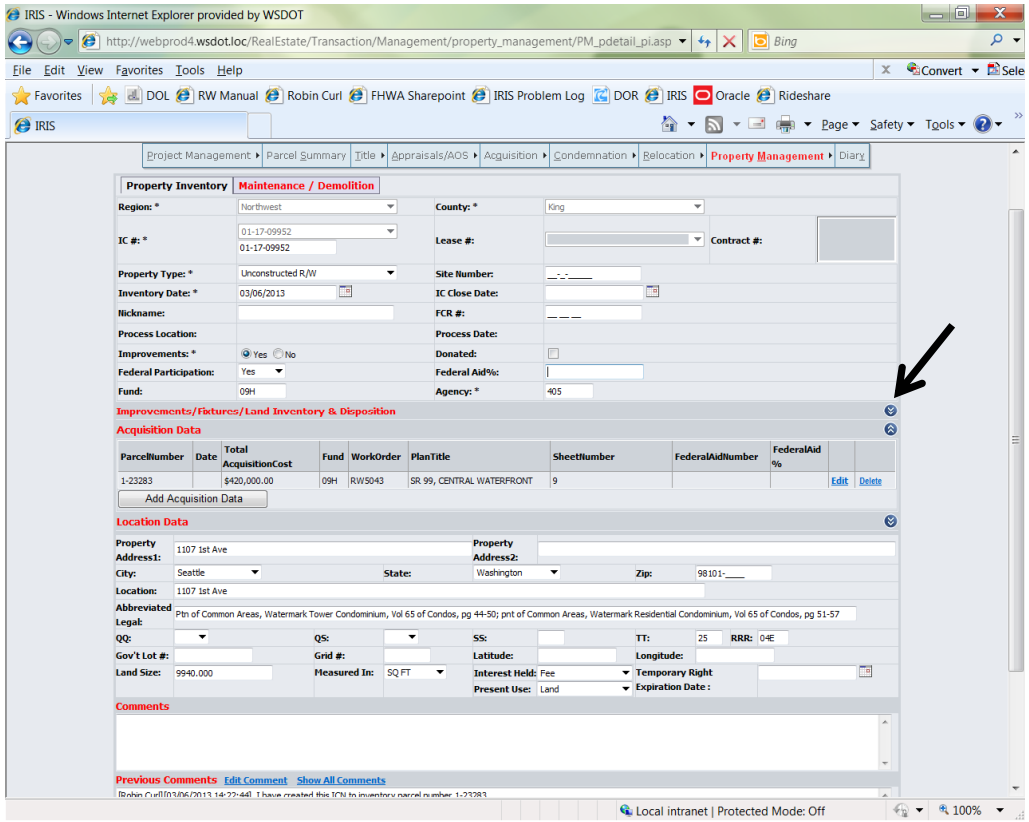

1. Click on the arrow to expand the Acquisition Data Tab
2. Click on Add Acquisition Data

# Inventorying a Parcel Number




- Choose the parcel number from the drop down list or type the parcel number into the Parcel Number field (depending on what is entered into IRIS on the Acquisition side will determine what is brought over). Either click off to the side or hit enter after choosing/entering the parcel number
- Enter Acquisition Date (if the field did not auto populate) or leave blank if the parcel has not been acquired yet.
- Enter the Fund
- Enter the Sheet Number
- Enter the Federal Aid Number (if applicable)
- Enter the Federal Aid% (if applicable)
- Click Update

# Inventorying a Parcel Number




- Once the parcel has been entered, this is what the Property Inventory Screen will look.
- Now it is time to inventory the Improvements using the "Improvements/Fixtures/Land Inventory and Disposition" tab.
- Click on the arrow to expand the "Improvements/Fixtures/Land Inventory and Disposition" tab.
- Click on "Add Improvements/Fixtures Inventory & Disposition".

# Inventorying Improvements

- Use the Real Property Voucher (RES 321) to accurately enter improvements. The following Improvement Types MUST be inventoried:
- Administrative Settlement
- Cost-to-Cure
- Damages
- Escrow Fees
- Excise Tax
- Judgment & Decree
- Land
- Negotiated P&U
- Protective Rents
- Release of Damages
- Septic Agreement
- Statutory Evaluation Allowance
- Well Agreement

*This list is not all encompassing.

# Inventorying Improvements

Washington State
Department of Transportation

**REAL PROPERTY VOUCHER**

AGENCY NAME
DEPARTMENT OF TRANSPORTATION
Real Estate Services
P. O. Box 47338
Olympia, WA 98504-7338

I hereby certify under penalty of perjury that the items and amounts listed herein are proper charges against the State of Washington, that the same or any part thereof has not been paid, and that I am authorized to sign for the claimant.

SIGNATURE (IN INK) FOR EACH CLAIMANT — DATED

The Watermark Tower Association of Apartment Owners, a Washington non-profit corporation

X Linda Mitchell — 1-3-13
By: Linda Mitchell, President

X Nancy Smith — 1-3-13
By: Nancy Smith, Secretary Treasurer NS

GRANTOR OR CLAIMANT (NAME, ADDRESS)
The Watermark Tower Association of Apartment Owners
2600 W. Commodore Way #2
Seattle, WA 98199-1279

SWV No. SW01484750 0

PROJECT NO. AND TITLE
U09936E
SR 99, S. King St. to Thomas St.

FEDERAL AID NO. F-099 ( )

PARCEL NO. 1-23283

In full, complete and final payment and settlement for the title or interest conveyed or released, as fully set forth in: Warranty Deed — DATED 1-3-2013

| | | $ AMOUNT |
|---|---|---|
| LAND: Subsurface fee beneath approx. 9,940 sf of surface area | + | $16,400.00 |
| IMPROVEMENTS: | + | |
| DAMAGES: | | |
| Cost to Cure | + | |
| Proximity | + | |
| Other Damages to the remainder | + | $146,600.00 |
| SPECIAL BENEFITS | | |
| JC (Just Compensation) Amount | | $163,000.00 |
| REMAINDER: | | |
| Uneconomic Remnant | + | |
| Excess Acquisition | + | |
| DEDUCTIONS: | | |
| Amount Previously Paid | | |
| Performance Bond | | |
| Salvage Amount | | |
| Pre Paid Rent | | |
| Other | | |
| ADMINISTRATIVE SETTLEMENT | + | $257,000.00 |
| STATUTORY EVALUATION ALLOWANCE | + | |
| ESCROW FEE | + | |
| REAL ESTATE EXCISE TAX | + | |
| OTHER: | + | |

| PARCEL NO. | JOB NUMBER WORK ORDER | JOB NUMBER GROUP | WORK OP. | ACCOUNT OBJ / SUB | CONTROL SECTION | ORG. NO. | NON-PART. | TOTAL DOLLARS |
|---|---|---|---|---|---|---|---|---|
| 1-23283 | RW 5043 | 10 | 0221 | JE 20 | 179101 | 303025 | | $420,000.00 |
| | | | | | | | | |
| Performance Bond | | | B/S Account-A592 | | | | | |
| | | | | | TOTAL ----------> | | | $420,000.00 |

ACQUISITION AGENT: Eric Lee — DATE 1/21/13 — Voucher No. — TOTAL AMOUNT PAID $420,000.00

AUTHORIZED AGENT FOR WSDOT — DATE 3/6/13

RES 321 REVISED 04/11

# Inventorying Improvements

**Looking at the Real Property Voucher the following improvements are inventoried:**

| Type | Description | Acquisition Value |
|---|---|---|
| 1. Land | land | $16,400.00 |
| 2. Damages | damages to remainder | $146,600.00 |
| 3. Administrative Settlement | Admin Settlement | $257,000.00 |

****When inventorying improvements ensure that the total amount of the improvements inventoried equal the "Total Amount Paid" (shown at the bottom of the Real Property Voucher) and the "Total Acquisition Cost" located in the "Acquisition Data" field.****

# Inventorying Improvements

IRIS - Windows Internet Explorer provided by WSDOT

http://webprod4.wsdot.loc/RealEstate/Transaction/Management/property_management/PM_pdetail_pi.asp

File Edit View Favorites Tools Help

Favorites DOL RW Manual Robin Curl FHWA Sharepoint IRIS Problem Log DOR IRIS Oracle Rideshare

IRIS

Project Management ▸ Parcel Summary ▸ Title ▸ Appraisals/AOS ▸ Acquisition ▸ Condemnation ▸ Relocation ▸ Property Management ▸ Diary

**Property Inventory** | **Maintenance / Demolition**

| | | | |
|---|---|---|---|
| **Region:** * | Northwest | **County:** * | King |
| **IC #:** * | 01-17-09952<br>01-17-09952 | **Lease #:** | **Contract #:** |
| **Property Type:** * | Unconstructed R/W | **Site Number:** | - - |
| **Inventory Date:** * | 03/06/2013 | **IC Close Date:** | |
| **Nickname:** | | **FCR #:** | |
| **Process Location:** | | **Process Date:** | |
| **Improvements:** * | Yes No | **Donated:** | |
| **Federal Participation:** | Yes | **Federal Aid%:** | |
| **Fund:** | 09H | **Agency:** * | 405 |

**Improvements/Fixtures/Land Inventory & Disposition**

| Type | Description | AcquisitionValue | Disposition | SalvageValue | Performance Bond Indication | Performance Bond | Purchaser | SalePrice | Date | |
|---|---|---|---|---|---|---|---|---|---|---|
| Land | land | $16,400.00 | | | | | | | | Edit Delete |
| Damages | damages to remainder | $146,600.00 | | | | | | | | Edit Delete |
| Administative Settlement | Admin Settlement | $257,000.00 | | | | | | | | Edit Delete |

Add Improvements/Fixtures Inventory & Disposition

**Acquisition Data**

**Location Data**

| | | | | | |
|---|---|---|---|---|---|
| **Property Address1:** | 1107 1st Ave | | **Property Address2:** | | |
| **City:** | Seattle | **State:** | Washington | **Zip:** | 98101-____ |
| **Location:** | 1107 1st Ave | | | | |
| **Abbreviated Legal:** | Ptn of Common Areas, Watermark Tower Condominium, Vol 65 of Condos; pg 44-50; pnt of Common Areas, Watermark Residential Condominium, Vol 65 of Condos; pg 51-57 | | | | |
| **QQ:** | | **QS:** | | **SS:** | |
| **Gov't Lot #:** | | **Grid #:** | | **Latitude:** | |
| **Land Size:** | 9940.000 | **Measured In:** | SQ FT | **Interest Held:** | Fee |
| | | | | **Present Use:** | Land |
| **TT:** | 25 | **RRR:** | 04E | **Longitude:** | |
| **Temporary Right Expiration Date :** | | | | | |

**Comments**

Done | Local intranet | Protected Mode: Off | 100%

# Inventorying Improvements

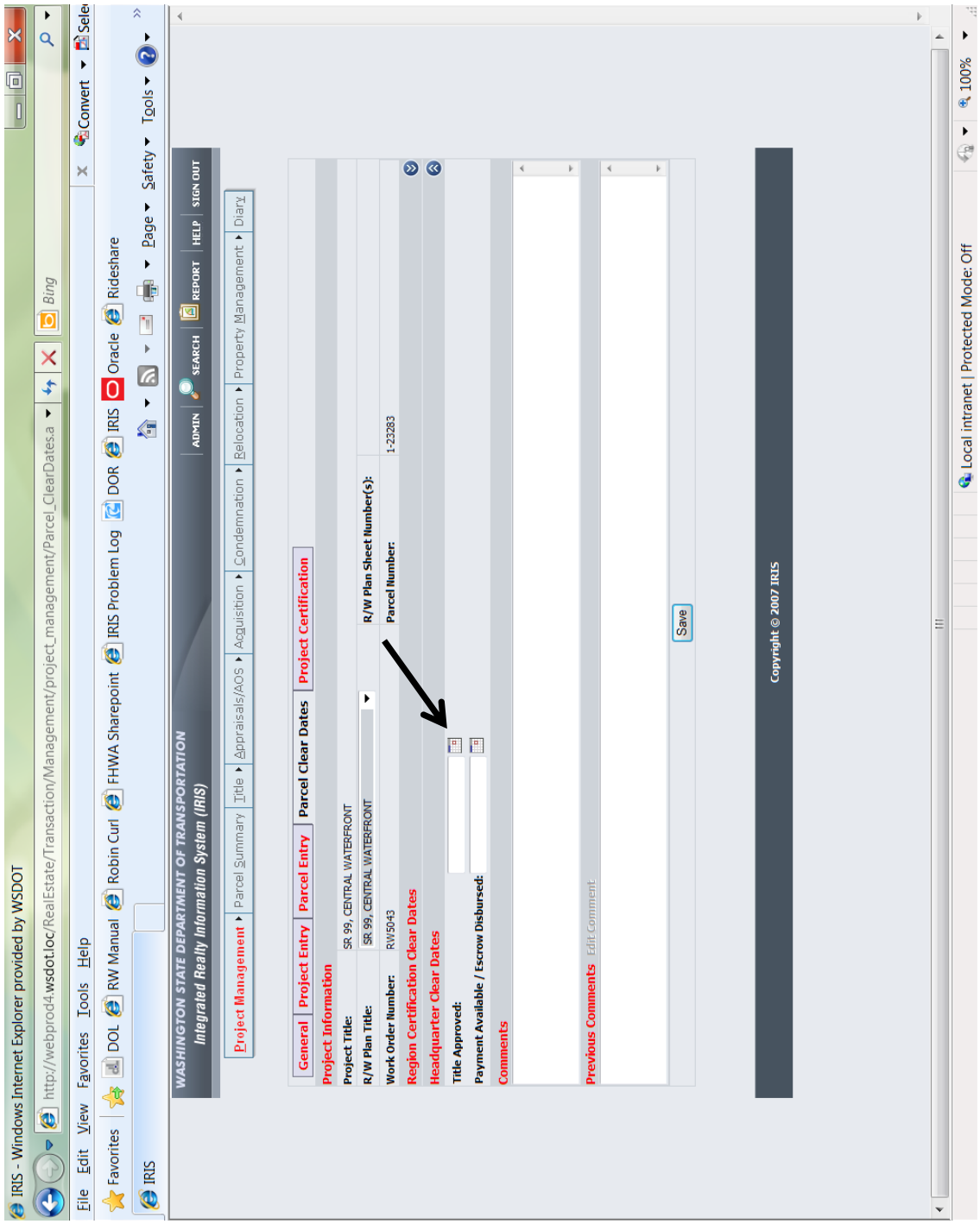
**Depending on when the parcel is inventoried, the Property Management Specialist (PMS) may need to revisit the ICN multiple times.**

**As you can see from the example I gave you, the "Date" field under the "Acquisition Data" tab is blank. The "Date" field is tied to the "Payment Available / Escrow Date" on the Acquisition side of IRIS.**

**The PMS can either edit the "Acquisition Data" information and manually enter the Date, or delete and re-add the "Parcel Number" to bring the "Date" over from the Acquisition side.**

****Remember the Fund, Sheet Number, Federal Aid Number and Federal Aid % do not come over from the Acquisition side, the information will need to be captured before deleting the "Parcel Number".****

# Inventorying Improvements



# Inventorying Different Property Types from one Parcel Number

**In cases where one Parcel has several different "Property Types" each Property Type must be Inventoried separately and the "Total Acquisition Cost" adjusted.**

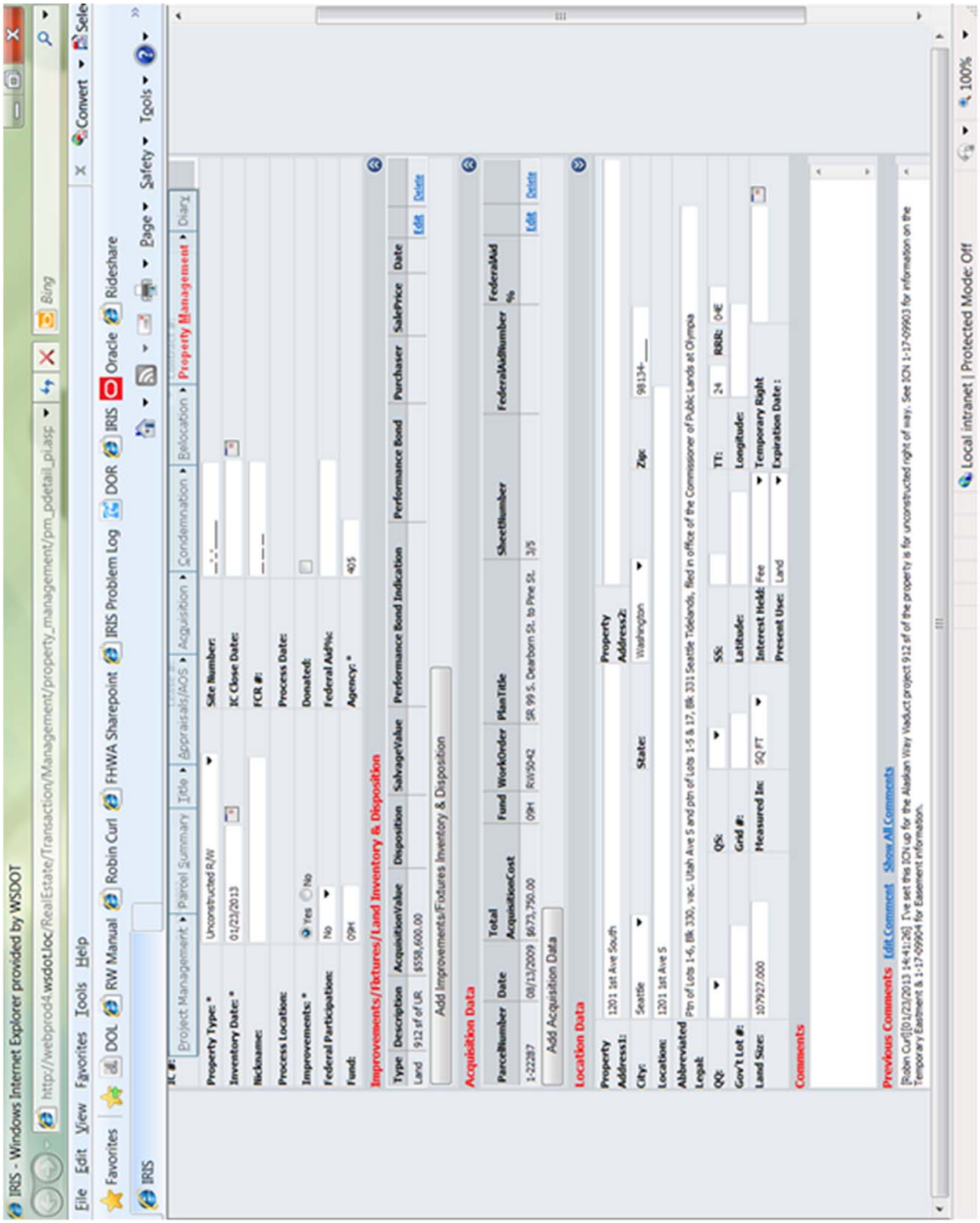
**For example: A portion of Parcel 1-22287 is inventoried four times as followed:**

**ICN 1-17-09902 - "Unconstructed Right of Way" ("Interest Held" is "Fee)**
**ICN 1-17-09903 - "Easement" ("Interest Held" is "Permanent Easement")**
**ICN 1-17-09904 - "Easement" ("Interest Held" is "Temporary Easement" with a date entered in the "Temporary Right Expiration Date" field)**
**1-17-09905 - "Surplus Lands"**

**With every portion of the parcel inventoried the land size is also reduced from the initial parcel size.**

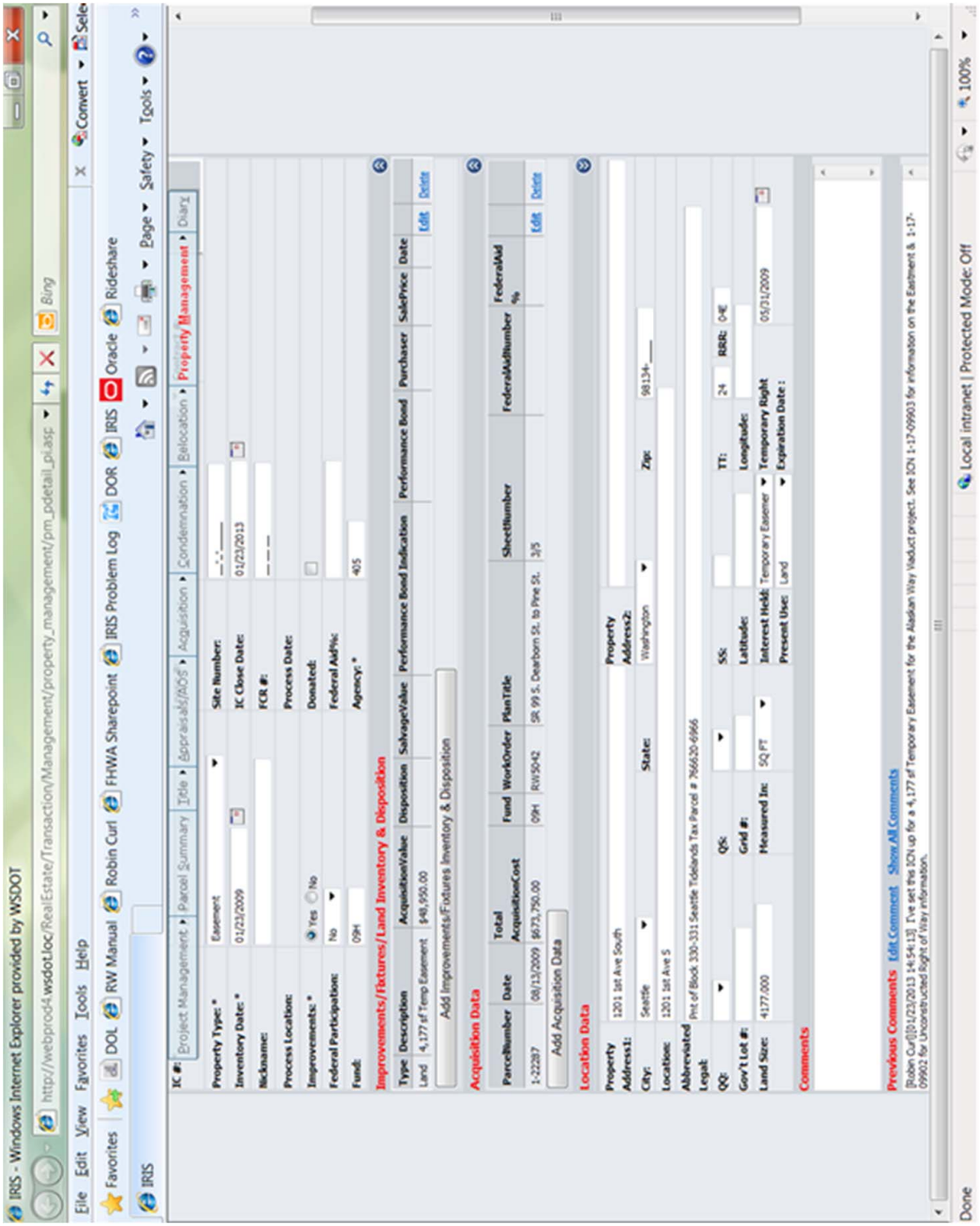
**Comments must be entered into IRIS referring to each ICN created for the parcel.**

# Example of Unconstructed Right of Way inventory

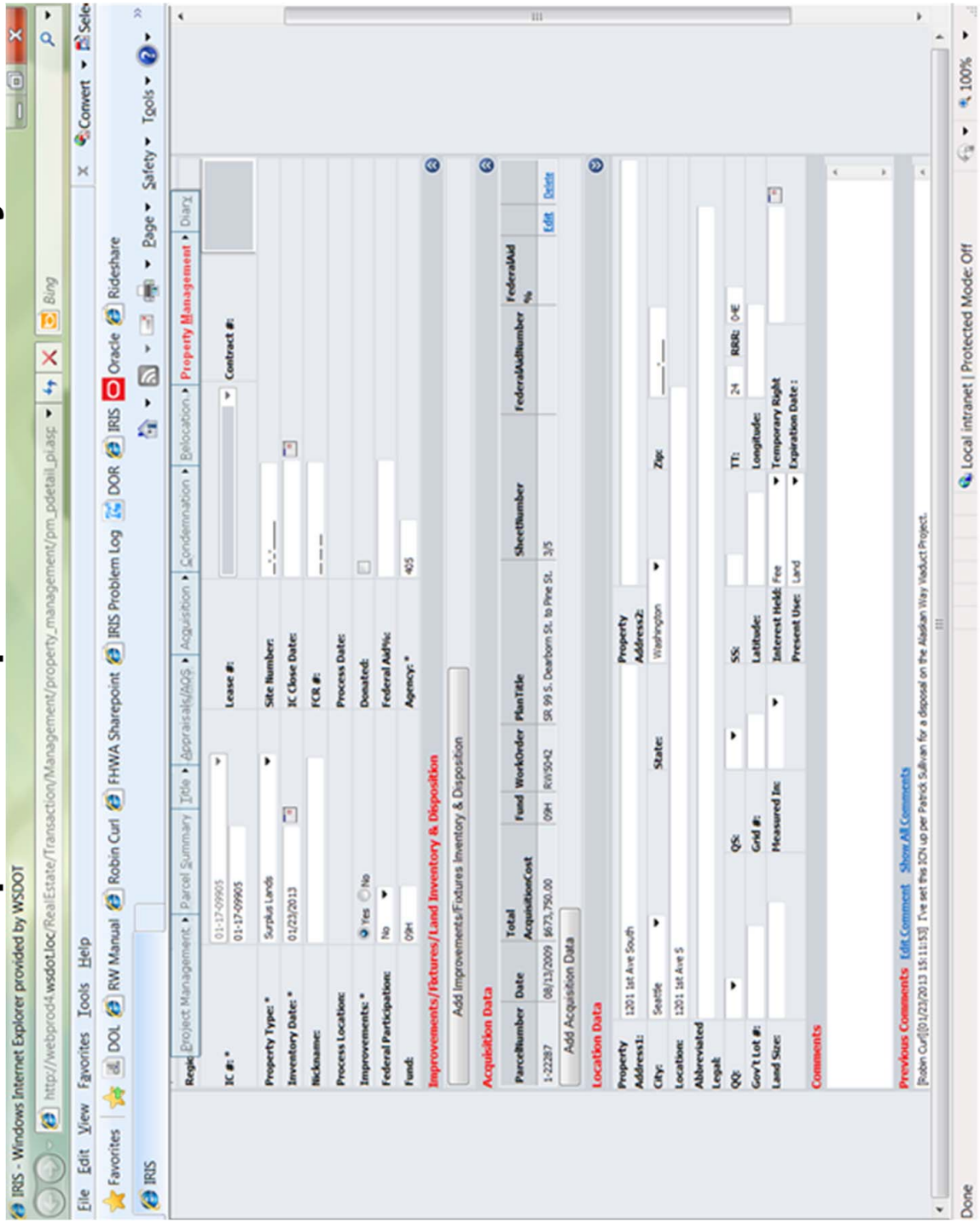


# Example of Permanent Easement Inventory

# Example of Temporary Easement Inventory



# Example of Surplus Land Inventory



# IRIS QA Testing

From time to time testing is required by the Regions for changes made to IRIS.

## Logging in to the IRIS QA Site:

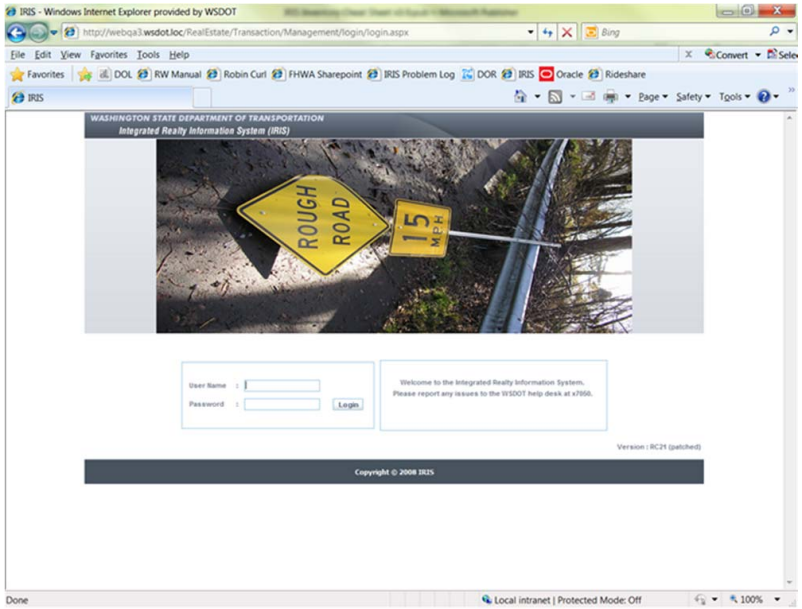
Open your Web Browser (Internet Explorer, etc.)

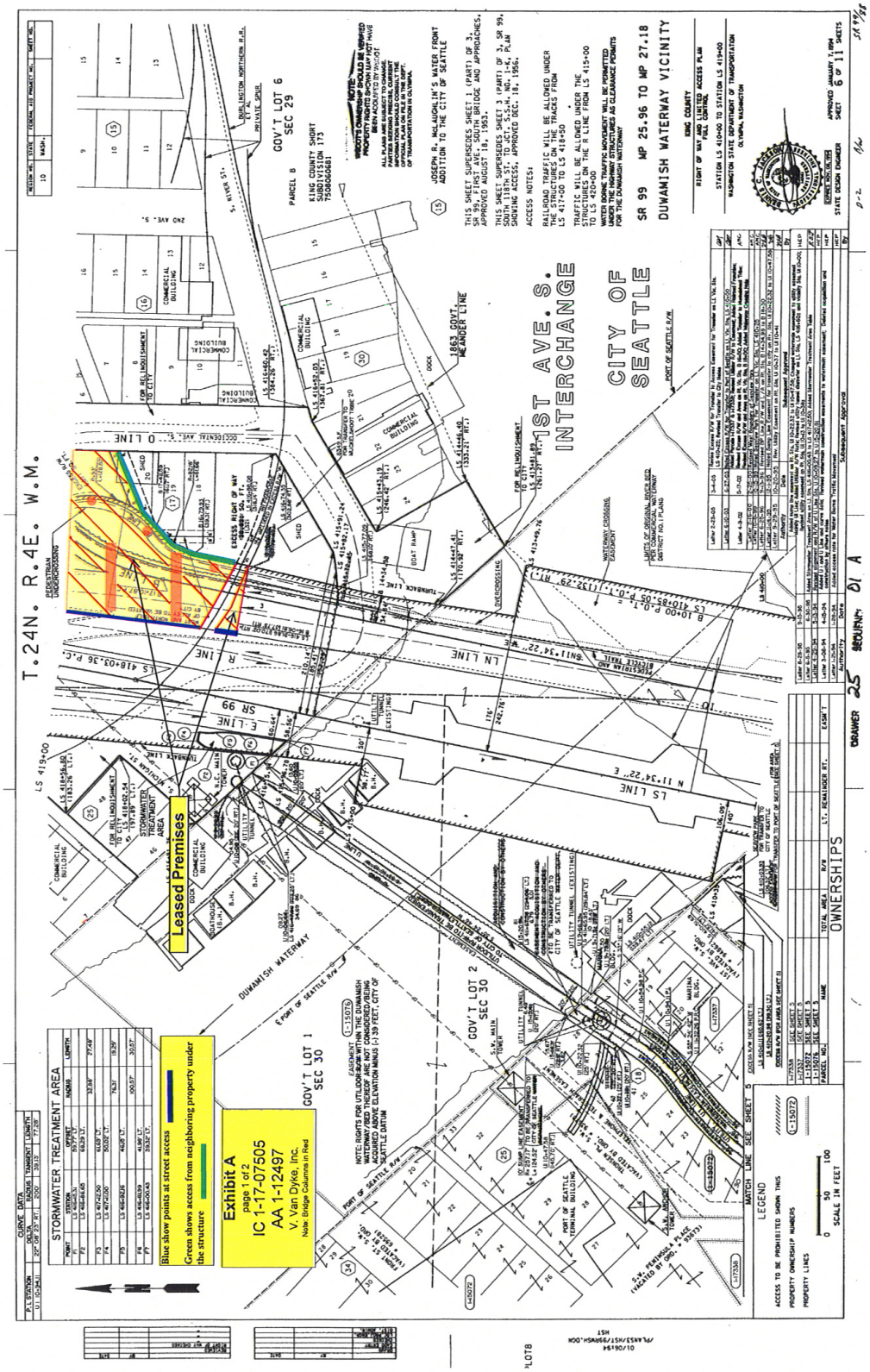
Go to the website: http://webqa3.wsdot.loc/RealEstate/Transaction/Management/login/login.aspx

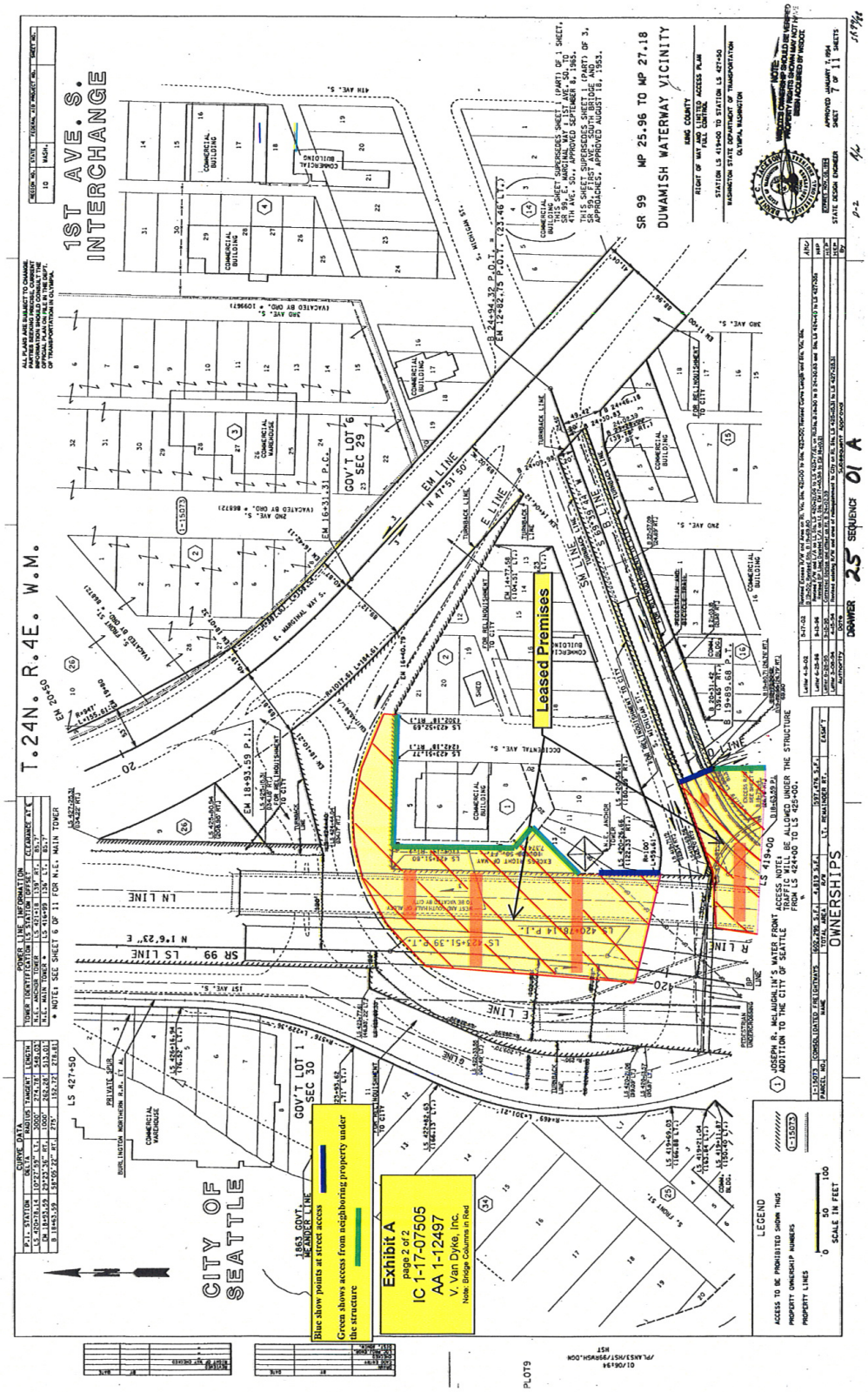
Enter your User Name and Password (this is usually your user name twice)

Select "login"

**Note the difference in the pictures on the login screen to help determine which site you're entering information into.***




Leased Premises
Blue show points at street access
Green shows access from neighboring property under the structure
Exhibit A
page 1 of 2
IC 1-17-07505
AA 1-12497
V. Van Dyke, Inc.
Note: Bridge Columns in Red
STORMWATER TREATMENT AREA
DUWAMISH WATERWAY
SR 99
1ST AVE. S.
INTERCHANGE
CITY OF SEATTLE
SR 99 MP 25.96 TO MP 27.18
DUWAMISH WATERWAY VICINITY
OWNERSHIPS
LEGEND
SCALE IN FEET


1ST AVE. S.
INTERCHANGE
SR 99 MP 25.96 TO MP 27.18
DUWAMISH WATERWAY VICINITY
T. 24N. R. 4E. W.M.
CITY OF SEATTLE
Leased Premises
Exhibit A
page 2 of 2
IC 1-17-07505
AA 1-12497
V. Van Dyke, Inc.
Note: Bridge Columns in Red
Blue show points at street access
Green shows access from neighboring property under the structure
OWNERSHIPS
LEGEND
SEQUENCE 01 A

5/20/2010

# Unlawful Detainer Action in Washington

S. Alexander Liu, AAG
Transportation & Public Construction Division

1

## What is an unlawful detainer action?

- Commonly known as "eviction"
- The legal proceeding that makes the tenant surrender possession of the leased premises to the landlord

2

1

5/20/2010

## The first condition

- A landlord-tenant relationship must be in place
  - WSDOT (landlord) must be the owner of the property
  - There must be a written or oral lease between WSDOT and tenant

3

## When the need to take possession of the property arises:

- The lease term has expired and WSDOT decides not to renew the lease
- Project deadline is coming up and WSDOT decides to terminate the lease/tenancy
- Tenant fails to make rental payment
- Tenant violates certain conditions/covenants in lease, such as "no subleasing"

4

2

5/20/2010

## When the need to take possession of the property arises:

- Tenant conducts drug-related illegal activities, nuisance, waste, unlawful business
- Person stays on the premises without permission
- Other conditions specified in lease may trigger lease termination
- Tenant abandons the premises

5

## Specified-term lease

- For example, a short-term 90-day lease after WSDOT acquires the property
- Ask the question: Do we need the tenant out by the end of the term?
  - YES – DO NOT ACCEPT ANY RENTAL PAYMENT BEYOND WHAT THE LEASE PERIOD ALLOWS

6

3

5/20/2010

## Specified-term lease

- Alert AGO if the tenant does not appear to be moving out
- No notice is required prior to the filing of eviction action
- What happens if WSDOT accepts additional payment beyond what the lease calls for?
  - (Lease is converted into month-to-month tenancy)

7

## Month-to-month tenancy

- Month-to-month tenancy for indefinite term
- WSDOT needs to terminate the lease to take possession of the property
- 20-day notice to terminate tenancy
- Review lease terms carefully -- sometimes WSDOT's leases require a 30-day notice instead

8

4

5/20/2010

NOTICE TO TERMINATE TENANCY

*TO:* _____

AND ALL OTHERS OCCUPYING THE PROPERTY LOCATED AT:

*[Enter property address.]* _____

YOU ARE HEREBY NOTIFIED that your tenancy of the premises is terminated on

_____ (last day of rental period)

and on that day you will be required to surrender possession of the premises to the Landlord.

Judicial proceedings may be instituted for your eviction if you do not surrender possession of these premises on or before the date set forth above.

It is illegal for a tenant to unreasonably withhold consent for the landlord to enter into the dwelling unit in order to:

- inspect the premises
- make necessary or agreed repairs, alterations, or improvements
- supply necessary or agreed services, or
- exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

A tenant who unreasonably withholds consent for the landlord to enter may be liable for up to $100.00 for each violation plus court costs and attorneys' fees. RCW 59.18.150.

DATED: _____.

*Signature of landlord or landlord's agent*
*Print Name:* _____
*Address:*
_____
_____

9

# How to serve eviction notice?

In order of preference:

(1) Personal delivery to tenant; OR

(2) Service upon someone of suitable age and discretion on the premises AND mail a copy to tenant; OR

(3) Post a copy in a clear and conspicuous place on the premises AND mail a copy to tenant

10

5

5/20/2010

**THREE DAY NOTICE TO QUIT**

TO:

AND ALL PERSONS IN POSSESSION

You and each of you are notified that you have conducted illegal drug related activities on the premises commonly known as

_____,

[*enter property address*]

Pursuant to RCW 59.12.030(5) you are instructed to quit any illegal drug activities on the premises within 3 (three) days of your receipt of this notice or your tenancy will be terminated and the landlord will be entitled to all remedies, relief, and damages allowed by law.

DATED this _____ day of _____, 20___.

_____
Signature of landlord or landlord's agent
Print Name: _____

_____

_____
[enter address for landlord or landlord's agent]

23

## Violation of other conditions/terms of the lease

- For example, tenant's failure to obtain renter's insurance, or tenant allows more than one single family to reside on the premises
- Ten-Day Notice to Comply or Vacate

24

12

5/20/2010

**DECLARATION OF SERVICE**

_____ declares and states as follows:

1. I am over the age of eighteen years, am competent to testify, and make the following statements based on my personal knowledge and belief.
2. Attached hereto as Exhibit A is a true and correct copy of _____ _____ [enter notice type], which I served upon _____ [tenant's name] by [check one]:

[ ] Personal delivery upon _____ [tenant's name] on _____ [date]; OR

[ ] Leaving a copy with _____ at the premises, who is a person of suitable age and discretion, AND mailing a copy to _____ [tenant's name and address of tenant's place of residence] on _____ [date]; OR

[ ] Posting a copy on _____, which is a clear and conspicuous place on the premises, AND mailing a copy to _____ [tenant's name and address of the leased premises] on _____ [date].

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this _____ day of _____, 20__, in _____, Washington.

_____
[Name of the Server]
[Address & Phone number of the Server]

13

## Additional notes on service

- Day of service does not count
- Weekends & holidays do count
- If mailing is involved, add one extra day for service
- Regular first-class is fine

14

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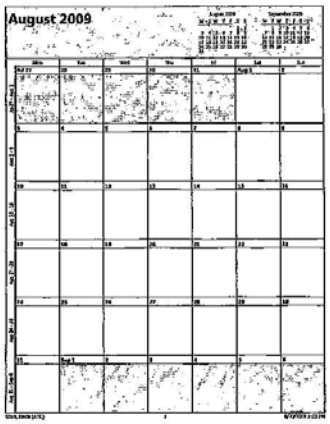
5/20/2010

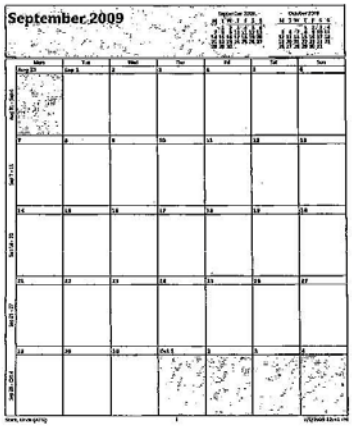
## Exercise No. 1:

- Month-to-month lease – next rental period ends on
  - Example 1: August 31, 2009
    - On or before what date should you serve the 20-day eviction notice?
  - Example 2: September 15, 2009
    - On or before what date should you serve the 30-day eviction notice?

15

## Month-to-month tenancy




8

5/20/2010

## Tenant's failure to pay rent

- Rent must be due
  - Example: 1st of each month as due date
  - A mere threat not to pay is not enough
- Three-Day Notice to Pay or Vacate
  - Three alternative ways of service
- How about late charges?
  - Probably OK

17

THREE DAY NOTICE TO PAY OR VACATE

TO: _____

AND TO ALL TENANTS IN POSSESSION

You and each of you are notified that rent for the premises commonly known as

[Enter property address]

is in arrears in the amount indicated:

| Rental period(s) | Amount |
|---|---|
| _____ | $_____ |
| _____ | $_____ |
| _____ | $_____ |
| _____ | $_____ |

YOU MUST PAY $_____ WITHIN THREE (3) DAYS
[ENTER TOTAL]
OR VACATE THE PREMISES.

You are instructed to pay the above amount to the undersigned or vacate the premises within three (3) days of service of this notice or your tenancy will be terminated and the landlord will be entitled to all remedies relief and damages allowed by law.

DATED this _____ day of _____, 20____.

_____
Signature of landlord or landlord's agent
Print Name: _____
Address: _____
_____
_____

18

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5/20/2010

## Exercise No. 2:

- Month-to-month lease -
  - Rent due on the 15th of each month.
  - Rent is current.
  - Tenant called on August 11, 2009 to inform WSDOT he would not be able to pay rent on August 15.
  - When can WSDOT serve the eviction notice?
  - Assuming WSDOT serves eviction notice on August 18 using service method No. 3, please calculate the deadline for tenant to comply the 3-day notice.

21

## Three-Day Notice to Quit

- For nuisance, waste, unlawful business, or **drug related activities** on the premises
- Three-Day Notice to Quit

22

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5/20/2010

**THREE DAY NOTICE TO QUIT**

TO:

AND ALL PERSONS IN POSSESSION

You and each of you are notified that you have conducted illegal drug related activities on the premises commonly known as

_____.

[*enter property address*]

Pursuant to RCW 59.12.030(5) you are instructed to quit any illegal drug activities on the premises within 3 (three) days of your receipt of this notice or your tenancy will be terminated and the landlord will be entitled to all remedies, relief, and damages allowed by law.

DATED this _____ day of _____, 20___.

Signature of landlord or landlord's agent
Print Name: _____

_____

_____

[enter address for landlord or landlord's agent]

23

## Violation of other conditions/terms of the lease

- For example, tenant's failure to obtain renter's insurance, or tenant allows more than one single family to reside on the premises
- Ten-Day Notice to Comply or Vacate

24

12

5/20/2010

**TEN DAY NOTICE TO COMPLY OR VACATE**

TO:

AND ALL PERSONS IN POSSESSION

You and each of you are notified that you are in violation of the rules, regulations, rental agreement, and/or obligations or restrictions applicable to your tenancy of the premises commonly known as

[enter property address]

Your non-compliance is described as:

Pursuant to RCW 59.12.030(4) you are instructed to comply with your obligations of your tenancy and to conform your conduct to the requirements set forth above within 10 (ten) days of your receipt of this notice or your tenancy will be terminated and the landlord will be entitled to all remedies, relief, and damages allowed by law.

DATED this _____ day of _____, 20____.

Signature of landlord or landlord's agent
Print Name: _____

[enter address for landlord or landlord's agent]

25

## Person occupying premises without permission of WSDOT

- Person who does not have any interest in the property and who has not entered into a lease agreement with WSDOT
- Three-Day Notice to Vacate

26

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5/20/2010

**THREE DAY NOTICE TO VACATE**

TO:

AND ALL PERSONS IN POSSESSION

You and each of you are notified that you are occupying the premises commonly known as

[enter property address] without permission of the owner as noted below and without having any color of title thereto.

Pursuant to RCW 59.12.030(6) you are instructed to vacate the premises within 3 (three) days of your receipt of this notice or the landlord will be entitled to all remedies, relief, and damages allowed by law. Your failure to vacate by the above-stated deadline may also subject you to the criminal provisions of Chapter 9A.52 RCW.

DATED this _____, day of _____, 20____.

Signature of owner or owner's agent
Print Name: _____

(enter address here)

27

## Abandonment (RCW 59.18.310)

- Abandonment of tenancy coupled with default in rent
- First, serve a notice of intent to enter to confirm presumed abandonment
  - Photos of premises to show abandonment (intent)
- Second, notice of sale and/or disposal
  - To tenant at last known address
- After 45-days, WSDOT may dispose of the properties

28

14

5/20/2010

NOTICE OF INTENT TO ENTER
TO CONFIRM PRESUMED ABANDONMENT

TO: _____

_____

AND ALL OTHERS OCCUPYING THE PROPERTY LOCATED AT:

_____

_____

Notice is hereby given that we intend to enter the premises listed above on _____ at _____ ☐ AM ☐ PM to inspect the premises and determine if you have abandoned the tenancy and, if so, to claim possession of the property.

**If you have not abandoned the property listed above, please contact us prior to that time.**

DATED this _____ day of _____, 20___.

_____
Signature of landlord or landlord's agent

Print Name: _____

Address and phone number:

_____
_____
_____

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NOTICE OF SALE AND/OR DISPOSAL

TO: _____

_____

AND ALL OTHERS OCCUPYING THE PROPERTY LOCATED AT:

_____

_____

Notice is hereby given that the property left and/or abandoned at the above-listed premises is stored at _____, a reasonably secure place; and that, pursuant to RCW 59.19.310, a sale and/or disposition of the property will take place on _____ at _____ ☐ AM ☐ PM.

**You have the right under RCW 59.18.230 to have the property returned prior to its sale or disposal.**

DATED this _____ day of _____, 20___.

_____
Signature of landlord or landlord's agent

Print Name: _____

Address and phone number:

_____
_____
_____

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5/20/2010

## Pre-eviction approval

- After eviction notice has been properly served and WSDOT is ready to initiate the eviction legal proceeding
  - Approval by the Real Services Manager at your region
    - Alternative to eviction proceeding
    - Settlement authority
    - Risks, costs, and time involved in litigation

31

## Eviction legal proceeding

- (1) Eviction Summons: answerable between 7 and 30 days after it is served
- (2) Complaint for unlawful detainer:
  - WSDOT's ownership of property – deed
  - Any written lease agreement
  - Type of breach – default in rent, illegal activities,
  - Eviction notice
  - How the eviction notice was served
  - Prayer for relief – writ of restitution, any rent due, and fees/costs

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5/20/2010

## Eviction Legal Proceeding

- (3) Declaration by you, property manager:
  - Eviction notice
  - How was it served – photos of posting
  - Affidavit of service
  - Whether tenant complied with eviction notice
  - Support for any damage items

33

## Default Judgment & Writ of Restitution

- If tenant fails to respond to the eviction summons, then move for a default judgment:
  - (1) Issuance of writ of restitution
  - (2) Rent due as damages
  - (3) Costs and fees
- Order for Writ of Restitution

34

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5/20/2010

## Show-cause hearing

- Summary proceeding
- At least 7-day notice of the show-cause hearing
- Judge briefly examines witnesses
  - Be ready to testify at such a hearing
- Only issue – possession of the property
  - Judgment and order for writ of restitution for plaintiff
  - Dismiss the action with prejudice
  - Set it over for trial, usually within 30 days

35

## Writ of restitution

- Obtain an "order for writ of restitution" signed by judge
- Go to clerk's office, have the clerk issue the "writ of restitution"
- Go to sheriff's office, present the writ and schedule the day of service
- Tenants are asked to vacate 3 days after the writ is served by sheriff
- On the day of scheduled eviction, WSDOT does the actual move and sheriff merely keeps peace
- No bond is required of the state

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5/20/2010

## Collection of Rent due

- Current practice – after tenant is evicted, Wendy Johnson's office sends out payment notice. If tenant does not pay, Wendy forwards the account to collection agency.

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## Three caveats

- (1) Lease may modify the eviction notice requirement
  - 20-day notice modified to be 30-day notice
  - 3-day notice modified to be 5-day notice
- (2) Residential v. commercial evictions
  - For most part, very similar
  - Special Landlord Tenant Act (RCW 59.18), more rights and protection to both residential landlords and tenants
  - Commercial – double rent due as damages
- (3) If property is in city of Seattle, eviction must also comply with Seattle Municipal Code Chapter 22.206

38

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5/20/2010

## Case Study No. 1:

Alex:

We are hopeful that we will be closing on Sterling Realty by the end of this week (10/10). As you know Mr. Tenant remains in occupancy and has not signed a Commercial Displacee Lease. We would like for him to move as soon as possible. It is my understanding that the build out of his replacement site should be completed soon. His staying could severely impact the demolition time line.

I would like to know the notice timeframe for eviction as well as an estimate of the time if we have to go court.

Thanks, XYZ

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## Response to Case Study No. 1:

- Mr. XYZ:

Since DOT has not acquired the property, DOT is not the landlord of the premises. DOT may not serve any eviction notice upon the tenants until it acquires the property and becomes the landlord.

. . .

In any event, as far as eviction goes, there is really not much DOT can do until after it acquires the property and becomes the landlord. I hope this helps. Thanks. Alex

40

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5/20/2010

## Case Study No. 2:

Alex – we have a tenant under the Residential Displacee lease, which has expired on March 31, 2009. Since then, we have accepted payments for April and May, but tenant stopped paying for June and July. What should we do?

41

## Case Study No. 3:

Alex,

I know we keep asking questions about this process, but we are still not sure about the Notice that should be provided when we have a Displacee Lease (Short term) that includes a 30-Day Termination Clause, but does not include a 3-day notice for rent default. If we have moved beyond the term, and the account is delinquent would it be considered a month-to-month and only require a 3-Day Notice, or do we need to abide by the 30-Day Termination Clause?

42

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5/20/2010

## Response to Case Study No. 3:

It appears that the Displacee Lease is for a fixed term. So, no eviction notice is required if the tenant does not vacate after the lease expires.

However, if the DOT accepted rental payment after the lease expired, then a month-to-month lease was created. If the tenant defaulted under the month-to-month lease, a 3-day eviction notice is hereby required.

I hope this answered your questions.

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## Case Study No. 4:

- After the eviction proceeding has started, the tenant tries to pay the rent due.

  What should WSDOT do? (i.e. should we accept the payment or return it?)

44

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5/20/2010

## Response to Case Study No. 4:

If the tenants attempt to pay, the first question that needs to be answered is whether the Department wants to evict the tenants and get the property back OR whether the Department wants to keep the tenants and future rents.

If it is the former, return the rent and keep a record of the return; we can continue with the eviction. If it is the latter, accept the rent and we will dismiss the pending action. Note that acceptance of any partial rent due could also be construed as a waiver of the ground for eviction and, thus, warrants a dismissal of the eviction action.

45

## More questions

Tenant called today and offered to pay a portion now and the balance mid-June because they are waiting on a contractor to pay them. I only want to consider this if they will sign an agreement that if they are delinquent again they waive their right to any notice of eviction and we could evict immediately. The reason is that this is the second time in 6 months that we've gone through this process and I don't want to do it anymore, but if they can follow through and pay their rent, I'm ok with keeping them as a tenant.

What do you think?

46

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5/20/2010

## More responses

The eviction statute provides the minimum notice requirement with which the landlord must comply in order to properly initiate the eviction proceeding. The landlord and tenant may enter into agreement for more generous notice requirement, such as 30-day notice to terminate the lease instead of the 20 days required by the statute. However, the parties generally may not enter an agreement to shorten or waive the statutory notice requirement.

So, if WSDOT wants to give the tenant another chance, it can certainly accept the partial rental payment and we can dismiss the pending eviction matter. However, if the tenant does not follow through or fails to pay in the future, WSDOT must properly re-serve any applicable eviction notice in order to initiate the eviction process.

If WSDOT wants to avoid the trouble of re-serving the eviction notice in the future, I advise we proceed with the pending eviction action and take possession of the property; and maybe WSDOT can find a different tenant.

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## Q & A:

S. ALEXANDER LIU
Assistant Attorney General
Office of the Attorney General
Transportation Public Construction Division
7141 Cleanwater Drive SW
Tumwater, WA 98501
Phone: (360) 753-1626
Facsimile: (360) 586-6847
Email: SongL@atg.wa.gov

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NOTICE TO TERMINATE TENANCY

***TO:***

_____

AND ALL OTHERS OCCUPYING THE PROPERTY LOCATED AT:

_____

***[Enter property address.]***

YOU ARE HEREBY NOTIFIED that your tenancy of the premises is terminated on

_____ (last day of rental period)

and on that day you will be required to surrender possession of the premises to the Landlord.

Judicial proceedings may be instituted for your eviction if you do not surrender possession of these premises on or before the date set forth above.

It is illegal for a tenant to unreasonably withhold consent for the landlord to enter into the dwelling unit in order to:

- inspect the premises
- make necessary or agreed repairs, alterations, or improvements
- supply necessary or agreed services, or
- exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

A tenant who unreasonably withholds consent for the landlord to enter may be liable for up to $100.00 for each violation plus court costs and attorneys' fees. RCW 59.18.150.

DATED: _____.

_____
***Signature of landlord or landlord's agent***
***Print Name:*** _____
***Address:***
_____
_____

**DECLARATION OF SERVICE**

_____ declares and states as follows:

1. I am over the age of eighteen years, am competent to testify, and make the following statements based on my personal knowledge and belief.
2. Attached hereto as Exhibit A is a true and correct copy of _____ _____ [enter notice type], which I served upon _____ [tenant's name] by [check one]:

   [ ] Personal delivery upon _____[tenant's name] on _____[date]; OR

   [ ] Leaving a copy with _____ at the premises, who is a person of suitable age and discretion, AND mailing a copy to _____ [tenant's name and address of tenant's **place of residence**] on _____[date]; OR

   [ ] Posting a copy on _____, which is a clear and conspicuous place on the premises, AND mailing a copy to _____[tenant's name and address of the **leased premises**] on _____[date].

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this _____ day of _____, 20__, in _____, Washington.

_____
[Name of the Server]
[Address & Phone number of the Server]

**THREE DAY NOTICE TO PAY OR VACATE**

TO: _____

AND TO ALL TENANTS IN POSSESSION

You and each of you are notified that rent for the premises commonly known as

_____

[Enter property address]

is in arrears in the amount indicated:

| Rental period(s) | Amount |
|---|---|
| _____ | $_____ |
| _____ | $_____ |
| _____ | $_____ |
| _____ | $_____ |

YOU MUST PAY $ _____ WITHIN THREE (3) DAYS
[ENTER TOTAL]
OR VACATE THE PREMISES.

You are instructed to pay the above amount to the undersigned or vacate the premises within three (3) days of service of this notice or your tenancy will be terminated and the landlord will be entitled to all remedies, relief, and damages allowed by law.

DATED this _____ day of _____, 20____.

_____
Signature of landlord or landlord's agent
Print Name: _____
Address: _____
_____
_____

Notice to Pay Rent or Vacate

**THREE DAY NOTICE TO QUIT**

TO:

_____

_____

AND ALL PERSONS IN POSSESSION

You and each of you are notified that you have conducted illegal drug related activities on the premises commonly known as

_____.

[enter property address]

Pursuant to RCW 59.12.030(5) you are instructed to quit any illegal drug activities on the premises within 3 (three) days of your receipt of this notice or your tenancy will be terminated and the landlord will be entitled to all remedies, relief, and damages allowed by law.

DATED this _____ day of _____, 20____.

_____

Signature of landlord or landlord's agent

Print Name: _____

_____

_____

_____

[enter address for landlord or landlord's agent]

Three-day Notice to Quit

**TEN DAY NOTICE TO COMPLY OR VACATE**

TO:

_____

_____

AND ALL PERSONS IN POSSESSION

You and each of you are notified that you are in violation of the rules, regulations, rental agreement, and/or obligations or restrictions applicable to your tenancy of the premises commonly known as

_____.

[enter property address]

Your non-compliance is described as:

_____

_____

_____

_____

_____

_____

_____

Pursuant to RCW 59.12.030(4) you are instructed to comply with your obligations of your tenancy and to conform your conduct to the requirements set forth above within 10 (ten) days of your receipt of this notice or your tenancy will be terminated and the landlord will be entitled to all remedies, relief, and damages allowed by law.

DATED this _____ day of _____, 20____.

_____

Signature of landlord or landlord's agent

Print Name: _____

_____

_____

_____

[enter address for landlord or landlord's agent]

Ten-day Notice to Comply or Vacate 1

**THREE DAY NOTICE TO VACATE**

TO:

_____

_____

AND ALL PERSONS IN POSSESSION

You and each of you are notified that you are occupying the premises commonly known as

_____

[enter property address] without permission of the owner as noted below and without having any color of title thereto.

Pursuant to RCW 59.12.030(6) you are instructed to vacate the premises within 3 (three) days of your receipt of this notice or the landlord will be entitled to all remedies, relief, and damages allowed by law. Your failure to vacate by the above-stated deadline may also subject you to the criminal provisions of Chapter 9A.52 RCW.

DATED this _____ day of _____, 20____.

_____

Signature of owner or owner's agent

Print Name: _____

_____

_____

_____

[enter address here]

Three-day Notice to Quit

NOTICE OF INTENT TO ENTER
TO CONFIRM PRESUMED ABANDONMENT

TO: _____

_____

AND ALL OTHERS OCCUPYING THE PROPERTY LOCATED AT:

_____

_____

Notice is hereby given that we intend to enter the premises listed above on _____ at _____ ☐ AM ☐ PM to inspect the premises and determine if you have abandoned the tenancy and, if so, to claim possession of the property.

**If you have not abandoned the property listed above, please contact us prior to that time.**

DATED this _____ day of _____, 20___.

_____
Signature of landlord or landlord's agent

Print Name: _____

Address and phone number:

_____
_____
_____

NOTICE OF SALE AND/OR DISPOSAL

TO: _____

_____

AND ALL OTHERS OCCUPYING THE PROPERTY LOCATED AT:

_____

_____

Notice is hereby given that the property left and/or abandoned at the above-listed premises is stored at _____, a reasonably secure place; and that, pursuant to RCW 59.19.310, a sale and/or disposition of the property will take place on _____ at _____ □ AM □ PM.

**You have the right under RCW 59.18.230 to have the property returned prior to its sale or disposal.**

DATED this _____ day of _____, 20___.

_____
Signature of landlord or landlord's agent

Print Name: _____

Address and phone number:

_____
_____
_____

**Washington State Department of Transportation**

Memorandum

Date May 25, 2007

TO: RES Staff

FROM: Shirley E. Hughes/Cindy Tremblay
360-705-7311 360-705-7335

SUBJECT: Short Term Rent for Residential Properties

It seems that more clarification is needed on the Short term rent policy for residential properties. Joe Granger originally issued the policy on May 13, 1993. James Salter wrote a clearer interpretation of that memo on August 16, 2001. This memorandum is intended to reiterate, define, and clarify the policy.

Short-term rent is 90 days or less. Anything longer than that should be based on market analysis.

When the Department acquires a residential improvement that is owner occupied, and no market rent rate is provided in the appraisal, the short-term rental rate will be calculated at 0.5% of the Before Value per month, or 6% per year. The monthly rate can be expressed mathematically at 0.005.

Before Value X 0.005 = Short Term Residential Rent Rate

If a tenant occupies the residential improvement when WSDOT acquires it, the rent will continue at the contracted amount, whether that amount is market rent or below. If the contract rent is above market rent, then the rent will be lowered to market rent.

Rent for commercial or industrial properties is generally based on market analysis, and is determined on each commercial or industrial property.

Any deviation will be reviewed on a case-by-case basis. Rent will be determined and recommended by the Region Property Management staff and will be approved by the Headquarters Property Management staff.

In instances where a particular situation does not appear to fit the stated policy, please contact the Assistant Director for PMP to reach a resolution. This is Cindy Tremblay or her designee.

SEH:pc

DOT Form 700-008 EF
Revised 5/99

# Appendix 11-7 Trail Lease Package Requirements

When a Trail Lease is being requested, the file submitted to Headquarters Real Estate Services must include the following nine items.

1. Lease application (see form attached).
2. Region review and Headquarters review. Signed by all necessary reviewers and approving authority. All questions and concerns brought up by the reviewers must be addressed by the approving authority.
3. Diary of right of way activities.
4. WSDOT right of way map with trail location hachured or delineated.
5. Construction plans. Maps and diagrams of the proposed construction. Also include proposed traffic control plans if the construction process interferes with or may pose a threat to the operating right of way.
6. Maintenance plan. Detailed list of all items tenant will maintain and all items WSDOT will oversee the maintenance of.
7. Photos of site/path route.
8. General permits or developer agreements, either issued or in draft form (if applicable).
9. Any additional documentation that identifies or helps solve issues that need to be addressed in the lease (information for property that is being acquired that affect the leased premises; other agreements (GM agreements) or leases that may be affected by the trail lease)

Funding can have significant impacts on state owned or operated right of way. Below is information specifically relating to impacts created by use of RCO funds.

## Funding Impact Information

The Washington State Recreation and Conservation Office (RCO), which began in 1964 and was formerly known as the Interagency Committee for Outdoor Recreation, provides leadership, funding, and technical assistance to help build communities. RCO provides grants for parks, trails, boating facilities, water access, firearm and archery ranges, off-road vehicle areas, and athletic fields, in addition to supporting the protection and restoration of Washington's diverse wild areas by protecting and restoring habitats, investing in and tracking salmon health and recovery, and protecting Washington state's diverse biological heritage.

RCO money should not be used in any projects which directly impact WSDOT owned property. WSDOT's Trail Lease states "…TENANT further acknowledges, agrees, and promises not to use Outdoor Recreation Funds as provided for in the Land and Water Conservation Fund Act, 16 U.S.C. 460-l, sections 4-11 (see section 8(f)(3) within state owned right of way; such funds may be used outside of the state owned right of way)". State grant funds, such as those granted through the RCO, may carry significant impacts and risks.

The information below, gathered through conversations with the AG's Office, RCO, and Federal Highways Administration (FHWA), is provided to help WSDOT staff better understand possible RCO grant impacts to state highway right of way and facilities.

- WSDOT allowing construction on WSDOT property is a business decision.
- WSDOT should obtain a copy of the grant, review grant language for intent, and incorporate pertinent grant language into lease document, making lessee liable for all grant terms, not the state.
- Trail Lease language will cover WSDOT legally and not hold the state liable for any RCO related actions; grant recipient is bound to RCO by grant – not WSDOT; language in lease needs to affirm this.
- RCO grant agreement is between the RCO and the grant recipient; RCO would not pursue WSDOT to meet the obligations of the grant recipient.
- WSDOT agreements with grant recipient should be strong so that grant recipient takes full responsibility for all grant compliance issues should impacted right of way needs change. (The grant recipient could not come back to WSDOT to meet any of their grant requirements if the lease is written to prevent this from occurring).
- WSDOT policy and Trail Lease language prevents potential tenants from using the federal Land and Water Conservation Fund Act dollars due to the requirement of continued use and control of property improved with these funds. Therefore, RCO will not approve grants using these federal funds on projects located in the right of way.
- Impact consideration should be given to all projects – not just federal.
- FHWA suggests not to accept any construction using RCO funds due to introducing potential 6f impacts (and possibly other recreational conversion requirements) on future WSDOT projects:
  - WSDOT will need to include additional time and budget for project development to address potential 6f impacts in their future project's NEPA documentation if a lessee uses RCO funds to make improvements within state owned right of way.
  - If a WSDOT future project results in an impact to the RCO funded improvements or if a project restricts access to the recreational site for greater than 180 days, a permanent impact has been made and WSDOT's project would likely need to provide mitigation.

- WSDOT staff reviewing and/or approving RCO funded improvement projects need to have adequate knowledge of the consequences of allowing RCO funded improvements within state-owned right of way to ensure lease language/stipulations provide WSDOT as much protection as possible from incurring mitigation costs if a WSDOT project impacts RCO funded improvements.
- FHWA may address any additional concerns in its standard review.
- Region should be thorough in review of the request for a "simple RCO development" on state-owned property to be sure to weigh future WSDOT project impacts including additional environmental review and mitigation requirements.
- Allowing a lessee to use RCO funds for improvements is a WSDOT business decision, but FHWA recommends against allowing the practice.

12-0 Acronyms
12-1 Policy
12-2 Responsibility
12-3 General Policy
12-4 General Relocation
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## 12-0 Acronyms

49 CFR 24.2(b)
WAC 468-100-002

Acronyms relating to relocation assistance and the Uniform Relocation Act are located in the Washington Administrative Code and the Code of Federal Regulations. Additional acronyms relative to the Washington State Department of Transportation (WSDOT) are as follows:

| | |
|---|---|
| AAG | Assistant Attorney General |
| AG | Attorney General |
| ALJ | Administrative Law Judge |
| CFR | Code of Federal Regulations |
| DLT | Direct Loss of Tangibles (Personal Property) |
| DV | Determination of Value |
| EIS | Environmental Impact Statement |
| HQ RESM | Headquarters Real Estate Services Manager |
| HUD | Housing of Urban Development |
| IRIS | Integrated Realty Information System |
| LPA | Local Public Agency |
| NPO | Nonprofit Organization |
| OAH | Office of Administrative Hearings |
| PPO | Personal Property Only |
| RAPM | Relocation Assistance Program Manager |
| RCW | Revised Code of Washington |
| RES | Real Estate Services |
| RHP | Replacement Housing Payment |
| RVI | Replacement Value Insurance |
| SPP | Substitute Personal Property |
| WAC | Washington Administrative Code |
| WSDOT | Washington State Department of Transportation |

# 12-1 Policy

49 CFR 24.1
RCW 8.26.010
WAC 468-100-001

## 12-1.1 Purpose

To establish uniform procedures in relocation assistance that will assure legal entitlements are provided and to provide fair, equitable, and consistent treatment to persons displaced by projects administered by WSDOT.

## 12-1.2 Authority

A. Title 42, United States Code Chapter 61, Sections 4601-4665 (42 USC §§ 4601-4665), the Uniform Relocation Assistance and Real Property Acquisition Polices for Federal and Federally Assisted Programs (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended), Public Law 91-646, 84 Stat. 1894 (42 USC 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV(1987 Amendments), Public Law 100-17, 101 Stat. 246-256 (1987 Amendments).

B. Code of Federal Regulations (CFR), 49 CFR Part 24.

C. The Revised Code of Washington (RCW), Chapter 8.26.

D. The Washington Administrative Code (WAC), Chapter 468-100.

# 12-2 Responsibility

## 12-2.1 Applicability

49 CFR 24.2(a)(9)
RCW 8.26.020(4)
WAC 468-100-002(9)

A. The provisions of this chapter are applicable to any person who is displaced by any state or federally assisted highway project or program.

B. Parcel files are not closed unless all payments have been made and all assistance and assurances have been provided to eligible displaced persons as required by this chapter.

## 12-2.2 Assurances

49 CFR 24.4
RCW 8.26.085
WAC 468-100-004

A. WSDOT assures that:

1. The relocation program is realistic and adequate to provide orderly, timely, and efficient relocation of displaced persons as provided in this chapter. Relocation assistance problems will be analyzed in a relocation plan for the project. In hardship cases or for protective buying, an analysis of the relocation problems involved and a specific plan to resolve such problems will be provided for each parcel or for the project. See Chapter 6 for information and procedures for protective buying and hardship cases.

2. Within a reasonable period of time prior to displacement, comparable replacement dwellings will be available or provided for displaced individuals and families as defined in this chapter. Displaced persons will receive written notice providing the address of at least one and if available three comparable replacement dwellings used in determining the replacement housing entitlements.

3. No person lawfully occupying real property will be required to move from the acquired dwelling, business, farm or NPO, without being provided a written assurance at least 90 days prior to the earliest date by which they could be required to vacate the property.

B. WSDOT assures that it will not proceed with any construction project within right of way acquired by the agency, UNLESS:

1. Relocation payments and services are provided as set forth in this chapter.
2. The public is adequately informed of the relocation payments and services available as set forth in this chapter.

### *12-2.3 Organization*

A. WSDOT administers the Relocation Assistance Program for all its own acquisitions and will supervise such program with respect to local agencies engaged in acquisitions for local road and transportation projects in accordance with this chapter.

B. The primary responsibility for the administration and supervision of the program rests with the Relocation Assistance Program Manager (RAPM).

C. One or more individuals whose direct responsibility is to provide relocation assistance are assigned to each right of way project where relocation will occur. These individuals may have responsibility for more than one project where work loads allow.

### *12-2.4 Transaction Reviews*

#### 12-2.4.1 Region Review

The Region Relocation Assistance Supervisor:

A. Verifies that the Relocation Eligibility Report has been completed and transmitted to Headquarters.

B. Verifies that the Relocation Plan has been approved by Headquarters and distributed to appropriate disciplines within the region.

C. Verifies that all the proper notices and relocation brochures have been given to displaced persons. Forwards original signed copies of notices to Headquarters Review for retention in the official parcel file.

D. Assures that all appropriate relocation entitlements have been calculated and presented to the displaced person(s).

- Reviews replacement housing calculation packages.
- Approves residential moving entitlements.
- Reviews all residential, nonresidential, and PPO recommendations and claims before submittal to Headquarters.

E. Determines the need for any revisions or re-computations of relocation entitlements that might arise from matters, such as an administrative settlement, uneconomic remainders, or offer withdrawn.

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F. If a claim is considered ineligible for reimbursement, the region is responsible to provide the displaced person a written statement explaining why the claim was ineligible or denied once the determination is made by the region. The written statement must also include language for review and reconsideration of decision and appeal. A copy of the written statement shall be sent to Headquarters for the original file.

G. Verifies that all computer entries have been made.

H. On a monthly basis, sends updated relocation status report to relocation review at Headquarters.

#### *12-2.4.1.1 Headquarters Review*

The State Relocation Reviewer:

A. Verifies that all necessary and appropriate documentation has been obtained and transmitted to Headquarters. Notifies Relocation Specialist of any missing documentation, incorrect references to citations, incorrect voucher coding, or if any changes are necessary.

B. Reviews and approves/denies all relocation entitlement calculations, recommendations, and claims submitted by the region in accordance with state and federal regulations. Authorizes approved payments. Review includes verification of all calculations, citations, and computer entries.

C. Assures that advance payments are properly deducted from total relocation entitlement.

### 12-2.4.2 Condemnations

#### *12-2.4.2.1 General*

After an acquisition parcel is turned in for condemnation, all contact by the acquisition section with the owner should be through the owner's attorney and the state's Assistant Attorney General assigned to the case unless direct contact is authorized by the attorneys or the displaced person. The region makes all appropriate contacts with tenants. Relocation efforts should continue with the displaced person unless directed to cease by either attorney or the displaced person.

#### *12-2.4.2.2 Possession and Use Agreements*

During the course of negotiations, an owner may sign a possession and use agreement whereby the grantor provides WSDOT with physical possession of the parcel in exchange for payment of just compensation. Although full legal ownership of the parcel is still held by the grantor until final negotiation or court settlement, a replacement housing payment can be made by using a "Provisional Payment Agreement" (RES-518). If this option is selected, the specialist should work closely with the Attorney General's Office to ensure all necessary deductions are made to the condemnation settlement for any refund of the advance RHP payment due the department.

### 12-2.4.3 Post-Judgment

#### *12-2.4.3.1 General*

As soon as possible after a verdict or judgment is entered in a condemnation case, the region takes appropriate action to complete the relocation process for the eligible displaced person and takes physical possession of the property acquired, if not already done.

#### *12-2.4.3.2 Moving Expense*

Moving expense payments are handled and processed as for any other displaced person.

#### *12-2.4.3.3 Price Differential*

A price differential previously calculated and delivered to the displaced person by written notice may have to be adjusted when the verdict or judgment differs from the determination of value used as a base for the prior computation. Such judgment will be treated as an administrative settlement for purposes of calculating the actual price differential to be paid to the displaced person.

A. In cases of stipulated judgments, the Attorney General's Office will usually be able to provide enough information to determine the acquisition cost.

B. In case of trial to the court or a jury, the result may be a single dollar figure with no explanation, and the basis for a price differential is derived from that plus any additional information that may be gleaned from the state's appraisal or from the Attorney General's report.

C. In computing price differentials based on judgments (or administrative/stipulated settlements), the following areas are considered:

   1. The state's "acquisition cost" is determined in the same manner as described under the definition of acquisition cost in Section 12-4.1.

   2. In the case of a partial taking or carve out, where the verdict or administrative/stipulated settlement or the voucher does not identify the amount being added for land versus improvements and/or for damages or if no insight is available from the state's attorney or others directly involved, it is necessary to use the proportions as determined from the state's appraisal and apply them to the amount of the settlement that is in excess of the state's appraisal.

   3. In either case, once an award is made a revised entitlement letter will need to be prepared and delivered to the displaced person. See RES-507a.

49 CFR 24.9
WAC 468-100-009

### 12-2.5 Records

A. The department shall maintain adequate records of its relocation assistance activities in sufficient detail to demonstrate compliance with the statutes and regulations.

1. The official repository for relocation records shall be in Headquarters. This includes documents for local public agency (LPA) relocation work until the project is complete. LPA originals will be returned to region staff upon completion of the project so they can be returned to the acquiring agency.
2. With the exception of LPA originals as discussed above, all records shall be retained in Headquarters for the record retention period established by the department.
3. All original records or copies with original signatures shall be submitted to Headquarters for retention. Where originals are delivered to others, legible copies should be submitted.

B. Many of the relocation records will be kept on various relocation forms. A list of relocation forms is provided in Chapter 13.

C. Relocation records are also maintained in the computer database.

D. Relocation records will be available for inspection in Headquarters during regular business hours. Requests for inspection of records shall be made in writing to the RAPM.

49 CFR 24.9
WAC 468-100-009

### 12-2.6 Annual Reports

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An annual statistical report is submitted every year for the preceding federal fiscal year. The report is forwarded to FHWA not later than October 31.

## 12-3 General Policy

### 12-3.1 General Operation

A. **Agreement Not to Rent** – The department can enter into an agreement with a non-occupant owner to not rent the property during negotiations for the purchase of the property. The department will not enter into a signed lease as we would in a Protective Rent situation. The acquisition section will administer according to procedures set forth in Chapter 6 and will utilize form RES-343.

49 CFR 24.10
WAC 468-100-010

B. **Appeal Procedures** – Appeal procedures for requesting a formal adjudicative hearing before the Office of Administrative Hearings are available to displaced persons as described in Section 12-5.5. In addition, WSDOT offers the displaced person review of the region's decision by the RAPM as an informal reconsideration option before proceeding to a formal adjudicative hearing.

49 CFR 24.401(e)
RCW 8.26.045(1)(c)
WAC 468-100-401(5)

C. **Closing Expenses** – Closing expenses (incidental purchase expenses) are reviewed and reimbursed by the department in accordance with Section 12-6.3.

D. **Duplicate Payments Prohibited** – Displaced persons are not entitled to receive any other payment which substantially duplicates the general purpose and effect of any other payment or project cost received by that displaced person as described in this manual. This includes payments received under federal, state, local law, or insurance proceeds which are determined by WSDOT to have the same purpose and effect.

49 CFR 24.3
RCW 8.26.105(2)
WAC 468-100-003

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E. **Forms** – A list of all forms pertinent to the Relocation Assistance Program are included in Chapter 13.

F. **Letter Withdrawing Offer** – If a decision is made by the department to withdraw an offer to purchase from a property owner, and relocation is involved, the acquisition specialist should forward a copy of the letter withdrawing the offer to the relocation section (see Chapter 6, Acquisition).

G. **Mobile Home Occupants** – Mobile home occupants are offered replacement housing payments as regulated by Section 12-8.

49 CFR 24.501
WAC 468-100-501

H. **Mortgage Interest Differential Payment (MIDP)** – Increased interest costs are computed and paid in accordance with Section 12-6.3.

49 CFR 24.401(d)
WAC 468-100-401(4)

I. **Moving Cost Payments** – Moving cost payments are determined in accordance with Sections 12-6.5 through 12-9.

49 CFR 24.301
WAC 468-100-301

J. **Ninety-Day Assurance** – Owners and tenants are not required to move without being provided 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 Section 12-5.4.5.

49 CFR 24.203(c)
WAC 468-100-203(3)

K. **Notice to Vacate** – A written notice to vacate the property (i.e., 30-Day Notice to Vacate) is provided to the displaced person by Property Management as specified in Chapter 11.

L. **Occupancy of the Displacement Site after WSDOT Acquires Possession** – Rental to the original displaced owner or tenant beyond occupancy as covered in the signed rental agreement is allowed only with prior written approval by the HQ RESM or designee (see Chapter 11).

M. **Personal Contacts** – Personal contacts with displaced owners and tenants are made by Relocation Specialists in accordance with the provisions of this manual as discussed in Section 12-5.1.4. The specialist makes detailed entries in the Diary of Right of Way Activities covering every contact, meeting, etc., with any party in interest. These entries are made as soon as possible after each contact to assure accuracy.

N. **Preliminary Investigation** – Preliminary investigation of project impacts on displaced persons and availability of replacement housing is made by the Relocation Specialist in accordance with Section 12-4.2.

O. **Protective Rent** – If a tenant vacates the property before the department acquires possession, it may be appropriate for the department to enter into a lease and pay protective rent to prevent the property from being rented to another tenant. The acquisition section will administer the protective rent program. Both the acquisition specialist and Relocation Specialist need to coordinate activities. A Relocation Specialist should notify the acquisition section if a tenant wishes to vacate prior to WSDOT possession. See Chapter 6 for procedures.

P. **Reassignment of a Relocation Assistance File** – When a relocation parcel file is reassigned, the current assigned specialist must turn over an organized and updated file with all correspondence to their supervisor or the newly assigned specialist. At a minimum, the file should contain:

- An updated checklist.
- Eligibility Report.
- Current signed diary with a statement that the file is being reassigned to another specialist.
- Correspondence such as emails, letters/notices, notes, etc.
- Documents such as photos, forms, leases, purchase and sale agreements, etc.

Q. **Relocation Assistance** – Relocation assistance offices are located in Headquarters and each region office. Additional offices (field offices) may be provided and operated in accordance with Section 12-5.2. Relocation plans are developed in accordance with Section 12-4.2.

R. **Replacement Housing Payments** – Replacement housing payments are determined and administered in accordance with Section 12-6.3.

### *12-3.2 Project Regulations*

A. **Payments Authorized** – Relocation assistance payments to eligible persons may be authorized when all of the following conditions have been met:

1. **Program Approval and Authorization** – When there has been approval of a program or project and authorization to proceed has been issued.
2. **Person Relocated** – When in fact a person has been or will be relocated by the project or from the right of way approved for such project.
3. **Lawful Costs** – When relocation costs are lawfully incurred.
4. **Costs Recorded as Liability** – When relocation costs are recognized and recorded as a liability of the acquiring agency.
5. **Project Agreement Executed** – After the project agreement (if required) has been executed for the particular project involved.
6. **Federally Assisted Right of Way Projects** – After federal participation in relocation assistance costs has been authorized. This requirement does not apply to projects funded with state funds.

B. **Interest Acquired** – The type of interest acquired does not affect the eligibility for relocation assistance payments provided the interest acquired is sufficient to cause displacement. In like manner, the terms under which a tenant is occupying property does not affect eligibility provided the tenant is actually displaced by the project and the occupancy is lawful.

C. **Losses Due to Negligence** – Losses due to negligence of the relocated person, the person's specialist, or employees are not eligible for payment.

D. **Deductions From Relocation Payment** – The Relocation Specialist must deduct the amount of any advance relocation payment from the relocation payment(s) to which the displaced person is otherwise entitled. WSDOT will not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any creditor.

49 CFR 24.403(a)(6)
WAC 468-100-403(1)(f)

E. **Availability of Replacement Housing** – No person to be displaced shall be required to move from the acquired dwelling unless at least one comparable replacement dwelling has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

49 CFR 24.2(6)
WAC 468-100-002(6)

1. The person is informed of its location which is provided to the displaced person in the Notice of Eligibility, Entitlements and 90-Day Assurance Letter.
2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property.
3. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.
4. **Comparable Replacement Dwelling – Short Sale Homes or Bank/REO (Real Estate Owned) Homes** – It is common to see short sale listings and bank or REO homes listed on NWMLS or other MLS systems. The difference between the two types of listings are:
   - **Short Sale Homes** – When dealing with short sales, there is a third party (bank) involved in the transaction. Once an offer is made to the homeowner on a short sale property and there is mutual acceptance between the owner and the buyer, they are then required to get acceptance on the offer from the bank. This process can take months to complete and the average short sale transaction is about 6.5 months. If the home has multiple mortgages then all banks must approve the offer. Short sale homes are not considered available by WSDOT standards and should not be used as the comparable home selected by the department to compute the replacement housing payment.
   - **Bank/REO (Real Estate Owned) Owned Homes** – Before the home becomes a bank foreclosure sale or REO, it is auctioned through the county. If it does not sell at auction, it becomes an REO home and is then listed by a real estate agent for sale on behalf of the bank. If a home is bank/REO owned, the process can be quicker than a short

sale, but you are still dealing with a bank rather than an individual home owner. This can delay the process, so these homes should not be used as comparables selected by the department to compute the replacement housing payment. Most foreclosures can be completed with the 30- to 45-day closure period just like any other home transaction. Once the turnaround time is confirmed, a bank/REO home can be used as a comparable dwelling as long as it not considered to be listed under market. Remember, a bank/REO property must still pass all DSS standards in order for the displaced person to be eligible for their replacement housing payment.

The specialist should advise the displaced person if they choose to purchase a bank/REO property or even a short sale and it takes longer than expected and if the ad date is approaching, they could be required to move once their 90-day assurance expires and the acquiring agency will not approve costs associated with a double move (i.e., storage, per diem, temporary housing).

F. **Federally Assisted Projects With a ROW Phase** – The costs of providing relocation payments and services required by this chapter are eligible for federal participation in the same manner and to the same extent as other project costs.

G. **Administrative Costs** – Only those costs directly chargeable to a given transportation project are charged to such project.

H. **Refusal of Assistance** – A displaced person can refuse relocation services and still be eligible for payments. There is no requirement that a displaced person accept the services of WSDOT in relocating if not desired. However, it is necessary that the displaced person make application within the required time limits to qualify for relocation payments and that, in a residential situation, the replacement dwelling meet the department's standards for decent, safe, and sanitary housing.

I. **Property Not Incorporated Into Right of Way** – If relocation is made necessary by an acquisition for the project, even though the property acquired is not incorporated within the final right of way, monetary relocation entitlements may be approved by the RAPM. The Region Relocation Supervisor must provide a detailed memorandum (with map) setting forth the circumstances for the request to the RAPM. A copy of the Appraisal and Determination of Value is also requested. If federal funds are proposed to be used for relocation or acquisition costs for property not incorporated into the final right of way, they can only be used for material sites, property acquisitions to a logical boundary, disposal of hazardous materials, environmental mitigation, and easements for permanent or temporary use.

49 CFR 24.207(f)
WAC 468-100-207(6)

J. **No Waiver of Relocation Assistance** – WSDOT shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and entitlements provided by the Uniform Act and governing regulations.

### 12-3.3 Disaster Project Regulations

A. **General** – The requirement that no person shall be required to move unless at least one comparable replacement dwelling is made available may be waived in any case where it is demonstrated that a person must move because of:

49 CFR 24.204(b)
RCW 8.26.075(3)
WAC 468-100-204(2)

1. A major disaster as defined in the Disaster Relief Act of 1974 (42 U.S.C. 5122); or
2. A presidentially declared national emergency; or
3. Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

B. **Basic Conditions of Emergency Move** – Whenever a person is required to relocate for a temporary period (defined as lasting no longer than a 12-month period) because of an emergency as described in paragraph A of this section, WSDOT shall:

49 CFR 24.204(c)
WAC 468-100-204(3)

1. Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling.
2. Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation.
3. Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied replacement dwelling.)

C. **Tenure of Occupancy**

1. Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to reoccupy their homes by the start of negotiations for the parcel may be considered to be in constructive occupancy and funds may be authorized for relocation payments to such individuals and families, provided that location approval for the project had been given by the Secretary of WSDOT prior to the major disaster.

D. **Computation of Replacement Housing Payment for <u>an Owner of at least 90-Days</u> Who Purchases**

1. **Fair Market Value of Acquired Residence** – The fair market value of damaged or destroyed residences is as of the usual date of valuation for a highway project.

2. **Computation** – The replacement housing payment is the amount, if any, which when added to the amount for which WSDOT acquired the damaged or destroyed dwelling equals the lesser of:
   a. The actual amount the owner paid for a decent, safe, and sanitary dwelling; or
   b. The amount determined by WSDOT as necessary to purchase a comparable dwelling.

49 CFR 24.3
WAC 468-100-003

3. **Duplicate Payments** – Any proceeds received for payment of damages to the displaced person's residence as a result of the major disaster, from any source, such as flood insurance or cancellation of a portion of a Small Business Administration (SBA) loan is deducted from the replacement housing payment for which the displaced person is eligible.

### *12-3.4 Deviation From Procedures*

Any deviation from procedures outlined in this chapter will require the region or local agency to submit a request to the RAPM outlining the issues. The request must include sufficient documentation as to why the procedure cannot be followed and the alternative solution. ***Caution:*** If a project is federally funded, any deviation from procedures without approval will jeopardize federal funding.

## 12-4 General Relocation

### *12-4.1 Definitions*

49 CFR 24.2
RCW 8.26.020
WAC 468-100-002

Definitions relating to relocation assistance and the Uniform Relocation Act can be located in WAC 468-100-002. Additional definitions and clarification are as follows:

A. **Acquired** – For the purpose of this chapter, "acquired" means WSDOT obtained legal possession of the real property. The date of such possession is the date on which final payment for the property is made available to the owner(s) or to the court. Where WSDOT has obtained early possession under a Possession and Use Agreement, legal possession is the time specified in the pertinent document or, if not specified in such document, upon making payment as required by such document.

B. **Acquisition Cost** – For the purpose of computing replacement housing payments, the "acquisition cost" is the cost WSDOT pays for the property acquired. The amount is determined from the Real Property Voucher. The amount of any administrative settlement is included and remains a part of the final settlement. Any amount paid by the displaced person for salvage rights is considered an expenditure by the displaced person toward the purchase of replacement housing. The amount of the "final settlement" in the case of a donation is considered to be fair market value. For court award cases or cases involving an administrative settlement, the amount of the just compensation is analyzed to determine acquisition cost.

C. **Business** – In addition to the definition found in WAC 468-100-002, a business is also referred to as "nonresidential."

D. **Carve Out** – A "Carve-out" is a term commonly used to describe the method for determining what portion of property occupied by a residential owner of 90 days or more is to be used in computing a replacement housing payment if the displaced person is situated on a site either larger than typical for residential purposes, or whose property is actually occupied by or used for other purposes, or has a major exterior attribute not typical of the area.

E. **Certified Copy** – A "certified copy" is a copy (often a photocopy) of a "filed" document, legal or other, in its entirety (everything within a staple) that is sworn to be a true and correct copy by the individual who prepared it, i.e., accountant, attorney, business owner. The statement can be as simple as the following: "I hereby certify that this document is a true and correct copy."

F. **Financial Means** – The following criteria are used in determining financial means:

1. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in Section 12-6.3, all increased mortgage interest costs as described at Section 12-6.3, and all incidental expenses as described at Section 12-6.3, plus any additional amount required to be paid under Section 12-6.4, Housing of Last Resort.

2. A replacement dwelling rented by an eligible displaced person is considered to be within that person's financial means if, after receiving rental assistance under this part, the monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at Section 12-6.3.

3. For a displaced person who is not eligible to receive a replacement housing payment because of failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within a person's financial means if WSDOT pays that portion of the monthly housing costs of a replacement dwelling which exceed 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under Section 12-6.4, Housing of Last Resort.

G. **Mortgage** – Classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the state of Washington together with the credit instruments. A real estate contract is considered to be a mortgage for the purposes of this chapter. A bona fide mortgage is a mortgage which is a valid lien on the real property for not less than 90 days prior to the initiation of negotiations.

H. **Moving Expense Payments** – The amount necessary to pay or reimburse an eligible displaced person, business, farm or NPO operation for certain expenses related to moving their personal property located on the displacement property.

I. **Nonresidential** – The term nonresidential includes a business operation, farm operation, or nonprofit organization (NPO).

J. **Personal Property Only (PPO)** – A move of personal property from the acquired property for project purposes where there is not a need for a full relocation of a residence and/or a nonresidential operation.

K. **Place of Permanent or Customary and Usual Abode (Permanent Place of Residence)** – A dwelling, legally used and occupied as living quarters or residence by a person or family with apparent intent to continue such use and occupancy. If a question arises, the specialist will need to obtain legal documents to support residency, i.e., utility bills, driver's license, voter registration, auto registration.

L. **Replacement Housing Payment (RHP)** – Any one or certain combinations of payments authorized to be paid to eligible displaced persons to enable such displaced persons to obtain replacement housing. There are five types of authorized payments, as follows:

1. **Incidental Purchase Expense** – The amount necessary to pay or reimburse an eligible displaced person for certain actual costs incurred by the displaced person incidental to the purchase of an eligible replacement dwelling, including but not limited to recording fees, escrow fees, title insurance premiums, appraisal fees, credit report fees, home inspection fees, and transfer taxes. (Does not include prepayment of any expenses. See Section 12-6.3.)

2. **Mortgage Interest Differential Payment (MIDP)** – The amount, as determined by WSDOT, necessary to compensate an eligible 180-day owner occupant for an increased interest cost required to obtain a mortgage for the purpose of purchasing an eligible replacement dwelling. In addition, such finance charges as may be imposed as a condition to the making of such a mortgage.

3. **Price Differential** – That amount, in addition to the just compensation paid by WSDOT, which is necessary to enable an eligible displaced person to purchase an eligible replacement dwelling. The computation is based on the most comparable dwelling selected by the department.

4. **Rent Supplement** – The amount, determined by WSDOT, necessary to compensate an eligible displaced person for the increased cost of renting an eligible replacement dwelling. The computation is based on the most comparable dwelling selected by the department.

5. **Down Payment Assistance** – The amount necessary to enable an eligible displaced person to make a down payment (including eligible incidental purchase expenses) on the purchase of an eligible replacement dwelling. Payment is limited to the maximum rent supplement calculated for the displaced person. A 90-day owner occupant is not eligible for this type of payment.

M. **Uneconomic Remnant** – The term "uneconomic remnant" refers to a remainder of the owner's real property which WSDOT has determined will have little or no value or utility to the owner after the department's acquisition of a portion of the tract.

N. **Utilities** – A privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected to highway drainage, or any other similar commodity (23 CFR 645.105).

## *12-4.2 Relocation Planning (Environmental NEPA/SEPA Stage)*

49 CFR 24.205
RCW 8.26.065
WAC 468-100-205

### 12-4.2.1 Preliminary Plans

49 CFR 24.205(a)
RCW 8.26.065(1)
WAC 468-100-205(1)

Detailed information and analysis of displacements may be required at various stages prior to development of a Relocation Project Plan as required by Section 12-4.2.2. Some examples of preliminary stages are Environmental Impact Statements (EIS), Environmental Assessment, Discipline Report, and so on. Information included in the document or report may be obtained by visual inspection of the area and from readily available secondary or community sources. Reports at this level should not include parcel specific information such as names and possible addresses of potential displacements. This information, if collected, should be kept in a separate project file. It also should be noted that secondary information collected during this phase of the project may cover many different alternatives prior to the selection of the preferred alternative. The document or report usually requires the following information:

A. Estimate of households to be displaced, including the family characteristics (e.g., minorities, income levels, the elderly, large families, owners or tenants).

B. Divisive or disruptive effect on the community, such as separation of residences from community facilities or separation of neighborhoods.

C. Impact on the neighborhood and housing where relocation is likely to take place.

D. An estimate of the businesses to be displaced and general effect of business dislocation on the economy of the community.

E. A description of housing available for sale in the area, not including short sales and bank/REO owned properties, and the ability to provide replacement housing for the types of families to be displaced.

F. A description of special relocation advisory services that will be necessary for identified unusual conditions.

G. A description of the actions proposed to remedy insufficient replacement housing including, if necessary, housing of last resort.

H. Results of consultation with local officials, social agencies, and community groups regarding the impacts on the community affected.

49 CFR 24.205(a)
RCW 8.26.065(1)
WAC 468-100-205(1)

### 12-4.2.2 Project Relocation Plans (Right of Way Stage)

Project relocation plans are required on all projects that will cause the displacement of individuals, businesses, or personal property. The plan itself should provide detailed firsthand information regarding the affected occupants of the project. This plan will provide important displacement information as well as estimated relocation costs for the project. A relocation plan is a great planning and communication tool and is considered a framework for the implementation of the relocation program.

#### *12-4.2.2.1 General Requirements*

A. Negotiations are not initiated on any project which will cause the relocation of any person until the Region Relocation Supervisor has submitted a Relocation Project Plan to the RAPM for review and approval.

B. Prior to submitting a request for funds (request for work order authorization) the Region Relocation Supervisor prepares a relocation plan in coordination with personnel assigned to prepare funding estimates. Such plan is submitted to the RAPM for review and approval. Upon approval by the RAPM, a copy of the approved plan is returned to the region showing such approval and a copy is provided to Headquarters Appraisal, Property Management, and Acquisition/Title. The Region Relocation Supervisor should distribute an approved copy of the plan to each discipline within their region.

C. The Relocation Specialist should deliver a relocation brochure to displaced person at the time the specialist is collecting the information on the occupancy survey for the preparation of the relocation plan. If appropriate, the Relocation Specialist may also deliver a General Notice of Relocation Rights letter. If the timing is not appropriate it should be given out closer to the initiation of negotiations in accordance with Section 12-5.4.

#### *12-4.2.2.2 Project Relocation Plan Contents*

A Relocation Project Plan covers the methods and procedures by which the needs of every individual to be displaced will be evaluated and correlated with available decent, safe, and sanitary (DSS) housing within those individuals' financial means and will cover information regarding business, farm, and NPO displacements that is required by federal regulations. The input for the plan is developed from the Occupancy Survey prepared by the region Relocation Specialist on each acquisition parcel requiring the displacement of persons or personal property from the project. The plan contains a tabulation of data, photographs, and narrative. Contact Headquarters for a sample of an appropriate relocation plan.

A. **General**

1. The plan should contain a statement of "Assurances" that the department will inform the public of relocation payments and services that will be available and that the department will provide such payments and services. In addition, this statement will advise that no person lawfully occupying real property will be required to move from the acquired dwelling, business, farm or NPO operation without being provided a written assurance at least 90 days prior to the earliest date by which they could be required to vacate the property. No person to be displaced from a residential dwelling shall be required to move unless at least one comparable replacement dwelling is made available.
2. A description of the project including information on limits, area location, purpose of the project, type and extent of work, and any other pertinent information deemed appropriate by the plan author.
3. A brief discussion of the number of parcels to be acquired and the resulting number of displacements by type (residential owner, residential tenant, business, and/or personal property only).

B. **Inventory of Individual Needs (Occupancy Survey)** – An inventory of the characteristics and needs of individuals, families, businesses, and/or personal property to be displaced. Photos of the subject dwelling should be included as an attachment or incorporated into the plan. The completed occupancy surveys should be included as an attachment to the plan. Recent census and other valid survey data obtained from city and county planning departments, redevelopment agencies, precinct registers, etc., may be used to assist in preparing the inventory. The survey process is carried out to the depth necessary to fully identify the characteristics and needs of the displaced person.

**Residential Displacements**

1. This inventory is based upon a complete occupancy survey. See Chapter 13 for the residential occupancy survey form. This shall include a personal interview with the displaced person. The write up for each potential displacement should include specific information as obtained during the occupancy survey.
2. Housing needs are determined by analysis of needs for Decent, Safe and Sanitary (DSS) replacement housing. This does not necessarily mean a replacement in kind for the dwellings to be acquired. It means providing DSS housing that meets the needs of the occupants being displaced. The financial means of the displaced person are also considered and discussed in the report.
3. The report should include an estimate of the number of residential households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

**Nonresidential Displacements**

1. The relocation plan should determine, for nonresidential (businesses, farm, NPO) displacements, the relocation needs and preferences of each to be displaced. It should also explain the relocation payments and other assistance for which the business, farm, or NPO may be eligible to receive. This shall include a personal interview with each business. See Chapter 13 for the nonresidential occupancy survey form.
2. At a minimum, interviews with displaced business owners and operators should include the following items:
   a. The business's replacement site requirements, current lease terms and other contractual obligations and financial capacity of the business to accomplish the move.
   b. Determination of the need for outside specialists that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
   c. An identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.
   d. An estimate of the time required for the business to vacate the site.
   e. An estimate of the anticipated difficulty in locating a replacement property.
   f. An identification of any advance relocation payments required for the move, and WSDOT's legal capacity to provide them.
3. The report should also include an estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

C. **Inventory of Available Housing and Business Sites** – A reliable estimate of comparable replacement housing currently available on the housing market (not including short sales and bank/REO owned homes) and an estimate of the availability of replacement business sites for the general project area.

1. The types of buildings and the adequacy of supply of DSS housing as related to the needs of the persons or families to be relocated. Further discussion of type of neighborhood, proximity of public transportation, commercial shopping areas, and distance to any pertinent social institutions, such as church, community facilities, is desired. The use of maps, plats, charts, etc., is useful at this stage. This estimate is developed to the extent necessary to assure that the relocation plan can be expeditiously and fully implemented.
2. Data on the availability of housing is gathered by any reasonable method such as: updating and using data previously gathered; using sources such as multiple listing bureaus, internet websites such as Craigs List, individual brokers, real estate management companies, associations of landlords, rental agencies; and direct contact with apartment owners

or managers, local planning offices, other governmental offices which regulate construction of homes and other buildings, and public utility companies which continuously study population growth and/or trends. Newspaper advertising and other printed resources could also be utilized.

3. The inventory of available residential housing should summarize:
   a. The number of comparable replacement dwellings, not including short sales and bank/REO owned homes, in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. Remember short sales and bank/REO owned homes should not be selected as comparable dwellings by the acquiring agency as they are time consuming and not considered available to the displaced person within a reasonable amount of time. When an adequate supply of comparable housing is not expected to be available, WSDOT should consider housing of last resort actions.
   b. The monthly (or annual) rate of "turn over" in the sale and rental markets.
   c. The rate at which new housing is being added.
   d. A projection of the amount of housing which will become available within the lead time during which acquisition and right of way clearance will take place.
4. The inventory of available nonresidential sites should summarize:
   a. The availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the business should be considered and addressed.
   b. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

D. **Analysis of Inventories** – An analysis and correlation of the above information is used to develop a relocation plan which:
   1. Discusses the various relocation problems, which may include cases of low income and minority groups.
   2. Provides an analysis of current and future federal, state, and community programs in the project areas, and nearby areas, which could affect the supply and demand for housing.
   3. Provides an analysis of said problems and offers potential resolutions to these problems.
   4. Estimates the amount of lead time required and demonstrates its adequacy to carry out a timely, orderly, and humane relocation program.

E. **Sources of Information** – Identification of the names/sources from which information was obtained and relied upon for the report.

F. **Project Relocation Assistance Office** – A brief discussion addressing the intended means by which displaced persons and adjacent occupants will have reasonable access to adequately staffed offices and how such offices will be operated, staffed, and equipped to provide relocation assistance services. This discussion should encompass the need or lack of need for project relocation assistance offices, the hours of operation, the location of said office and the resources to be available at said office.

G. **Alternate and/or Housing of Last Resort Needs**

1. Discuss the impact of the project on available replacement housing within the financial means of the displaced person.
2. Explain that either:
   a. There is an adequate, continuing supply of replacement housing available within the financial means of the displaced person, or
   b. A "Housing of Last Resort" will be prepared on a case-by-case basis or is incorporated into this report.

H. Maps, plats, charts pictorial, and/or graphic data which further illustrates the needs of the displaced person or describes the availability or lack of availability of suitable replacement housing may be included with the report. Approved right of way plans are not included as a part of this report but are available in the appropriate region and Headquarters offices.

I. Include a summary of total estimated relocation project costs, i.e., residential, nonresidential, and personal property.

49 CFR 24.205(c)
RCW 8.26.065(2)
WAC 468-100-205(3)

## 12-5 Relocation Advisory Services

### *12-5.1 General*

WSDOT has established and carries out a Relocation Assistance Advisory Services Program so that displaced persons will receive uniform and consistent services and payments regardless of race, color, religion, sex, or national origin. Services are provided by personal contact by the region Relocation Specialist. If personal contact cannot be made, the Relocation Specialist documents the file to show that reasonable efforts were made to achieve personal contact.

#### 12-5.1.1 To Whom Provided

Relocation assistance advisory services are offered to:

49 CFR 24.2(a)(9)

A. Any "displaced person" as defined in WAC 468-100-002(9).

B. Any adjacent occupant when WSDOT determines that such person or persons are caused substantial economic injury because of the acquisition.

C. Any person who, because of the acquisition of real property used for the person's business or farm operation, moves from other real property used for a dwelling, or moves personal property from such other real property.

### 12-5.1.2 Minimum Advisory Services

The Relocation Specialist provides relocation assistance advisory services to include such measures, facilities, or practices as may be necessary or appropriate. The amount and extent of the advisory services are administered on a reasonable basis commensurate with the needs of the displaced person.

A. For all displacements, the Relocation Specialist shall:

1. Determine the need, if any, of displaced persons for relocation assistance by completing the appropriate occupancy survey. The form should be completed by the Relocation Specialist during the on site visit with the displaced person. The specialist should ask all questions on the form. If the displaced person advises during the interview that the question is not applicable the specialist should note that on the form.
2. Explain the types of relocation payments, move options, and the eligibility requirements to receive relocation payments and assist in completing any required forms.
3. Advise displaced persons that they will be provided with a written 90 Day Assurance of the earliest date they will be required to vacate the displacement property.

49 CFR 24.203(c)
WAC 468-100-203(3)

4. Advise displaced persons that no payments received under the Uniform Act shall be considered as income for the purposes of the Internal Revenue Code of 1954 which has been redesignated as the Internal Revenue Code of 1986 or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under any state or federal law.

49 CFR 24.209
RCW 8.26.115
WAC 468-100-209

5. Advise that all displaced persons have the right to appeal department determinations regarding relocation assistance or relocation payment amounts and as an option may seek informal review by the RAPM of the Relocation Specialist's decision, and reconsideration of the RAPM's decision by the WSDOT Relocation Review Board prior to commencing a formal appeal.

49 CFR 24.10
WAC 468-100-010

B. For residential displacements, the Relocation Specialist shall:

1. Provide current information regarding the availability, purchase prices and/or rental costs of comparable decent, safe, and sanitary housing, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available. As necessary provide additional available comparable replacement dwellings.

49 CFR 24.204
WAC 468-100-204

2. Discuss Decent, Safe and Sanitary (DSS) replacement requirements with the displaced person. The DSS inspection does not replace a professional home inspection. Advise the displaced person (owner occupant) that WSDOT strongly recommends they obtain a professional home inspection by a qualified home inspector when purchasing a replacement dwelling. If the displaced person is a 90-day owner occupant, they should be advised the home inspection is 100 percent reimbursable by the department. The Purchase and Sale Agreement for the replacement dwelling should be contingent on both the home inspection and the DSS inspection. For a

49 CFR 24.401
49 CFR 24.402(c)
WAC 468-100-401
WAC 468-100-402(3)

displaced residential tenant who elects to purchase a replacement home using Down Payment Assistance the home inspection is reimbursable, however it is part of their original RHP and not paid in addition to as is with a 90-day owner occupant.

3. Inform the displaced person that the actual RHP is based on a dwelling similar to the displacement dwelling occupied and acquired by the agency for construction of the project. If the displaced person chooses to purchase a replacement dwelling that is not similar to the displacement dwelling than the RHP will be adjusted accordingly. For example, a single family dwelling is not considered similar to a multifamily dwelling and therefore not reasonable to apply the full calculated RHP to the purchase of the replacement dwelling.

49 CFR 24.205(c)(2)(ii)(B)
WAC 468-100-205(4)(b)(ii)

4. As soon as feasible, WSDOT shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

49 CFR 24.205(c)(2)(ii)(C)
WAC 468-100-205(4)(b)(iii)

5. Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, WSDOT shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

49 CFR 24.205(c)(2)(ii)(D)
WAC 468-100-205(4)(b)(iv)

6. Whenever possible, minority persons shall be given reasonable opportunities to relocate to Decent, Safe and Sanitary (DSS) replacement dwellings, within their financial means. Specialist shall not “steer” the displaced persons to minority concentrated areas only. This policy, however, does not require WSDOT to provide a person a larger payment than necessary to enable a person to relocate to a comparable replacement dwelling.

49 CFR 24.205(c)(2)(v)
WAC 468-100-205(4)(e)

7. Supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

49 CFR 24.205(c)(2)(ii)(F)
WAC 468-100-205(4)(b)(vi)

8. Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised that the requirements of such government housing assistance program dictates the comparable dwelling made available to them.

49 CFR 24.205(c)(2)(ii)(E)
WAC 468-100-205(4)(b)(v)

9. Offer to provide transportation to displaced persons to search for or view replacement housing.

49 CFR 24.205(c)(2)(iv)
WAC 468-100-205(4)(d)

10. Provide other advisory services to displaced persons to minimize hardships to such persons in adjusting to a new location as appropriate.

11. For a tenant displacement, the Relocation Specialist needs to determine if the tenant paid a damage deposit, first and/or last month’s rent to their landlord. This information should be recorded on the Residential

Occupancy Survey (RES-532) and provided to the acquisition specialist. Further, if there is prorated rent from the time WSDOT comes into ownership of the property the Relocation Specialist will need to advise the tenant that they will need to get any of these refunds from their current landlord, not WSDOT.

12. Explain the moving options available and the differences between the commercial move and the self move options, i.e., fixed residential moving cost schedule (room count) and actual costs.

49 CFR 24.301(b)
WAC 468-100-301(2)

13. Advise the displaced person if they choose to purchase a bank/REO property or even a short sale and it takes longer than expected and the ad date is approaching, they could be required to move once their 90-day assurance expires and the acquiring agency will not approve costs associated with a double move (i.e., storage, per diem, temporary housing).

C. For nonresidential displacements, the level of advisory services may be different for each displaced business, farm, or nonprofit organization (NPO) depending on the complexity of the displacement. The Relocation Specialist shall:

1. Provide current and continuing information on the availability, location, purchase prices, and rental costs of suitable commercial and farm properties. The Relocation Specialist should advise the displaced person to seek the services of a local commercial real estate agent.

2. Assist the person displaced from the person's business, farm operation, or NPO in obtaining and becoming established in a suitable replacement location. This should include advice regarding potential moving and reestablishment claims based on the selection of a suitable replacement site. At a minimum, the specialist should explain all categories of potential reimbursements available under reestablishment expenses.

3. Advise displaced business owners that professional services obtained by them must be preapproved by WSDOT as the determination will be made based on what is reasonable and necessary for their type of relocation. Not all businesses require professional services. Advise displaced business owners that prior to entering into a contractual obligation for professional services, that they must obtain a minimum of two "Scopes of Work" estimates. As part of advisory services, the Relocation Specialist should review the Scopes of Work to determine which items listed are considered eligible for reimbursement and advise the business appropriately. Advise displaced person that professional services are categorized into three sections:

   a. Professional services to plan the move, plan the placement of the personal property at the replacement location, and the actual move of the personal property.

   49 CFR 24.301(g)(12)
   WAC 468-100-301(7)(l)

   b. Professional services performed prior to the purchase or lease of the replacement site to determine suitability of the replacement site.

   49 CFR 24.303(b)
   WAC 468-100-303(2)

   c. Professional services obtained to reestablish at the replacement site.

   49 CFR 24.304(7)
   WAC 468-100-306(1)(g)

4. Encourage the business to work closely with their Relocation Specialist throughout the entire relocation.
5. As soon as feasible, discuss completing the site search log and discuss and document approved hourly rates for specific activities of the various employees (different rates may be considered reasonable for different types of activities). The Relocation Specialist and Region Relocation Supervisor need to agree upon and pre-approve a reasonable rate for the person performing the site search tasks.
6. Provide business owner with a large envelope with form RES-545 – Nonresidential Obsolete Printed Items, to be completed and returned as soon as possible. Obsolete printed items include items such as letterhead, business cards, checks, etc., that become obsolete due to the displaced business's change of address to the replacement location. Explain they will need to supply a copy of each item that will need to be reprinted due to the move in order to be reimbursed for printing costs. Prior to the move, the Relocation Specialist must complete an inventory of each item considered obsolete. Photographs may be appropriate in some cases. Discuss with the business owner options available other than reprinting, for example stickers to be placed over address. Go Green!
7. It may be necessary to refer the business to an industry professional for technical or code issues.

49 CFR 24.209
RCW 8.26.115
WAC 468-100-209

8. If a business has questions regarding relocation funds not being considered income, advise them to speak with a tax accountant. WSDOT cannot provide legal or tax advice.
9. Clearly explain Substitute Personal Property (SPP) and Actual Direct Loss of Tangibles (DLT) early in the process and prior to obtaining professional move bids to the business owner so they can make informed decisions regarding their relocation.
10. The Relocation Specialist and the business owner need to be present during the appraisal walk through to discuss Realty vs. Personalty issues. In addition the displaced business needs to understand the importance of the differences between realty and personalty. If there are questionable items, the Relocation Specialist and the appraiser need to discuss what is the appropriate way to handle the item in question. In order to avoid confusion at a later date, the Appraiser should detail the items on the Realty vs. Personalty Report (RES-217). If the item is not discussed in the appraisal, it does not automatically make the item personal property and eligible for relocation assistance. If not addressed, the Relocation Specialist will need to consult with the appraiser to get a determination as to the status of the item. When a displaced business wants to keep an item that is considered real property, it should be handled according to procedures set forth in Chapter 6 addressing the salvage of real property.

49 CFR 24.301
49 CFR 24.303
49 CFR 24.304
WAC 468-100-301
WAC 468-100-303
WAC 468-100-306

11. Explain all move options to a displaced business and the differences between the commercial move and the self move—based on the lowest acceptable bid or specialist estimate or actual costs supported by receipts/ invoices. Advise the displaced business owner if they elect to go with the

fixed payment in lieu of all other relocation expenses, they should wait to make the decision until after all appropriate move estimates have been obtained so they can make an informed decision. Clearly explain that if the displaced business owner elects the fixed payment that he or she cannot receive payment for any of the other moving and related expenses.

### 12-5.1.3 Exchange of Information With Other Agencies

Relocation specialists maintain personal contact and exchange information with other local agencies providing services useful to persons who will be relocated.

A. Such agencies may include but are not limited to social welfare agencies, urban renewal agencies, redevelopment authorities, public housing authorities, the Department of Housing and Urban Development, Veterans Administration, and Small Business Administration.

B. Contact is maintained with local sources of information on private replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors.

C. Contact is maintained with the Department of Housing and Urban Development and Veterans Administration relative to properties owned by those agencies that may be available for sale.

### 12-5.1.4 Relocation Assistance Diaries

Diaries are often the only written documentation that is available to show that right of way transactions are done in compliance with the Uniform Act and 49 CFR Part 24. Therefore, diaries need to provide a complete record of the transaction. They need to be well organized and factual, and they should be written for someone unfamiliar with the transaction. Also, the diary shall reference any appropriate documents in the file such as brochures and forms provided to property owners/tenants or estimates obtained to support an administrative record.

Each diary entry shall clearly show the month, day, and year of the contact; the name of the individual who made such a contact; how the contact was made (i.e., in person or by phone) and the name(s) of the individual(s) contacted. Each diary entry shall provide a summary of the contact. It is not sufficient to enter a simple posting of events as they occurred. For example, merely recording that the specialist presented an offer or that “discussions were held” on a given date tells too little. The entry should indicate, at the very least, where the event took place, what the owner’s reaction was, what questions the owner asked and what answers the specialist supplied. These elements are at the very heart of the negotiation process, and when an acquisition becomes difficult or negotiations break down, a well-written diary may be the most important document protecting the acquiring agency’s interests.

Multiple contacts should be stated in separate paragraphs. These entries need to be made as soon as possible to insure accuracy. Upon completion of activity entry, the specialist should type their initials after each entry. Electronic diaries are recommended and they should not have any spelling errors.

Diary entries need to be limited to a recitation of the facts because the diary is subject to the rights of discovery by all parties in any court proceeding or appeal case. All persons who participate in relocation activities with displaced persons, whether staff or consultant shall maintain an appropriate diary or log of such activities and discussions with the displaced persons. If more than one specialist is working on a file it is recommended that all specialists contribute to the same diary. The specialist must initial after each diary entry and all specialists should sign the diary when the relocation is complete.

A collection of emails pertaining to the acquisition and relocation of a parcel does not constitute a diary. Information taken directly from email correspondence often contributes to a good diary, but care should be taken to exclude extraneous information.

Remember if it is not in the diary, it is difficult to prove it happened. Should a relocation claim be appealed, the lack of information in the diary will create a burden to prove that those discussions and activities did happen.

A. Residential diary entries include, but are not limited to the following:

1. Proper displaced person information including name, a contact phone number, address of displacement site, current mailing address, project name, parcel number, and current work order number and control section.
2. Specialist assigned and date of assignment.
3. Date and time of all telephone contacts.
4. Date, time, place, and name of all individuals present at face-to-face meetings, including what was discussed and any resolutions.
5. Preparation and presentation of all official relocation notices, notification of and any other general correspondence mailed to the displaced person. If notice was mailed by certified mail, include certified numbers.
6. Date when items were received from the displaced person, i.e., signed documents, letters requesting information, phone calls, emails.
7. Statement that the relocation program was discussed with displaced person verbally and that displaced person was given a relocation brochure.
8. Statement on how the specialist arrived at the room count entitlement. ***Example:*** living room = 1 room, kitchen = 1 room, 2 bedrooms = 2 rooms, garage = 3 rooms, total = 7 rooms, $1,800. There should be a statement included in the diary that states the calculation has been approved by the Region Relocation Supervisor.
9. Discussion of comparable search information. Where did specialist obtain the information for the comparable home search? What search criteria was used? How many comparable homes were available? Of those, how many were selected to view?

10. Information or statement in relation to viewing the selected comparable homes and which of the three comparable homes the specialist selected as the most comparable and why. Also, a statement should be included that an interior inspection of the most comparable home was completed or if the interior was not inspected why it was not inspected.
11. Include the specialist's line of thinking. Why is the specialist making certain considerations for this displaced person? Why might the specialist be considering a 4-bedroom comparable home versus a 3-bedroom comparable home?
12. Carve out issues. If applicable discuss why a carve out is necessary, i.e., mixed use property, large outbuilding, pool.
13. Statement that advisory services were offered to the displaced person, such as transportation if needed or any community or social service contacts that may need to be made. In the case of an owner occupant, the specialist will need to include a statement in the diary that the specialist advised the displaced person to get a professional home inspection of the replacement home and that the costs will be reimbursed by WSDOT.
14. Any issue brought up by the displaced person that requires further research or consultation with others.
15. Questions asked by the displaced person and response given by the specialist.
16. DS&S inspection. List who was on site during the inspection; make sure you turn on stove, furnace, check smoke detectors, flush toilets, turn on faucets, check under sinks for leaks, etc., in front of displacee/agent/owner, etc. Discuss any issues at this time. Note that you explained that the agency recommends and will pay for a home inspection requested by the displaced person and the displaced person's response.
17. Confirm with acquisition and record the final settlement amount in the diary. If the acquisition payment involves an administrative settlement, a copy needs to be included in the actual Price Differential payment package that is sent to Headquarters for review.
18. Clearly identify the vacate date.
19. Documentation of all relocation claims submitted by the displaced person.
20. Send an updated diary to Headquarters with any request for approval or claim. Failure to include an updated diary could delay the processing of the claim.
21. Initials of the Relocation Specialist need to be either typed or hand written after each diary entry.
22. Final statement stating that the relocation is complete. Date, sign, and send final diary with original signature to Headquarters.

B. Non-Residential diary entries include, but are not limited to the following:

1. Proper displaced person information including name, name of business/ non-profit organization/farm, a contact phone number, address of displacement site, current mailing address, project name, parcel number, and current work order number and control section.
2. Relocation specialist assigned and date of assignment.
3. Date and time of all telephone contacts.
4. Date, time, place, and name of all individuals present at face-to-face meetings. Include what was discussed and any resolutions.
5. Preparation and presentation of all official relocation notices, notification of and any other general correspondence mailed to displaced person. If notice was mailed by certified mail, include certified number.
6. Date when items were received from displaced person, i.e., signed documents, letters requesting information, tax information, phone calls, emails, etc.
7. Statement that relocation program was discussed with displaced person verbally and that they were given a relocation brochure. This discussion should discuss reestablishment and show what the difference between actual move costs versus a fixed payment.
8. When dealing with non-residential moves sometimes many different specialists and vendors are contacted. A record of all contacts made is important.
9. Date of occupancy survey, determination of number of businesses, identification of personalty versus realty.
10. Diary shall include at least one entry where the specialist describes the advisory services provided, i.e., preapproval process, claim process, importance of working with specialist, reason for viewing tax records.
11. Statement that moving options were discussed in detail, that the fixed payment was explained, that the moving and related expenses that the agency will not pay if the displaced business chooses the fixed payment were explained in detail, substitute personal property (SPP) options, direct loss of tangible personal property (DLT) options, obsolete items, site search costs, etc. Statement that reestablishment items were discussed in detail.
12. Vacate date clearly stated.
13. Documentation of all relocation claims submitted by displaced person.
14. Send an updated diary to Headquarters with any request for approval or claim. Failure to include an updated diary could delay the processing of the claim.
15. Initials of the Relocation Specialist need to be either typed or hand written after each diary entry.
16. Final statement stating that relocation is complete. Date, sign, and send final diary with original signature to Headquarters.

## 12-5.2 Project Relocation Assistance Offices

### 12-5.2.1 General Criteria

A. When the volume of work or needs of the displaced person are such as to justify the establishment of a project relocation office, such an office will be established and located reasonably convenient to public transportation or within walking distance of the project.

B. The determination whether or not to establish a project relocation office is made by the region on an individual project basis based on criteria which include, but are not limited to:

   1. The number of displaced persons to be served.
   2. The distance and availability of transportation between the project and the Region Real Estate Service Office.
   3. The nature of the relocation problems in terms of income level, displaced person's needs and characteristics, and special replacement housing problems.

### 12-5.2.2 Information Available at Project Office

The following information will be made available for the displaced person of each project at both the region office and/or the project office:

A. Copies or reprints of any published public announcements addressing relocation assistance services and payments.

B. Current lists of suitable replacement dwellings available to displaced persons without regard to race, color, religion, sex, or national origin. Lists may come from a variety of sources including newspaper listings, apartment directories, multiple listing services, real estate and property management companies, etc.

C. Current lists of comparable commercial properties and locations for displaced businesses.

D. Current data for such costs as security deposits, closing costs, typical down payments, interest rates, and terms.

E. Maps showing the location of schools, parks, playgrounds, shopping, and public transportation routes in the area where applicable.

F. Schedules and costs of public transportation where applicable.

G. Copies of the department's brochure explaining its relocation program.

H. Copies or excerpts from local housing, building, and/or occupancy codes.

I. Other information of value to displaced persons in the particular area.

### 12-5.2.3 Office Hours

Project offices will be open during hours convenient to the persons to be relocated including evening hours when needed. Hours of operation will be addressed in the relocation plan.

### 12-5.3 Public Information

#### 12-5.3.1 General Hearings

In order to assure that the public has adequate knowledge of the department's Relocation Assistance Program, such program and its related procedures are discussed at all public hearings. The Regional Administrator may require the presence of RES personnel at any hearing in order to assure that the Relocation Assistance Program is adequately explained.

A. Brochures, pamphlets, or flyers describing the relocation program are made available, without cost, to all persons attending such hearings. The brochures provide the address of the department's region office where copies of the department's regulations implementing the Relocation Assistance Program may be obtained.

B. If there are extensive relocation problems, which cannot be covered at typical or regular hearings on highway location and other engineering matters, a separate public hearing on relocation assistance will be held, as arranged by the Region Real Estate Services Manager.

#### 12-5.3.2 Corridor Hearings

A. Right of way personnel may be called upon by the Regional Administrator to assist with the development of needed information and/or for the presentation of information at any corridor hearing. Such information may include, but is not necessarily limited to the following data:

   1. Regional and community growth including general plans and proposed land use, total transportation requirements, and status of the planning process.
   2. Public facilities and services including religious, health and educational facilities, public utilities, fire protection, and other emergency services.
   3. Community cohesion including residential and neighborhood character and stability, highway impacts on minority and other specific groups and interests, and effects on local tax base and property values.
   4. Displacement of people, businesses, and farms including relocation assistance, availability of adequate replacement housing, and economic activity (employment gains and losses, etc.).
   5. The estimated costs of the alternatives considered.
   6. Responses to questions or problems raised during the previous hearings.

B. Discussion on relocation assistance includes but is not necessarily limited to:

   1. The availability of relocation assistance services, eligibility requirements, and payment procedures.
   2. The estimated number of individuals, families, businesses, farm, and nonprofit organizations that are to be relocated by each of the alternatives under consideration at the hearings.

3. An estimate of the availability of decent, safe, and sanitary replacement housing, within the financial means of the individuals and families affected; a projection of the availability of such DSS housing to the anticipated year of right of way acquisition; any alternative plans considered for rehousing displaced persons; and assurance that housing needs of the displaced persons will be met.

#### 12-5.3.3 Highway Design and/or Access Hearings

The discussion on relocation assistance at the design or combined hearing supplements the information contained in the Relocation Assistance Program Brochure. Such discussion on relocation includes but is not necessarily limited to:

A. Assurance that no person is required to move from a residence required for a public works project or program unless a comparable replacement dwelling is available or provided for any person meeting the criteria for a displaced person.

B. The eligibility requirements and payment procedures including:

1. Eligibility requirements and payment limits for moving costs.
2. Eligibility requirements and payment limits for replacement housing payments.
3. Eligibility requirements and payment limits for nonresidential reestablishment costs.
4. Appeal procedures.

C. The services available under the state's relocation assistance advisory program, the address and telephone number of the local relocation office, and the name of the Relocation Specialist in charge.

D. An estimated number of dwelling units presently available to meet replacement housing requirements.

E. An estimate of the time necessary for relocation and the number of dwelling units meeting the replacement housing requirements that will become available during that period.

### *12-5.4 Relocation Written Notices*

49 CFR 24.203
WAC 468-100-203

#### 12-5.4.1 General

A. Appropriate relocation assistance notices will be provided to each residential occupant (family or individual); non-occupant owner of an occupied dwelling unit; business or farm owner or operator; or owner of personal property that may be directly or constructively displaced by the program or project. A notice is not furnished where there is no displacement.

49 CFR 24.5
WAC 468-100-005

B. Written notices will be presented in letter format using the basic formats found in Chapter 13 and shall include the name and telephone number of the specialist who may be contacted for answers to questions or other needed help. The letters may be revised to reflect appropriate information for any specific relocation situation. Each notice shall be written in plain, understandable

language. Translation and Counseling: Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. A certified translator must be used for those documents needing translation. Contact Headquarters Relocation for additional information.

C. Where certain relocation notices fulfill statutory requirements, the displaced person will be requested to sign a copy of the letter as evidence that the notice has been given and received. If the displaced person refuses to sign the notice, the Relocation Specialist should note the refusal on the copy of the notice and transmit this copy to Headquarters for inclusion into the official file. The Relocation Specialist should also note the refusal in the Diary. The RAPM may request further effort be made to present any notice letter to the displaced person(s).

D. If the written notice cannot be delivered in person, it must be sent by certified or registered first-class mail, return receipt requested, and documented in the official file. The electronic return receipt or copy of front and back of the green card needs to be attached to the copy of the letter sent to Headquarters for inclusion in the official file.

49 CFR 24.5
WAC 468-100-005

E. A non-occupant owner is considered, for purposes of the Relocation Assistance Program, to be displaced whenever there will be a displacement of persons or personal property from the property he owns.

F. These letters are partially intended to provide the displaced person with a written reference to certain basic information that will be or has been explained in a personal contact by a qualified representative of the department. No letter can answer all the questions in a given case. Much importance is placed on the detailed description in the relocation brochure and on the expertise of the Relocation Specialist handling the case. The Relocation Specialist should advise the displaced person of the importance of reading and understanding the information in the brochure and of asking any questions the displaced person may have regarding the information in the brochure. The specialist should note in the diary that the displaced person was so advised, including whether the displaced person did or did not have any questions and what those questions were.

49 CFR 24.203(d)
WAC 468-100-203(4)

### 12-5.4.2 Notice of Intent to Acquire

A. If the RAPM authorizes the establishment of eligibility for relocation entitlements prior to the initiation of negotiations for acquisition of a parcel, a Notice of Intent to Acquire, along with the Relocation Assistance Program Brochure, may be furnished to displaced persons. When a Notice of Intent to Acquire is issued, for purposes of this chapter, the date of initiation of negotiations for the parcel is considered to be the date of such notice.

B. This notice is not issued prior to authorization for the initiation of negotiations on the project or prior to authorization for acquisition of individual parcels in the case of protective buying or hardship acquisition.

C. The notice advises owners and occupants concerning the following:

1. The area of their eligibility for and the requirements to receive moving and replacement housing payments.
2. That any occupant contemplating moving should, to ensure eligibility for moving and replacement housing payments, notify the department before moving.
3. The anticipated date of actual initiation of negotiations.
4. How additional information pertaining to relocation assistance payments and services can be obtained.

D. If a Notice of Intent to Acquire is furnished to a property owner, it is also furnished to any tenants within 15 days and the owner is simultaneously notified of such action by furnishing such owner with a copy of the tenant's notice.

### 12-5.4.3 General Notice of Relocation Rights

49 CFR 24.203(a)
WAC 468-100-203(1)

A. This is a notice that is required by statute.

B. The letter format for this notice will depend on the type of displacement that will occur. An appropriate notice letter, to be selected from the formats found in Chapter 13, must be provided to the person(s) to be displaced by the project.

C. Delivery of the General Notice letter can occur either of two ways:

1. This notice can be presented to persons to be displaced at the time the Relocation Specialist makes the initial contact to gather information for the Relocation Plan. A Relocation Assistance Program Brochure should be provided to the displaced person at the same time. This method may not be appropriate if the project will not be constructed for a while.
2. This notice can be presented to persons to be displaced at or near the initiation of negotiations by either the Relocation Specialist or upon request, by the acquisition agent.

*Note:* **Lawfully Present in the United States Certification** – WSDOT suggests certification be obtained during the relocation planning phase or, at the latest, the delivery of the General Notice of Relocation Rights letter.

49 CFR 24.208
WAC 468-100-208

D. The notice must include the following information:

1. A statement that the person(s) may be displaced from a public project and a general description of the types of relocation payments, the basic conditions of eligibility and how the payments can be obtained.
2. A statement that the person(s) to be displaced will be given reasonable advisory assistance including referrals to replacement properties, help in filing claims and other necessary assistance.
3. Advice that the person(s) will not be required to move without at least 90 days written notice/assurance and that a person displaced from a residential dwelling will not be required to move until at

least one comparable replacement dwelling is made available to the displaced person(s).

4. A statement that the person(s) to be displaced have a right to appeal department determinations regarding relocation eligibility or entitlement amounts and may also have department determinations reviewed or reconsidered before proceeding to an appeal.

49 CFR 24.203(a)(4)
49 CFR 24.208
WAC 468-100-203(3)(d)
WAC 468-100-208

5. A statement that informs the person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.

### 12-5.4.4 Relocation Assistance Program Brochure

This "notice" provides additional and more detailed information about the Relocation Assistance Program. It should be provided to each displaced person at the time the General Notice is provided. There are three brochures; one for Residential displacements, one for Business/Farm/NPO displacements, and one for PPO displacements. WSDOT brochures should not be distributed by LPA's on non-WSDOT projects. Generic brochures for their use have been created and are available on our RES Web page. The acknowledgment on the General Notice also states the brochure has been provided.

49 CFR 24.203(b)
WAC 468-100-203(2)
49 CFR 24.203(c)
WAC 468-100-203(3)

### 12-5.4.5 Notice of Relocation Eligibility, Entitlements, and 90-Day Assurance

A. This notice combines two notices that are required by statute.

B. This notice advises the displaced person(s) that they are now eligible for relocation assistance and entitlements because initiation of negotiations has begun. This notice should be provided to each displaced person as soon as possible after the date of initiation of negotiations or, if possible, at the same time of said initiation.

C. The department also uses this notice to provide displaced persons with a description of the relocation entitlements, which they are eligible to receive as well as other information as follows:

1. For a 90-Day Owner Occupant:

   a. Date of initiation of negotiations.

   b. Date the displaced person first occupied the parcel.

   c. Amount of Maximum Price Differential.

   d. Addresses of Available Comparable Dwellings.

   e. How the Price Differential was calculated.

   f. Other Replacement Housing Entitlements.

      (1) Mortgage Interest Differential Payment (MIDP – must be 180 day bona fide mortgage).

      (2) Incidental Purchase Expenses.

g. Moving Entitlements.

h. How to claim the entitlements.

i. Ninety-Day Assurance ***(Note: This is a required notice.)***

49 CFR 24.203(C)
WAC 468-100-203(3)

(1) States the earliest date an occupant could be required to move.

(2) The 90-day period cannot begin until the department has made at least one comparable replacement dwelling available to the displaced person.

j. The Right of Appeal.

2. For a 90-Day Tenant or less than 90-Day Occupant/Subsequent Occupant:

a. Date of Initiation of Negotiations.

b. Date of Occupancy by the Displaced Person.

c. Amount of Maximum Rent Supplement.

d. Addresses of Available Comparable Dwellings.

e. How the Rent Supplement was calculated.

f. Down Payment Assistance Option.

g. Moving Entitlements.

h. How to claim entitlements.

i. Ninety-Day Assurance ***(Note: This is a required notice.)***

(1) States the earliest date an occupant could be required to move.

(2) The 90-day period cannot begin until the department has made at least one comparable replacement dwelling available to the displaced person.

j. The Right of Appeal.

k. In the case of a tenant occupant, the eligibility letter should include information regarding the economic rent of the displacement dwelling and a template of the displacee lease format. This is intended to provide additional information early in the process and does not require a prepared lease at the time of delivery. Region RESM will assign a specialist to deliver the prepared lease should the displaced person not be able to move from the acquired property and stays on as a tenant as may be allowed by law after acquisition of the property by WSDOT.

l. The department is not required to restart the 90-Day Assurance clock if the original most comparable replacement dwelling is sold. However, if the original comparable dwelling is no longer available, the department must assure itself that equally comparable dwellings are still available in the same price range.

3. Business, Farm, or NPO:
   a. Actual Move Costs.
      (1) Personal Property Move Expenses.
      (2) Other Related Move Expenses.
      (3) Equipment Disconnect and Reconnect Expenses.
   b. Reestablishment Costs.
   c. Fixed Payment Entitlement Amount (In Lieu) if selected in place of actual costs and reestablishment.

49 CFR 24.203(C)
WAC 468-100-203(3)

   d. Ninety-Day Assurance ***(Note: This is a required notice.)***
      (1) States the earliest date an occupant could be required to move.
   e. Right of Appeal.
   f. In the case of a tenant business occupant, the eligibility letter should include information regarding the economic rent of the displacement dwelling and a template of the displacee lease format. This is intended to provide additional information early in the process and does not require a prepared lease at the time of delivery. Region RESM will assign a specialist to deliver the prepared lease should the displaced person not be able to move from the acquired property and stays on as a tenant as may be allowed by law after acquisition of the property by WSDOT.
4. Personal Property Only:
   a. Actual Move Costs.
      (1) Personal Property Move Expenses.

49 CFR 24.203(C)
WAC 468-100-203(3)

   b. Ninety-Day Assurance ***(Note: This is a required notice.)***
      (1) States the earliest date an occupant could be required to move their personal property.
   c. In the case of a tenant occupant, the eligibility letter should include information regarding the economic rent of the displacement dwelling and a template of the displacee lease format. This is intended to provide additional information early in the process and does not require a prepared lease at the time of delivery. Region RESM will assign a specialist to deliver the prepared lease should the displaced person not be able to move from the acquired property and stays on as a tenant as may be allowed by law after acquisition of the property by WSDOT.

D. At the time of delivery of this notice, the Relocation Specialist should also provide the displaced person with a Substitute W-9 and SWV form to complete in accordance with procedures set forth in Chapter 10.

### 12-5.4.6 Other Notices

A. **Notice of Revised Maximum Price Differential**

1. If an owner occupant does not seek or is not actively seeking replacement housing at the time the Notice of Eligibility is delivered, it may become necessary to recalculate the price differential entitlement because the offered replacement dwelling(s) may not be available any longer. In most cases the specialist can check the market to see if other comparable dwellings are available for sale in the area within the same price range. If there are comparables dwellings available the specialist should supply the list of the properties to the displaced person and inform them in writing their price differential will not be recalculated. If the price differential must be recalculated, a revised notice must be presented to the displaced person.

2. If the owner occupant receives an administrative settlement for the displacement dwelling, the price differential must be adjusted accordingly and a Revised Notice of Maximum Price Differential must be presented to the displaced person. For example, if the administrative settlement is more than the price of the available most comparable replacement dwelling on which the entitlement was calculated, the displaced person is no longer entitled to a price differential payment as the acquisition price of the displacement property is greater than the asking price of the available most comparable. In another situation, if a displaced person received an administrative settlement that is more than the initial offer but less than the most comparable replacement dwelling on which the entitlement was calculated, the displaced person is only entitled to a portion of their calculated price differential. See Chapter 13 for the correct RES form. In accordance with Chapter 6, the Relocation Specialist should receive notification from the acquisition specialist if an administrative settlement is given.

3. If an owner occupant decides to become a tenant, a revised notice should be presented which states the maximum entitlement for a rent supplement. See Chapter 13 for the correct RES form.

B. **Notice of Revised Maximum Rent Supplement**

1. If a tenant does not or is not actively seeking replacement housing at the time the Notice of Eligibility is delivered, it may become necessary to recalculate the rent supplement entitlement because the offered replacement dwelling(s) may no longer be available. In most cases the specialist can check the market to see if other comparable dwellings are available for rent in the area within the same price range. If there are comparable dwellings available the specialist should supply the list of the properties to the displaced person and inform them in writing their rent supplement will not be recalculated. If the rent supplement must be recalculated, a revised notice must be presented to the displaced person.

C. **Notice of Non-Eligibility**

1. If the department withdraws an offer to purchase for any reason, the Relocation Specialist must provide a written letter to all displaced persons associated with the property that were previously provided with a Notice of Relocation Eligibility explaining the person(s) are no longer eligible for relocation assistance.

D. **Relocation Determinations**

49 CFR 24.207(e)
WAC 468-100-207(5)

1. Any time a relocation determination is made in the eligibility letter or subsequent letter or email that disapproves all or part of a payment claimed, the Relocation Specialist must provide the displaced person a written statement why the claim was denied, cite the appropriate CFR, RCW, and/or WAC and include the appropriate language for review, reconsideration and appeal of the relocation determination. Refer to the language for review, reconsideration and appeal used in the eligibility letter.

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### 12-5.4.7 Lawfully Present in the United States Certification

49 CFR 24.208
WAC 468-100-208

Each person seeking relocation payments or relocation advisory services shall certify that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States of America by reading and signing RES-547. This document must be signed by the displaced person(s) prior to the delivery of the notice of eligibility. WSDOT suggests certification be obtained during the relocation planning phase or, at the latest, the delivery of the General Notice of Relocation Rights letter.

### *12-5.5 Appeals/Reconsideration*

49 CFR 24.10
RCW 8.26.085(1)(c)
RCW 34.05
WAC 468-100-010
WAC 468-10
WAC 10-08

A. **General (Notice of Denial of Claim)** – Any person aggrieved by a determination as to eligibility for, or the amount of any payment for relocation assistance authorized by Chapter 8.26 RCW, and the regulations at Chapter 468-100 of the Washington Administrative Code (WAC) has the right to request an adjudicative hearing before an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH). WAC 468-100-010 sets forth WSDOT's rules regarding appeals and the hearing process. The typical (or maybe usual) steps leading up to a hearing at OAH include: (1) the aggrieved person files a request to have a determination made by the regional staff or specialist regarding relocation assistance reviewed by the RAPM, (2) the aggrieved person requests an adjudicative hearing. It is not mandatory that the aggrieved displaced person follows step 1 before filing a request for an adjudicative hearing before an ALJ at OAH.

49 CFR 24.207(e)
WAC 468-100-207(5)

1. **General Procedures for Determination of Relocation Benefits** – The WSDOT local regional staff (regional staff) works individually with the displaced person and communicates WSDOT's determination regarding eligibility for, or the amount of, payment for relocation assistance to the displaced person, or to the displaced person's attorney. If a claim is considered ineligible for reimbursement, the Region is responsible for providing the displaced person a written statement why the claim was ineligible or denied. This can be accomplished by providing

the displaced person with a Claim Determination Letter (RES-549). In doing so, the letter must include language setting forth the displaced person's options for review/reconsideration of the local regional staff's decision and appeal of the local regional staff's decision. Thereafter, if the displaced person wants to challenge the regional staff's determination, the displaced person has the option of seeking review of that determination by the RAPM, or filing a request for an adjudicative hearing to be heard before an ALJ at OAH. If the displaced person elects to have the RAPM review the determination and then disputes the RAPM's determination, the displaced person has the option of filing a request for an adjudicative hearing to be heard before an ALJ at OAH. The displaced person requests an adjudicative hearing by submitting a request in writing to the WSDOT Secretary of Transportation. The process is further explained in the procedures set forth below.

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B. **Informal Reconsideration Review by RAPM**

1. **Request for Review by the Displaced Person** – If the displaced person opts to have the RAPM review the regional staff's decision, the displaced person must file a written request for review of the regional staff's decision. The displaced person must file the written request with the RAPM within 30 days following receipt of the regional staff's determination of the displaced person's claim. Review proceedings are initiated upon receipt by the department of a statement or letter from the displaced person or the displaced person's representative or attorney.

   a. **Form of Statement or Letter** – No specific form or format is required; however, the displaced person's statement or letter, at a minimum, should include:

      (1) Date of statement or letter.

      (2) Name of the displaced person(s).

      (3) Project title.

      (4) Parcel number.

      (5) An explanation of what the displaced person is claiming; all facts, reasons, and any supporting documents explaining why the displaced person believes the claim should be paid; or why the displaced person is otherwise aggrieved.

      (6) Address, telephone number, and signature of the displaced person or the displaced person's representative or attorney.

2. **Reconsideration Review Decision by RAPM** – The RAPM shall review the WSDOT file and the statement or letter and any supporting documents submitted by the displaced person. The RAPM shall issue a written decision on the displaced person's request for review of the regional staff's determination. If the RAPM finds that the displaced person's request for a review is unclear or insufficient the RAPM may require the displaced person to correct, clarify or amend the request for review, statement or letter submitted by the displaced person or to provide additional

information or documentation within a reasonable time. The RAPM will specify in writing to the displaced person a reasonable timeframe within which the displaced person should send the requested information. If the displaced person fails to make any required corrections, amendments or clarifications or fails to provide any of the additional information or documentation requested within the time specified by WSDOT, the RAPM shall respond to the original request according to its merits. This response shall notify the aggrieved person that the aggrieved person has the option of requesting an adjudicative hearing to be held before an ALJ at OAH.

C. **Adjudicative Hearing Procedures/Administrative Law Judge** – As set forth in WAC 468-100-010, the adjudicative hearing will be carried out under the provisions of WAC 468-100-010, WAC 468-10, and WAC 10-08:

1. The RAPM:

   a. Notifies the Attorney General's Office that an adjudicative hearing in front of an ALJ at OAH has been requested by the displaced person and makes a request that an Assistant Attorney General (AAG) be assigned to the relocation appeal case.

   b. Once an AAG has been assigned to the hearing he or she will contact OAH to request the assignment of an ALJ for an adjudicative hearing. Ordinarily the hearing will be held in the county were the displacement occurred.

2. Office of Administrative Hearings:

   a. Provides direct notification to the assigned AAG and to the displaced person or the displaced person's representative or attorney as to the date of the prehearing conference and actual hearing date and time.

   b. After the hearing, issues an Initial Order, which is generally called the Proposed Decision and Order.

   c. Either party—the displaced person or WSDOT—may file a Petition for Review of the ALJ's Initial Order by filing a petition for review of the Initial Order with the Secretary of Transportation within 20 days of the date of service of the Initial Order.

   d. If neither party files a petition for review of the ALJ's Initial Order within 20 days of its service, the Initial Order becomes WSDOT's final order.

3. The Attorney General's Office:

   a. Deals directly with OAH.

   b. Prepares for hearing with the assistance of the Real Estate Services office.

   c. Presents the case in front of the ALJ.

   d. Notifies the RAPM of the Initial Order issued by the ALJ.

4. Petition for Review of the Administrative Law Judge's Initial Order by Secretary of WSDOT:
   a. If a petition for review of the Initial Order is filed, the Secretary of Transportation or the Secretary's designee (WSDOT reviewing officer) will review the ALJ's Initial Order and issue a written Final Decision and Order.
   b. The AAG assigned to advise WSDOT reviewing officer must be an AAG who has not been previously involved in the matter.

### *12-5.6 Civil Rights*

A. The department takes affirmative action to ensure that replacement housing resources are, open to all races and sexes without discrimination. This is determined at the time the Relocation Specialist is searching for available replacement housing.

B. The department fully informs displaced persons of procedures for hearing fair housing discrimination complaints.
   1. The displaced person is advised of the department's procedure at the time of initial contact.
   2. Upon receipt of a fair housing discrimination complaint, the Relocation Specialist refers the displaced person to the Division of Equal Opportunity and Fair Housing, Department of Housing and Urban Development, or to the nearest area office of the Washington State Human Rights Commission.

C. The department fully informs displaced persons of their fair housing rights and options in selecting replacement housing in areas of their choice and the available assistance from the department in ensuring displaced persons that their fair housing rights are protected by the Washington State Human Rights Commission under Title 49.60 Revised Code of Washington in accordance with Title VIII of the Civil Rights Act of 1968 and the Housing and Community Development Amendment Act of 1974. This information is given to the displaced person at the time of initial contact.

D. The department, to the extent possible, assists displaced persons in ensuring against discriminatory practices in the purchase and rental of residential units on the basis of race, color, religion, sex, or national origin.

## 12-6 Residential Relocation Entitlements

### *12-6.1 Eligibility*

A. Individuals and families displaced from a dwelling acquired for a highway project or program are eligible for replacement housing payments and moving payments in addition to the advisory services described in Section 12-5.

B. The type of Replacement Housing Payments for an individual or family depends on the type and length of occupancy.

49 CFR 24.2(a)(20)
WAC 468-100-002(20)

1. **A 90-day Owner** – A person who owns and occupies the displaced dwelling for at least 90 days prior to initiation of negotiations would be eligible for a price differential or a rent supplement. This includes those persons defined as owners of dwellings and includes life estates and other ownership interests.

2. **A 90-day Tenant** – A person who rents and occupies the displaced dwelling for at least 90 days prior to initiation of negotiations would be eligible for a rent supplement or down payment assistance.

49 CFR 24.403(d)
WAC 468-100-403(4)

3. **Less Than 90-day Occupant (Subsequent Occupant)** – A person who fails to meet the length of occupancy requirements as stated above in items 1 thorough 2 would be eligible for a replacement housing payment if the provisions of Housing of Last Resort apply.

C. The displaced individual or family is not required to relocate to the same occupancy (owner or tenant) status and has certain options regarding their status.

1. A 90-day owner may elect to become a tenant and receive a rent supplement; or a 90-day owner may elect to remain an owner, purchase a dwelling and receive a price differential. The rent supplement cannot exceed the maximum price differential payment the displaced person would have received as a 90-day owner who elected to purchase and occupy a comparable replacement dwelling. A 90-day owner is not eligible for down payment assistance.

49 CFR 24.402
49 CFR 24.402(b)
49 CFR 24.402(c)
49 CFR 24.403(c)
RCW 8.26.055(2)
WAC 468-100-402
WAC 468-100-402(2)
WAC 468-100-402(3)
WAC 468-100-402(3)

2. A 90-day tenant may elect to become an owner, purchase a dwelling and receive down payment assistance. The entire rent supplement, subject to the maximum amount allowable, can be applied to the purchase of the replacement dwelling. Eligible incidental expenses can be paid out of the calculated rent supplement if they elect to use down payment assistance.

3. A less than 90-day occupant (subsequent occupant) may elect to become an owner and receive down payment assistance. This should be handled under the Housing of Last Resort provision.

D. Only one Replacement Housing Payment is authorized for each dwelling unit except in case of multifamily occupancy of a single family dwelling or possibly a mobile home and lot situation.

E. **Trust Situations** – In "trust" situations, the acquisition specialist is responsible for obtaining a copy of the trust agreement, including any attachments or exhibits, and any amendments to the trust concerning the property to be acquired by WSDOT and work with Headquarters Title to determine the occupancy status of the displaced persons. It may be necessary to obtain an AG opinion prior to making a determination. This process is addressed in Chapter 6.

### 12-6.2 Decent, Safe, and Sanitary Standards (Replacement Dwelling Inspection Report)

49 CFR 24.403(b)
WAC 468-100-403(2)

49 CFR 24.2(a)(8)
WAC 468-100-002(8)

Decent, Safe, and Sanitary Standards (DSS) are defined in the regulations. A DSS inspection is required to make sure that to the best of the specialist's knowledge and abilities the replacement dwelling meets the agency's minimum standards for qualified replacement housing. This inspection must be performed even if the displaced person is only claiming incidental expenses. Once the inspection is complete, a Replacement Dwelling Inspection Report (RES-525) plus any photographs or requested supporting documentation must be forwarded to Headquarters. The Relocation Specialist should strongly advise or require the displaced person to obtain a professional home inspection from a qualified inspector per the displaced person's situation as our department's DSS replacement dwelling inspection does not take the place of a professional home inspection. The cost of a professional home inspection is a reimbursable incidental expense. The Relocation Specialist will need to obtain a copy of the report and will need to review it for the DSS items listed on the replacement dwelling inspection report prior to signing off and stating the displaced person qualifies for their replacement housing payment.

***Note:*** If the displaced person elects to move out of state, contact Headquarters Relocation and they will provide you with a contact name and number of the respective state DOT for a complimentary inspection. Also, if a displaced person wants to make an offer to purchase a replacement dwelling and the dwelling and the utilities are not active then WSDOT can make a payment on behalf of the displaced person to the utility company to have the utilities turned on so the specialist can complete the DSS inspection. This is considered an expense incidental to the purchase or lease of a replacement site.

A. **Local Codes** – A decent, safe, and sanitary dwelling is one which conforms with all applicable provisions for existing structures that have been established under state or local building, plumbing, electrical, housing, and occupancy codes and similar ordinances or regulations. The project file should contain an actual copy of the local codes for the county/city in which the project is located. The parcel file only needs to reference the information and state it can be located in the general project file. A copy of this information should be sent to Headquarters.

B. **Minimum Standards** – In those cases where local codes do not exist, do not address, or are less restrictive than the minimum standards listed hereinafter, the following minimum housing/dwelling standards shall apply:

   1. **Water** – Such dwelling unit, excluding a rental sleeping room, shall have a continuing and adequate supply of potable safe water. If the replacement dwelling has a private well, the specialist must obtain documentation indicating when the last water test was done or if the dwelling has a community well, the specialist must obtain and attach a copy of the Health Department water test results to the Replacement Dwelling Inspection Report (RES-525).

2. **Kitchen** – Such dwelling, excluding a rental sleeping room, shall have a kitchen or an area set aside for kitchen use, which contains:
   a. A sink in good working condition and connected to hot and cold water and an adequate sewer system. The Relocation Specialist should turn on faucet to make sure there are no leaks.
   b. Utility service connections and adequate space for the installation of a stove and refrigerator.
3. **Heating System** – Such dwelling unit or rental sleeping room shall have an adequate heating system in good working order, which will maintain a minimum temperature of 70 degrees Fahrenheit in the living area except in those areas where local climatic conditions do not require such as system. The Relocation Specialist should turn on furnace to verify working regardless of time of year.
4. **Bathroom Facilities** – Such dwelling unit or rental sleeping room shall have a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush toilet, all in good working order and properly connected to a sewage disposal system. For rental sleeping rooms, the dwelling shall also provide a lockable bathroom door if such bathroom is separate from the sleeping room. The Relocation Specialist should flush toilet and turn on faucets to make sure there are no leaks.
5. **Electric System** – Such dwelling unit or rental sleeping room shall have an adequate and safe wiring system for lighting and other electrical services. The Relocation Specialist should verify all outlets and light switches have plate covers.
6. **Structurally Sound** – Each building used for dwelling or rental sleeping room purposes shall be structurally sound, weather-tight, in good repair, and adequately maintained. The Relocation Specialist should make sure there are no broken windows, broken locks, rotten stairs, etc.
7. **Egress** – Each building used for dwelling or rental sleeping room purposes shall have a safe, unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multidwelling building has access either directly or through a common corridor to a means of egress to open space at ground level. In multidwelling buildings of three stories or more, the common corridor on each story has at least two means of egress. The Relocation Specialist should open windows to make sure they are operational.
8. If the displaced person has a disability, the replacement dwelling shall be adequate in terms of access and livability with respect to the person's limitations and meet the American Disabilities Act (ADA) requirements. The specialist should identify ADA items such as grab bars in the bathroom, ramp in lieu of stairs, etc., at the displacement dwelling to determine the needs at the replacement dwelling. Required ADA items need to be supported by adequate documentation from the displaced

person's medical provider. Reasonable and necessary costs of approved ADA items are in addition to the replacement housing payment and move costs and considered 100 percent reimbursable.

9. **Sleeping Rooms** – The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes. In addition, WSDOT shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes. In the absence of local codes, the following procedures should be followed:

   a. **Number of Persons Per Sleeping Room** – The dwelling unit must have not less than 120 square feet of floor area, sleeping areas must have a minimum of 70 square feet, with an additional 50 square feet for each occupant in excess of two persons. Efficiency apartments (studios) must have a living room that is at least 220 square feet, and an additional 100 square feet for each occupant in excess of two.

   b. **Sharing Sleeping Rooms With Opposite Gender** – Children of the opposite gender, at the option of the family, may share the same bedroom or living/sleeping room in order to obtain replacement housing within their financial means.

C. **Exceptions** – The RAPM may grant exceptions to decent safe and sanitary standards when requested in writing by the displaced person. Such exceptions are limited to items and circumstances that are beyond the reasonable control of the displaced person to adhere to the standards. Approved exceptions do not affect the computation of the replacement housing payment.

D. The purpose of the DSS inspection on the replacement dwelling is to determine eligibility for replacement housing payments and is not intended to be, nor constitutes, warrants or guarantees that the replacement dwelling is free from defects. The Relocation Specialist should advise the displaced person to obtain a home inspection on the replacement dwelling prior to making the purchase. The cost of the home inspection is reimbursable as an incidental purchase expense.

## *12-6.3 Replacement Housing Payments*

### 12-6.3.1 90-Day Owner Occupant

#### *12-6.3.1.1 Replacement Housing Payments for 90-Day Owner Who Purchases*

A. **General**

1. A displaced owner-occupant may receive payments, the combined total of which may not exceed $31,000 for the additional cost necessary to:

   a. Purchase replacement housing (also referred to as Price Differential).

   b. Compensate the owner for the loss of favorable financing on the existing mortgage in the financing of replacement housing (also referred to as "Mortgage Interest Differential Payment (MIDP). In order to qualify for the MIDP, a 90 day owner must have a 180-day bona fide mortgage on the displacement dwelling.

c. Reimburse the owner for expenses incidental to the purchase of replacement housing (also referred to as "Incidental Purchase Expenses.")

2. The displaced owner-occupant is eligible for such payments provided:

a. The displaced owner is in occupancy at the initiation of negotiations of the acquisition of the real property, or at the time a written notice is given stating WSDOT's intent to acquire the property by a given date.

b. Such ownership and occupancy has been for at least 90 consecutive days immediately prior to the earlier of:

(1) The initiation of negotiations.

(2) The date the occupant vacates, if the displaced owner has been given a notice of intent to acquire.

c. The property is acquired by WSDOT, or WSDOT issues an order to vacate even though the property is not acquired.

d. The displaced owner purchases and occupies a decent, safe, and sanitary dwelling within the statutory time period and is required to obtain a professional home inspection of the replacement dwelling by a qualified home inspector.

49 CFR 24.403(c)
WAC 468-100-403(3)

e. For the purposes of d. above, a dwelling is considered to be purchased by the displaced owner when:

(1) An existing dwelling is acquired by the displaced owner; or

(2) The displaced owner purchases a life estate in a retirement home or contracts for extended residence in a limited care or full care facility that provides medical and residential services to persons unable to live independently and provide their own care. The actual cost is the entrance fee plus any other monetary commitments to the home, not including periodic service charges such as meals, medication, cleaning, laundry service; or

(3) The displaced owner relocates and/or rehabilitates a dwelling which the displaced person owns or acquires. If the replacement dwelling selected by the displaced owner does not meet the "decent, safe, and sanitary" criteria or lacks "major exterior attributes," the cost to correct such deficiencies is eligible to the extent that the sum of the cost of the replacement dwelling and the cost of correcting the deficiencies do not exceed the price differential based on comparable replacement properties. Major exterior appurtenances are explained in more detail later in this section.

***Note:*** Improvements to the replacement property beyond those reasonable and necessary to correct DSS deficiencies are not considered in qualifying for replacement housing payments; or

(4) The displaced owner contracts for the construction of a new decent, safe, and sanitary dwelling on a site which the displaced person owns or acquires. Reimbursement is limited to only those costs necessary to construct a dwelling comparable to the one acquired. The cost of adding new features to bring the cost up to the maximum replacement housing amount is not eligible for reimbursement.

## B. Price Differential

49 CFR 24.401(c)
WAC 468-100-401(3)

### 1. Amount of Payment

a. The price differential is the calculated amount of any difference between the acquisition cost of the dwelling and the actual costs which the owner is required to pay for a decent, safe, and sanitary dwelling or the amount determined by WSDOT that would be necessary to purchase such a decent, safe, and sanitary comparable dwelling, whichever is less. The maximum price differential payment is calculated by using a Price Differential Report (RES-542) and Housing Comparison Work Sheet (RES-541).

49 CFR 24.401(b)
RCW 8.26.045
WAC 468-100-401(2)

b. If the displaced person elects to construct a replacement dwelling, the base cost of the newly constructed replacement dwelling can be determined by adding the cost necessary to construct a comparable dwelling and the current fair market value for residential use of the replacement site unless the site is rented and there is a reasonable opportunity to rent a suitable replacement site.

c. If the displaced person elects to retain ownership of, or obtains salvage rights to, the person's dwelling (in accordance with procedures described in Chapter 6), moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of the following:

49 CFR 24.401(c)(2)
WAC 468-100-401(3)(b)

(1) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(2) The cost of making the unit a DSS replacement dwelling as defined in WAC 468-100-002; and

(3) The current market value for residential use of the replacement dwelling site unless the site is rented and there is a reasonable opportunity to rent a suitable replacement site.

(4) The retention/salvage value of the displacement dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(5) Limitations. The payment computed under this subsection cannot exceed the amount of the calculated maximum price differential payment.

d. If a displaced owner desires to enter into an assisted living situation, WSDOT will make a reasonable effort to accomplish the request. This will be treated as if the displaced owner is purchasing a "life estate" considering it is their intent to live out the rest of their life in a retirement or extended care facility. The price differential will be the amount of the calculated RHP and paid according to the Headquarters disbursement policy to the displaced owner or facility once an agreement is signed for the replacement living situation.

e. If the displaced owner desires to change dwelling status to a tenant, WSDOT makes a reasonable effort to accomplish the request. The rent supplement is computed in accordance with Section 12-6.3.3.1, except that the base monthly rent is the economic rent of the acquired dwelling. Refer to the appraisal for the economic rent of the displacement dwelling. The maximum rent supplement to an owner who chooses to become a tenant cannot exceed the computed price differential payment that they would have received as a 90-day owner occupant.

2. **Amount of Payment to Occupant With a Partial Ownership**

a. When a single family dwelling is owned by several persons, but occupied by only some of said owners, the maximum price differential entitlement is calculated as if all owners occupied the dwelling. The occupant(s) would then be required to spend their entire proportionate share of the acquisition payment plus the full amount of the calculated price differential to receive the maximum price differential.

b. A partial owner occupant who cannot afford to purchase a comparable replacement dwelling may be relocated as a tenant and provided a rental assistance payment in accordance with the procedures set forth in Section 12-6.3.3.

c. The agency is not required to provide a fractional interest owner occupant a payment that is more than what the agency would pay a full interest owner occupant.

d. If unusual circumstances create an undue hardship on the displaced occupant(s) with partial ownership, other solutions may be provided if approved by the RAPM. Any such solution would be treated as Housing of Last Resort.

e. If the displaced owner-occupants do not purchase and occupy a decent, safe, and sanitary dwelling, they are entitled to receive a rent supplement payment provided they rent and occupy a decent, safe, and sanitary dwelling.

3. **Additional Rules Governing Replacement Housing Payments**

49 CFR 24.403(a)
WAC 468-100-403(1)

a. **Three Comparable Method** – The asking price of at least three comparables are analyzed to determine the replacement housing payment. The analysis is not a mere averaging but a correlated conclusion based on the most comparable available dwelling that is as good as or better than the dwelling to be acquired. Less than three comparables may be used for this determination when sufficient comparables are not available on the market. The Relocation Specialist in the "Remarks" section of the Housing Comparison Work Sheet explains the reasons leading to the use of less than three comparables.

b. **Carve Out** – This term is commonly used to describe the method for determining what portion of property occupied by a residential owner of 90 days or more is to be used in computing the price differential payment. The purpose of a carve out is to level the playing field for the displaced person seeking a comparable replacement dwelling. It takes into consideration a displaced person who is situated on a site either larger than typical for residential purposes or whose property is actually occupied by or used for other purposes. The Relocation Specialist will need to first identify if a carve out is warranted based on the following situations:

(1) **Major Exterior Attributes** – The replacement dwelling used in computing the replacement housing payment must be comparable to the living unit acquired. When the comparable replacement dwelling used in computing the replacement housing payment is similar except that it lacks a major exterior attribute such as a garage, an outbuilding, or a swimming pool, the value of such items is subtracted or carved out as defined in Section 12-4.1.D from the acquisition cost of the displacement dwelling.

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(2) **Mixed Use Property, Multifamily Property, or Lot Larger Than Typical** – If the displacement dwelling is part of a property that contains another residential dwelling unit, and/or is part of a property that is partially used for non-residential purposes, and/or is located on a tract of land that is larger than a site that is typical for residential purposes, only that portion of the property which is attributable to the residential use shall be considered as the acquisition cost when computing the price differential. Contact Headquarters for samples of appropriate carve out applications of this provision. Additionally, if an MIDP is to be calculated, the lien on the replacement property must be pro-rated in the same manner as the residential carve out. Remember, in order to qualify for the MIDP, a 90 day owner must have a 180-day bona fide mortgage on the displacement dwelling.

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If a carve out is warranted, the Relocation Specialist will need to establish what constitutes a tract that is "typical in size for residential purposes" in the area. The specialist will apply the tract size that is derived from what was determined to be typical

in size for residential purposes to the displacement site and extract the acquisition price that represents a property that is typical for residential purposes. The area used for residential purposes includes a pro-rata portion of the land and on-site improvements.

If the replacement property is on a larger than typical site, or is a mixed use property, only that portion of the property used for residential purposes may be used in calculating the actual price differential payment.

c. **Multiple Occupants of One Displacement Dwelling** – In general, all of the occupants of a single dwelling unit should be considered one family for the purposes of payment calculations. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined and agreed upon by the displacees, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. In this case, the specialist would compute one replacement housing payment and use the predetermined prorated share for each occupant. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments. The agency is responsible for determining the number of households in a dwelling based on the use of the dwelling, the relationship of the occupants, and any other information obtained. The payment computation for each household should be based on the part of the dwelling that the household occupies and the space that is shared by others. An attempt should be made to locate similar comparable DSS living facilities. The specialist's diary should be sufficiently documented to support the decision.

d. **Remainder Offer** – The requirements for computing a replacement housing payment of a partial acquisition with a remaining uneconomic remnant differs from a partial acquisition with a remaining buildable lot.

(1) **Uneconomic Remnant (Buildable vs. Unbuildable)** – The acquiring agency is required to offer to purchase the uneconomic remnant.

(a) **Buildable** – The value of the remnant is used in the RHP computation regardless of whether or not the owner elects to sell it to the acquiring agency. The remnant value shall be added to line 2 of the Price Differential Report (form RES-542). If the owner keeps the buildable uneconomic remnant add its value to the residential value of the dwelling, site, and any other inducements such as administrative settlements, free salvage, etc. on line 10, of the Price Differential Report.

Conversely if the owner sells the buildable uneconomic remnant its value is also added to the sum of line 10 on the Price Differential Report.

(b) **Unbuildable** – Initially the value of the uneconomic remnant shall be added to line 2 of the Price Differential Report. If the owner sells the entire parcel to the agency, the total settlement amount is added to line 10 of the Price Differential Report. However, if the owner does not elect to sell the uneconomic remnant its value is not included on line 10 of the Price Differential Report in the actual RHP computation.

(2) **Remaining Buildable Lot Not Considered Uneconomic** – The acquiring agency may offer to purchase a remaining buildable lot. Its value may be included in the RHP computation regardless of the owner's rejection or acceptance of the offer. However, if the agency does not offer to purchase, the value of the remainder may not be used in the actual RHP computation.

e. **Computing an RHP When a Higher and Better Use is Other than Residential** – In computing a replacement housing payment for an owner occupant whose residential property to be acquired is appraised for a higher and better use, the acquisition cost of the displacement dwelling used in the computation is the value of the dwelling plus the value of that portion of the acquired land representing a typical residential lot for the area. The dwelling and land values are based on the agency's approved appraisal used for acquisition.

f. **Replacement Dwelling Differs from Displacement Dwelling** – The actual RHP is based on dwellings similar to the displacement dwelling occupied and acquired by the agency for construction of the project. If the displaced person chooses to purchase a replacement dwelling that is not similar to the displacement dwelling, than the RHP will be adjusted accordingly. For example, a single family dwelling is not considered similar to a multifamily dwelling and therefore not reasonable to apply the full calculated RHP to the purchase of the replacement dwelling.

C. **Incidental Purchase Expenses** – The amount of the incidental purchase expense payment is the amount necessary to reimburse the displaced owner for the actual cost incurred incidental to the purchase of the replacement dwelling, not including prepaid expenses such as purchaser's advance payment into a reserve account for payment of future taxes, insurance. These regulations pertain solely to incidental expenses in connection with a displaced owner's acquisition of a replacement dwelling. The Relocation Specialist should work closely with the lender and the escrow company to facilitate the closing of the replacement dwelling and make sure funds are applied and shown correctly on the closing statement.

49 CFR 24.401(e)
WAC 468-100-401(5)

The specialist should prepare the Incidental Expense Work Sheet, Entitlement Instructions regardless of the amount of the price differential payment, and process a warrant once the preliminary closing statement is received. In order to prevent an overpayment of incidental expenses it is recommended that the specialist reduce the relocation assistance voucher by $50-$100 based on the preliminary HUD statement. See Chapter 13 for RES forms. Once the loan closes the specialist is required to perform a reconciliation of the final closing statement to make sure all funds were applied correctly and send it and supporting documentation to Headquarters. If an overpayment is discovered, the specialist will inform the displaced person of the overpayment and request that the funds be paid back to WSDOT or if they are still due relocation funds that the overpayment be reduced on their next relocation assistance voucher. If an underpayment is discovered the specialist will inform the displaced person of the underpayment and will prepare a relocation assistance voucher for reimbursement.

1. Incidental purchase expenses may include the following items if normally paid by the buyer and must be typical of the selected loan program:
    a. Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings, or plats and charges paid incidental to recording.
    b. Lender's, FHA, or VA appraisal fees.
    c. FHA or VA application fees – limited to amount necessary to purchase the comparable used to establish the RHP.
    d. Certification of structural soundness when required by the lending agency, FHA, or VA.
    e. Credit report.
    f. Lender's title policy or abstract of title, limited to outstanding balance of old mortgage on the displacement dwelling or the new mortgage, whichever is less.
    g. Escrow agent's fee/Settlement fee – limited to amount necessary to purchase the comparable used to establish the RHP.
    h. Professional Home Inspection fees – The displaced person needs to be advised that they will need to obtain a professional home inspection of their selected replacement dwelling prior to being eligible to receive their replacement housing payment. Costs associated with the home inspection are fully reimbursed by WSDOT. The professional home inspection must be ordered by the displaced person and a copy provided to WSDOT for our records. The home inspection report will be attached to the DSS Replacement Dwelling Inspection Report.
    i. Sales or transfer taxes.
    j. Loan origination or assumption fees that do not represent prepaid interest—limited to the amount of the old or new mortgage, whichever is less. Fees should be reflective or typical of industry standards.

2. No fee, cost, charge, or expense is reimbursable as an incidental expense which is determined to be a part of the debt service or finance charge payable as part of the mortgage interest differential payment.
3. Incidental purchase expenses are determined from a copy of the preliminary closing statement (preferred) or a good faith estimate and verified from a copy of the final closing statement.
4. **Partial Ownership** – If incidental expenses are incurred for the purchase of a replacement property they must be pro-rated in the same manner as the ownership of the displacement dwelling.

D. **Mortgage Interest Differential Payment (MIDP)** – The payment for increased mortgage interest cost is that amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. Increased mortgage interest costs are based only on bona fide mortgages that were valid liens, (i.e., equity line of credit) on the displacement dwelling for at least 180 days prior to the initiation of negotiations. The specialist needs to obtain the following information in order to calculate the MIDP:

49 CFR 24.401(d)
WAC 468-100-401(4)

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling. If the unpaid mortgage balance(s) has a variable interest rate (ARM), the calculation should be based on the interest rate in effect on the date of acquisition. The MIDP will be computed based on an available loan program similar to the loan on the displacement dwelling. The displaced person can elect to change loan programs once the department determines a threshold for the level of reimbursement on a similar loan program. In the event the person obtains a smaller mortgage than the mortgage balance(s) used to compute the "buy down" amount, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance is that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less. Specialist will need to obtain copies of displacement dwelling loan documents from the displaced person.
2. The payment is based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage used in determining the amount of the payment cannot exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. The specialist needs to work closely with the lender to obtain Good Faith Estimates (GFE) on several different options for closing to determine if paying discount points on the replacement loan to obtain the lower rate is more cost effective than payment of an entire MIDP. A combination of both the MIDP and discount points can also be used. It might be helpful to obtain the following:

a. GFE to close at today's rate w/no discount points

b. GFE to close at the interest rate of the displacement loan using discount points

c. GFE to close with a mid-range interest rate and discount points

4. Purchaser's points (discount points) and loan origination or assumption fees, but not seller's points, are paid to the extent:

   a. They are not paid as incidental expenses;

   b. They do not exceed rates normal to similar real estate transactions in the area;

   c. WSDOT determines them to be necessary; and

   d. The computation of such discount points and fees are based on the unpaid mortgage balance on the displacement dwelling unless the cost to buy down the interest rate on the entire replacement loan is more cost effective for the agency than paying the calculated MID.

5. The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known. The payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended. Communication with the lender and escrow/title company is necessary to make sure payment can be made available at closing. The calculation can be verified using an MIDP software program. Contact Headquarters Relocation for more information.

6. The payment is contingent upon an actual mortgage being placed on the replacement dwelling.

7. **Other Loan Programs** – Contact Headquarters Relocation for guidance (RES-513).

8. **Partial Ownership** – If an MIDP is to be calculated on the replacement property it must be pro-rated in the same manner as the ownership of the displacement dwelling.

E. **Total Payment** – The total of the payments for purchase of replacement housing (Price Differential, increased interest, and incidental purchase expenses) cannot statutorily exceed $31,000 under this section. If the amount exceeds this maximum, housing of last resort is required (see Section 12-6.4).

F. **Short Sale Bank/REO or HUD Home Purchase** – If a 90-day owner occupant elects to purchase a short sale or a HUD home as their replacement dwelling, the home must pass the DSS inspection prior to the release of any replacement housing payment. In addition, if they choose to purchase a bank/REO property or even a short sale and it takes longer than expected and the ad date is approaching, they could be required to move once their 90-day assurance expires and the acquiring agency will not approve costs associated with a double move (i.e., storage, per diem, temporary housing).

#### 12-6.3.1.2 Rent Supplement Payment for 90-Day Owner Who Rents

49 CFR 24.401(f)
WAC 468-100-401(6)

A. **General** – A displaced owner who is eligible for a replacement housing payment but who elects to rent a replacement dwelling is eligible for a rent supplement payment not to exceed the price differential amount the displaced person would have received as a 90-day owner occupant.

B. **Computation and Disbursement of Payment** – The payment is computed and disbursed as provided for a 90-day tenant who rents. The base rental rate is defined as the economic rent plus utilities. Computation for this payment is submitted on a Rent Supplement Report (RES-543) and the Housing Comparison Work Sheet (RES-541).

### 12-6.3.3 90-Day Tenants

49 CFR 24.402
RCW 8.26.055
WAC 468-100-402

#### 12-6.3.3.1 Rent Supplement for a 90-Day Tenant Who Rents

49 CFR 24.402(a)
WAC 468-100-402(1)

A. **Eligibility** – A displaced 90-day tenant is eligible for a rent supplement payment not to exceed $7,200 when the following conditions are met:

1. The displaced tenant is in actual and lawful occupancy at the initiation of negotiations for the acquisition of the real property, or is in occupancy at the time a written notice is given by WSDOT that it intends to acquire the property by a given date.
2. The displaced tenant has been in occupancy for at least 90 consecutive days immediately prior to the initiation of negotiations or 90 days prior to the date of vacation, if a notice of intent to acquire was previously delivered.
3. The property is subsequently acquired or an order to vacate is delivered even though the property is not acquired.
4. The displaced tenant rents and occupies a decent, safe, and sanitary dwelling within one year from the date they move from the displaced dwelling.

B. **Computation of Payment**

49 CFR 24.402(b)
RCW 8.26.055
WAC 468-100-402(2)

1. **Amount of Payment** – A maximum rent supplement payment is calculated using a Rent Supplement Report (RES-543) and Housing Comparison Work Sheet (RES-541). The payment is determined by multiplying 42 times the amount obtained by subtracting the base monthly rent and utility costs for the displacement dwelling from the monthly rent and cost of utilities, as determined below in item #2, Utility Costs, for a comparable replacement dwelling.

49 CFR 24.2(a)(30)
WAC 468-100-002(30)

2. **Utilities Costs** – Utilities include electricity, gas, other heating and cooking fuels, water, and sewer. Garbage is not considered a utility and is not included in the rent supplement computation. The Relocation Specialist may use various sources to obtain this information including displaced tenant's receipts or monthly billings, a schedule or average cost provided by the respective utility company or a utility rate cost schedule if available, from the local housing authority. The latter method

is preferred by WSDOT and can be found at www.awha.org/contact.html. Schedules may be based upon number of adults and children in the family, approximate square footage of the dwelling, type of construction, etc. The data source must be identified under the Correlation and Conclusion portion of the Housing Comparison Work Sheet. The method chosen to calculate utility costs must be utilized throughout the entire project (subject dwelling and comparables) to maintain consistent and uniform treatment of all displaced persons.

49 CFR 24.402(b)(2)
WAC 468-100-402(2)(b)

3. **Base Monthly Rent** – This amount is the lesser of:

   a. The actual monthly rent and average utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the agency (for an owner occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use fair market rent, unless it would result in a hardship because of the person's income or other circumstances.); or

   b. Thirty percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs (www.fhwa.dot.gov/realestate/ua/ualic.htm). The base monthly rent shall be established solely on the criteria in "a" above for persons with income exceeding the survey's "low income" limits and persons considered dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise. The displaced person will need to furnish documentation (i.e., pay stubs, income tax return, bank statements) of income to support monthly income figures. Social security is a government program that is considered income by federal law. Therefore, even though the benefits are for dependent children, it should be considered as family income used to support the disabled children, not income received or earned by dependent children. Food stamps are not considered income. If tenant does not provide income verification as requested by the specialist or agency, or provides inaccurate documentation, the rent supplement should be calculated by subtracting the actual rent and utilities at the acquired dwelling from the rent and utilities at the replacement dwelling (rent to rent).

   c. The monthly amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

49 CFR 24.403(e)
WAC 468-100-403(5)

C. **Change of Occupancy – Displaced Tenant Has Not Used Maximum Entitlement** – A tenant, after initially moving to a decent, safe, and sanitary dwelling that does not maximize the calculated rent supplement, may relocate to another higher cost replacement dwelling within the one-year period, and may submit another claim for the amount in excess of what was originally claimed, but not to exceed the maximum rent supplement computed. The Relocation Specialist makes a decent, safe, and sanitary inspection, confirms

the new rental amount, and computes the rent supplement based upon the new rental amount. The claim is then processed in accordance with this manual. An additional DSS inspection is not required if a displaced person maximizes their replacement housing payment and chooses to move to another dwelling prior to the release of their final payment. Once the displaced person rents and occupies a replacement dwelling within the allotted timeframe, the displaced person vests fully in the calculated replacement housing payment.

HUD's policy and guidance on "Gap Payments"

D. **Government Subsidized Housing** – Comparable housing for those occupying government subsidized housing will be determined by the family composition at the time of displacement and current housing program criteria, not the size of the unit currently occupied. WSDOT will not impose their rules of comparability for those occupying government housing. WSDOT will continue to keep displaced tenants receiving government housing (Section 8 Housing Choice Voucher) in their government program, however, if the displaced person is required to pay more rent out of their pocket at the replacement rental they are eligible to receive a rent supplement payment referred to by HUD as a "Gap Payment". These relocation payments are not considered income and will not jeopardize the Section 8 Housing Choice Voucher tenant's eligibility to remain in Section 8 Housing Choice Voucher housing if they accept the relocation payment.

- An example of the formula to compute a Section 8 (Housing Choice Voucher) rental supplement is the following: Mrs. G is a Section 8 tenant. Her old rent and new rent is shown below. We use the portion of her old rent and subtract it from what she would pay for the comparable (utilities not included).

| | |
|---|---|
| 1. Total old rent<br>(Note: $525 does not include cost of utilities) | $525 |
| 2. Her portion of rent at old address: | $114 |
| 3. HUD subsidy rent payment | $411 |
| 4. Total new rent<br>(Note: $603 does not include cost of utilities) | $603 |
| 5. Her portion of rent for new address | $192 |
| 6. HUD subsidy rent payments | $411 |
| Her portion of new rent | $192 |
| Her portion of old rent | $114 |
| Difference | $78 |

$78 × 42 = $3,276

Mrs. G is eligible for a rental supplement of $3,276 aka HUD Gap Payment which is not considered income.

49 CFR 24.402(c)
RCW 8.26.055(2)
WAC 468-100-402(3)

### 12-6.3.3.2 Replacement Housing Payment for a 90-Day Tenant Who Purchases

A. **General** – A displaced tenant eligible for a rent supplement payment who elects to purchase a replacement dwelling is eligible to receive an amount, not to exceed the amount of the maximum rent supplement or $7,200 whichever is greater, to enable the displaced tenant to make a down payment toward the purchase of a replacement dwelling.

49 CFR 24.402(c)(2)
WAC 468-100-402(3)(b)

B. The full amount of the replacement housing payment must be applied to the purchase price of the replacement dwelling and related incidental purchase expenses, not including prepaid costs like taxes and insurance. The displaced person needs to be advised that WSDOT strongly advises them to obtain a professional home inspection of their selected replacement dwelling. Costs associated with the home inspection are reimbursed by WSDOT as part of the displaced person's down payment assistance entitlement. The professional home inspection must be ordered by the displaced person and a copy provided to WSDOT for our records. The home inspection report will be attached to the DSS Replacement Dwelling Inspection Report. In the event the displaced person chooses not to have a home inspection, the Relocation Specialist will notify the displaced person in writing regarding the risks associated with not obtaining a professional home inspection. This letter should be sent via CERTIFIED mail. Incidental expenses are inclusive of the total entitlement and cannot exceed the RHP. Since the displaced tenant usually lacks sufficient funds to make the down payment, an escrow arrangement is usually established. The Relocation Specialist should obtain a preliminary closing statement or a good faith estimate from the lender or the escrow company. The specialist will need to work closely with the lender and escrow/title company to make sure the down payment is applied and shown correctly on the closing statement. Once the loan closes the specialist is required to perform a reconciliation of the final closing statement to make sure all funds were applied correctly and send it and supporting documentation to Headquarters. If an overpayment is discovered, the specialist will inform the displaced person of the overpayment and request that the funds be paid back to WSDOT or if they are still due funds from WSDOT that the incidental overpayment amount will be reduced on their next payment voucher. If an underpayment is discovered the specialist will inform the displaced person of the underpayment and will prepare a relocation assistance voucher for reimbursement.

C. **Short Sale Bank/REO or HUD Home Purchase** – If a 90-day occupant elects to purchase a short sale or a HUD home as their replacement dwelling, the home must pass the DSS inspection prior to the release of any replacement housing payment. In addition, if they choose to purchase a bank/REO property or even a short sale and it takes longer than expected and the ad date is approaching, they could be required to move once their 90-day assurance expires and the acquiring agency will not approve costs associated with a double move (i.e., storage, per diem, temporary housing).

### 12-6.3.4 Short-Term Occupants (Less than 90-Day Occupants) and Subsequent Occupants Occupancy Requirements

49 CFR 24.403(d)
WAC 468-100-403(4)

Short-term occupants are persons who have been in occupancy less than 90 days prior to initiation of negotiations. Subsequent occupants are persons who move into the displacement dwelling after initiation of negotiation, but prior to WSDOT's actual acquisition of the property. Displaced persons failing to meet the length of occupancy requirements continue to be eligible for relocation entitlements under housing of last resort. Base monthly rent will be computed in accordance with Section 12-6.3 and displaced tenants will be required to provide the same required documentation.

## 12-6.4 Housing of Last Resort

49 CFR 24.404
WAC 468-100-404

### 12-6.4.1 Applicability

49 CFR 24.404(b)
WAC 468-100-404(2)

A. **Basic Rights of Persons to be Displaced** – Not withstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this section. WSDOT will not require any displaced person to accept a dwelling provided by WSDOT under these procedures unless WSDOT and the displaced person have entered into a contract to do so. A displaced person may choose other replacement housing and receive relocation entitlements if all requirements are met by the chosen replacement dwelling.

49 CFR 24.404(a)
WAC 468-100-404(1)

B. A number of situations may arise which require the application of this section:

1. The replacement housing payment will exceed the statutory monetary limits set forth as follows:
   a. $31,000 for 90-day owner occupants. This amount represents the sum of the price differential, increased mortgage interest, and incidental expenses.
   b. $7,200 for 90-day tenant occupants. This amount is the rent supplement.
2. There is no comparable housing available for sale in the entire project area.
3. Comparable housing is not available within the financial means of a displaced person who fails to meet the necessary length of occupancy requirements.
4. A program or project cannot be advanced to completion in a timely manner without housing of last resort.

49 CFR 24.404(c)
WAC 468-100-404(3)

### 12-6.4.2 Methods of Providing Housing of Last Resort

A. Super Payments

1. In the case of a 90-day owner occupant whose total calculated replacement housing payment exceeds $31,000, usually the most economical and reasonable method of providing housing is by paying the entire calculated RHP towards the purchase of the replacement dwelling.
2. In the case of a 90-day occupant, short-term occupant, or subsequent occupant whose estimated replacement housing payment exceeds $7,200, usually a rent supplement payment is selected as the most economical method of providing replacement housing.

B. Rehabilitation or other modifications to an existing dwelling. This may be necessary to enable the dwelling to meet minimum DSS standards and/or to provide additional bedrooms and other living area.

C. Purchase of land and improvements.

D. Construction of new dwellings.

E. Other methods of providing last resort housing, as approved by the RAPM.

### 12-6.4.3 Last Resort Housing Narrative

A. A last resort housing narrative is required for all cases under this section, where it is estimated that replacement housing payments will exceed statutory limits or comparable DSS housing is not available, etc.

B. Anticipated shortfalls of replacement housing, which will require construction or purchase and rehabilitation of existing housing should be addressed as early as the Environmental Impact Statement, if possible. This will allow for sufficient lead-time to ensure that replacement housing will be in place at the appropriate time. Housing of last resort requiring super payment or other solutions must be addressed at the Relocation Plan Stage.

C. The narrative should be included as part of the specialist's correlation and conclusions which is submitted with the Housing Comparison Work Sheet to Headquarters Relocation.

D. Relocation payments in excess of $31,000 for owner occupants and $7,200 for tenants must be coded properly in the "object of expenditures" portion of the Relocation Assistance Voucher. The payment must be broken out to show that the amount of payment within the statutory limits will not be a last resort payment while the amount in excess of the limits would be shown as last resort.

### 12-6.5 Residential Moving Entitlements

49 CFR 24.301(b)
RCW 8.26.035(2)
WAC 468-100-301(2)

A "displaced person" is entitled to receive a payment for the move of their personal property located on the displacement property. The displaced person has the option of selecting a commercial move, a self move, or a combination of both. A commercial move is ordered by Headquarters Relocation upon receipt of the Moving Expense Agreement in accordance with the procedures set forth by the contract administered by the Department of Enterprise Services (DES). A fixed residential move cost is based on a fixed schedule based on the number of eligible rooms. An actual cost self move is supported by receipted bills for labor and equipment. Self moves based on the lower of two bids or estimates are not eligible for reimbursement.

49 CFR 24.301(1)
WAC 468-100-301(1)

A. **Multiple Occupancy of Dwelling Units** – Two or more families occupying the same dwelling unit who relocate into separate dwelling units may elect to receive a commercial move or receive a self move for each family. A self move is based on the number of rooms actually occupied by each family plus community rooms utilized by each family.

B. **Dwelling Salvage** – When an owner acquires salvage rights to the acquired dwelling, the cost of moving that dwelling onto remainder or replacement land is not eligible for reimbursement as a part of the cost of moving personal property. However, if the displaced person chooses to use this dwelling as a means of moving personal property, the cost of moving personal property is considered eligible. Payment in these cases would be on a self move basis.

C. **Moving Advisory Assistance** – The Relocation Specialist encourages the displaced person to select a commercial move if there is any concern for the displaced person's ability to accomplish the move economically or safely by any of the other methods for which the displaced person is eligible. The specialist points out the advantages of a commercial move including: professional labor, appropriate equipment, insurance against risks, professional management, and other factors as compared to the risks and other management problems present in any other method of moving.

D. **Disposal of Personal Property and Hazardous Materials** – This should be handled according to the procedures set forth in Section 12-7.2.1, actual move costs for nonresidential displacements.

#### 12-6.5.1 Self Move, Fixed Residential Moving Cost Schedule

49 CFR 24.302
RCW 8.26.035(1)
RCW 8.26.035(2)
WAC 468-100-302

A. **Methods for Providing Scheduled Move Payments** – A displaced individual or family is eligible to receive a moving expense and dislocation allowance according to the schedule shown below. The schedule applies to residential occupants of furnished or unfurnished dwelling units. In certain cases, it may be necessary to utilize both methods to calculate a scheduled move payment.

**Fixed Moving Payment Schedule**

1. **Room Count Method**

   (For relocating personal property to be moved from a dwelling unit.)

| Number of Eligible Rooms | Occupant Owns Furnishings | Occupant Does Not Own Furnishings |
|---|---|---|
| 1 | $600 | $300 |
| 2 | $800 | $350 |
| 3 | $1,000 | $400 |
| Additional Rooms | $200 each | $50 each |
| Dislocation Allowance = | $400 and is included in the first room count above for occupants who owns furnishings | |

2. **Additional Personal Property Method** – The above schedule can be used when relocating personal property such as vehicles, RV's, boats, and trailers from the outside areas surrounding the residential dwelling unit. The specialist must figure the number of eligible rooms based on the volume of the property to be moved. Excessive room counts for this type of move would be best handled as an actual cost self move.

B. **Computation**

1. The moving expense payment is computed on the number of furnished rooms in the dwelling unit (not to include bathrooms) plus basements, attics, garages, and "out buildings" if such spaces do, in fact, contain sufficient personal property to constitute a room or rooms.

2. The number of eligible rooms is documented by the Relocation Specialist in the diary. This room count shall be approved by the Region Relocation Supervisor. Where unusual personal property situations exist, other rooms may be added as long as justification and documentation are provided and the Region Relocation Supervisor approves.

3. In cases where there is an abundance of personal property in the residence and there are more than the typical number of operating or nonoperating vehicles such as boats, trailers, on a residential dwelling site, the cost to move the personal property items located in the residence should be handled by a room count and the remainder should be handled as an actual cost move supported by receipts
   and/or invoices. Typically moves of this size are difficult for a displaced person to handle on their own and it might be difficult for them to move the items off the right of way in a timely manner.

C. **Occupant Landlords** – Occupant landlords may elect either move method but only for their own living unit. Landlords are considered to be business operators and as a business operator, such landlord may be eligible for the business moving payments with respect to the personal property furnishings in rental units.

D. Payment is limited to $100 if a person has minimal possessions and occupies a dormitory style room or a person's residential move is performed by an agency at no cost to the person.

E. **Authorization** – Before the move, the Relocation Specialist and the displaced person complete the Moving Expense Agreement, which confirms the type of move and agreed upon amount (for a self move.)

F. **Inspection** – After the move, the Relocation Specialist inspects the acquired dwelling and verifies that all the personal property has been removed. If sufficient quantities of personal property remain, which would constitute a room or rooms, the specialist will reduce the number of rooms and adjust the payment accordingly. Diary entries are required to verify the results of the inspection and any adjustments to the moving expense payment. The specialist should also record the vacate date in the diary and make the necessary computer entries.

### 12-6.5.2 Self Move, Actual Cost

A. The displaced person may elect to perform an actual cost move supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

   1. The Relocation Specialist works closely with the displaced person to develop a written and photo inventory of the personal property items to be moved.

B. **Computation** – The Relocation Specialist reviews the supporting documentation submitted by the displaced person to make sure the charges are considered reasonable and necessary for the amount of personal property that was moved. If there is a question as to the reasonableness of the costs submitted, the specialist may have to provide both the photo and written inventory to a commercial mover and ask for an estimate.

   1. The computation and supporting documentation is sent to the RAPM for review and approval.

### 12-6.5.3 Residential Commercial Move

A. A displaced person may elect to have the department contract for and pay a commercial mover directly for the move of their personal property. A Moving Expense Agreement is required and completed and forwarded to Headquarters so the move can be ordered. The move will be ordered in accordance with procedures set forth by DES. The Relocation Specialist will advise the displaced person that any item considered to be irreplaceable or of exceptional value should be identified. The Relocation Specialist should also obtain from the displaced person a value of the personal property to be moved. Standard insurance amount is $75,000. If value of the property is greater than $75,000, then a copy of the displaced person's insurance policy is required. Special arrangements may need to be made for moving these items separate from the rest of the displaced person's property. A memorandum to the RAPM

describing the items requiring special handling is required along with the specialist's recommendation on a moving method. ***Note:*** Move is limited to a 50-mile radius. If move is greater than 50 miles the displaced person is responsible for the costs associated with the excess mileage. The moving company will charge the displaced person directly.

B. **Other Expenses** – Under certain unusual and/or unforeseen circumstances, it may be necessary to reimburse the displaced person for actual costs incurred during their move. The region submits a memorandum to the RAPM explaining the situation and requests approval for reimbursement of certain expenses as follows:

1. Actual costs of temporary lodging and meals based on either actual receipts or using state per diem rates.
2. Actual costs of transportation of displaced persons to the replacement dwelling if necessary in special cases such as ambulance transport or special transport of disabled persons.

### 12-6.5.4 Ineligible Moving and Related Expenses

Refundable security deposits and utility deposits are considered ineligible expenses and cannot be reimbursed to the displaced person.

49 CFR 24.207(a)
WAC 468-100-207(1)

## *12-6.6 Claiming Relocation Entitlements*

### 12-6.6.1 Replacement Housing Claims

49 CFR 24.207(d)
WAC 468-100-207(4)

A. **Time for Filing Requirements**

1. A 90-day owner must purchase or rent and occupy a DSS replacement dwelling within one year from the later of:
   a. The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in court; or
   b. The date the person moves from the displacement dwelling.
2. A 90-day, less than 90-day, or subsequent tenant must purchase or rent and occupy DSS replacement dwelling within one year from the date the person moves from displacement dwelling.

49 CFR 24.402(b)(3)
WAC 468-100-402(2)(c)

B. **Disbursement of Replacement Housing Payments**

1. **RHP to 90-day Owner Occupant** – Replacement housing payments can be disbursed in the following manner:
   a. **Escrow Option** – This is accomplished by utilizing the Entitlement Instructions format found in Chapter 13. The Relocation Specialist explains to the displaced owner (buyer), the seller, and the escrow agent, that:
      (1) The entire amount of WSDOT's payment is to be applied toward the purchase price and applicable closing costs associated with the purchase of the replacement dwelling as stated in the Entitlement Instructions.

b. **Direct Payment to the Displaced Owner Option** – This is accomplished by the following:

(1) Reimbursement will be made directly to the displaced owner based on a **final** closing statement and submittal of all other supporting documentation (i.e., purchase and sale agreement, contract, receipts).

(a) If a displaced owner goes into an assisted living situation, the payment can be made directly to the displaced owner based on a signed resident agreement and copy of monthly charges along with any other supporting documentation (i.e., terms of care, breakdown of fees). Contact Headquarters for current policy on disbursement of funds for this situation.

(2) Direct payment can be made to the seller on behalf of the displaced owner based on a final closing statement and submittal of all other supporting documentation (i.e., purchase and sale agreement, contract, receipts).

(a) If a displaced owner goes into an assisted living situation, the payment can be made to the care facility on behalf of the displaced owner based on a signed resident agreement and copy of monthly charges along with any other supporting documentation (i.e., terms of care, breakdown of fees). Contact Headquarters for current policy on disbursement of funds for this situation.

2. **RHP to 90-Day Occupant/Less Than 90-Day Occupant/Subsequent Occupant** – The following types of replacement housing payments can be made:

a. Full payment to the displaced tenant at the time of occupancy of a qualified replacement dwelling. The first $7,200 RHP payment should be coded JN 77 and any last resort housing payment should be coded JN 80.

b. The entire amount of the rent supplement is applied toward down payment and closing costs for the replacement dwelling. Incidental expenses are inclusive of the total entitlement and cannot exceed the RHP.

49 CFR 24.402(c)
WAC 468-100-402(3)

(1) **Escrow Option** – This is accomplished by using the Entitlement Instructions for Down Payment Assistance format found in Chapter 13. The Relocation Specialist explains to the displaced tenant (buyer), the seller, and the escrow agent, that:

(a) The entire amount of WSDOT's payment is to be applied toward the purchase price and applicable closing costs associated with the purchase of the replacement dwelling as stated in the Entitlement Instructions.

(2) **Direct Payment to the Displaced Tenant** – This is accomplished by either of the following:

(a) Reimbursement will be made directly to the displaced tenant based on a final closing statement or equivalent documentation.

(b) Direct payment can be made to the seller on behalf of the displaced tenant. The displaced tenant needs to sign the voucher authorizing payment to the seller.

C. The Relocation Specialist completes a DSS inspection to determine if replacement dwelling meets minimum standards to receive replacement housing payment.

D. The Relocation Specialist obtains all necessary documentation to substantiate the purchase price of the replacement dwelling, i.e., purchase and sale agreement or owner contract.

E. The Relocation Specialist completes the actual calculation portion of the Price Differential Report or Rent Supplement Report, obtains necessary signature on form and sends to Headquarters with supporting documentation, i.e., purchase and sale agreement, rental agreement, and DSS report for approval prior to the submittal of the relocation assistance voucher for payment of the replacement housing entitlement. The specialist should consult with the acquisition specialist to determine if the displaced person received an administrative settlement. If so, this will have an affect on the actual calculation of the RHP and the specialist will need to send the displaced person a revised entitlement letter. See Chapter 13 for the appropriate RES form. If an administrative settlement eliminates the price differential payment, the displaced person is still eligible to receive reimbursement of the following:

- MIDP
- Incidental Closing Expenses

The specialist must perform a DSS inspection on the replacement dwelling prior to making any of the above payments.

F. The Relocation Specialist obtains preliminary information from the escrow company or displaced person to determine eligible incidental closing costs, if any. Typically, this information is supplied to the Relocation Specialist by the escrow company in the form of a HUD statement (preliminary closing statement).

G. The Relocation Specialist works with the displaced person and the lender when necessary to calculate the Mortgage Interest Differential Payment (MIDP) (RES-513), if any, prior to closing.

H. The Relocation Specialist prepares the appropriate vouchers which are used as the claim for payments, obtains displaced person's signatures, and secures agency signatures as provided on the Relocation Assistance Voucher (RES-537). The Relocation Specialist should also obtain a Substitute W-9 and SWV form from the payee listed on the relocation assistance voucher, i.e., displaced person or vendor and submit to their region accounting in order to obtain the SWV number. These forms should be obtained in accordance with the procedures set forth in Chapter 10.

I. The Relocation Specialist submits all claims to Headquarters for approval and payment.

### 12-6.6.2 Moving Claims

A. The Relocation Specialist and the displaced person should agree on the type of move to be selected by the displaced person prior to any move taking place.

   1. If a self move is chosen, all parties should agree on room count, any additional compensation for personal property items to be moved as addressed in the scheduled payments section of Section 12-6.5 and sign the Moving Expense Agreement (RES-540).

   2. For a residential displacement, if a commercial move is chosen, the Relocation Specialist should obtain from the displaced person a value for the personal property to be moved. If the amount of the value exceeds $75,000 then a copy of their current insurance policy is required, and all parties should sign the Move Expense Agreement and submit it to Headquarters for ordering a mover in accordance with the DES contract. In some instances the commercial move contract does not allow for the move of hazardous materials (i.e., household cleaning supplies, gas, solvents, paints), so the Relocation Specialist and displaced person should agree on a reasonable amount to move such items.

B. The Relocation Specialist is responsible for monitoring the residential move. This can be accomplished by an on site visit or phone call the day the move begins. This will ensure the personalty is moved to the replacement site and will help to answer any questions that may arise the day of the move. The specialist should document all monitoring activities in the diary.

C. When the move is complete, the Relocation Specialist verifies that all personal property is removed from displacement property and verified to be at the replacement property and completes the Vacate Inspection (RES-517). Verification can include photos of the vacated site and photos of the replacement site. The Relocation Specialist should clearly document the on site vacate inspection in the diary and enter the vacate date on the relocation voucher and in the RES data collection system. Upon such verification, the Relocation Specialist prepares a claim (voucher), secures the appropriate signatures and submits the claim to Headquarters for processing and payment. If the displaced person fails to move all the personal property an adjustment should be made in the payment amount prior to getting a voucher signed. The specialist is then responsible to clear the items which can be accomplished by hiring a professional mover or coordinating with Property Management for removal of items. The Relocation Specialist should also obtain a Substitute W-9 and SWV form from the payee listed on the relocation assistance voucher, i.e., displaced person or vendor. These forms should be obtained in accordance with the procedures set forth in Chapter 10.

D. In case of a commercial move, the Relocation Specialist verifies that the move is complete.

1. If personal property is not removed and not abandoned, the Relocation Specialist should consult with Headquarters Relocation and the moving company to arrange to have said remaining property moved to the replacement property. If they are items that the commercial mover is unable to move then the specialist should make necessary arrangements with a specialty mover or the displaced person to get the items moved to the replacement location.

2. If the personal property is not removed and is abandoned, the Relocation Specialist should get an abandonment notice signed by the displaced person and should make the necessary arrangements with a mover or Property Management to get the items removed from the property. Abandonment of personal property should be handled as outlined in the section of this chapter titled "Abandonment of Personal Property."

3. When the move is complete, invoices from the movers will be received in Headquarters and processed for direct payment to the movers. The Relocation Specialist will need to obtain a Substitute W-9 and SWV form from the mover in accordance with the procedures set forth in Chapter 10.

E. The Relocation Specialist assures that the displaced person makes a claim for move payment within 18 months after vacating the displacement property or receiving final payment, as appropriate. If the displaced person has not claimed moving entitlements, the Relocation Specialist advises the displaced person of time remaining within which to file a claim using the RES form located in Chapter 13.

#### *12-6.6.2.1 Abandonment of Personal Property*

The specialist should work closely with the displaced person to remove all personal property items from the right of way. The agency will pay the cost to move the items as set forth in Section 12-6.5 – Moving Entitlements and appropriate calculations should be performed and required notices provided. Disposal costs are not paid in addition to the move costs. The specialist should not encourage items to be left on the property and should advise the displaced person that they will be financially responsible for the removal of the items. In the rare instance personal property is left at the displacement property, the Relocation Specialist will need to obtain region manager's approval prior to obtaining a signed abandonment letter from the displaced person stating the displaced person is abandoning the personal property to the state and cannot claim payment for moving said abandoned property. Once approval is obtained, the moving expense attributable to the abandoned property will be deducted from the displaced person's final move payment. (Refer to Chapter 13 for the RES form.) The Relocation Specialist should make the necessary arrangements through the Relocation Assistance Program to hire a mover to clear the property or check with Property Management to get the items removed from the property according to procedures set forth in Chapter 11. If the property is clear at the vacate inspection, the specialist does not need to obtain a signature from the displaced person on the abandonment notice.

### 12-6.6.3 Residential Payment Claims

As a general rule, moving cost payments and replacement housing payments are not made prior to completion of the move, and/or occupancy of the replacement dwelling. However, exceptions arise where, due to extenuating circumstances, the case merits special consideration. When these special cases arise, the RAPM may authorize advance payment of relocation claims.

A. **Advance Replacement Housing Payments**

49 CFR 24.207(c)
RCW 8.26.085(1)(b)
WAC 468-100-207(3)

1. Advance payment may be necessary in cases where a displaced person is entitled to a replacement housing payment for a replacement dwelling but does not have sufficient funds with which to gain the right of occupancy prior to receiving relocation payments.
2. It is a good idea to make advance replacement housing payment for an owner occupant to an escrow agent. However, there may be certain situations where a displaced owner may elect to purchase a replacement dwelling on contract or pay the purchase price in full and may choose not to have the transaction closed in escrow.
3. Any displaced occupant must be in agreement with making payments directly to a 3rd party on their behalf. This is accomplished by having the displaced person sign the relocation voucher. The Relocation Specialist must also clearly document in the diary that the payment is being made at the request of the displaced person. The Relocation Specialist should obtain a Substitute W-9 and SWV form from the payee listed on the voucher in accordance with the procedures set forth in Chapter 10.
4. Requests for down payment and rent supplement advances are authorized where payment of the down payment or a rental deposit is a prerequisite to occupancy.
5. Requests for advanced replacement housing payments to owners are considered necessary when the funds made available directly to the displaced person from the department's acquisition of the property are insufficient to secure occupancy of a replacement dwelling.
6. The burden of proving the reasonableness and necessity of advance payments rests upon the displaced person requesting the advance payment.

B. **Advance Moving Payment** – When a displaced person is financially unable to pay the expenses involved in a move, a payment in advance of the move may be authorized. Payments reasonably necessary to cover the costs incidental to moving may be approved by the Regional RES Manager and paid in advance of the move. This advance payment may cover such incidental expenses as transportation, equipment and materials. Advance payment must be authorized by the RAPM, acting upon a written request from the displaced person or region Relocation Specialist. The amount of any proposed advance payment should not exceed 25 percent of the approved move amount as shown on the Moving Expense Agreement (RES-540), unless there are unusual and extraordinary circumstances. The amount previously paid is deducted from any reimbursement for moving expenses which is due the displaced person upon completion of the move.

49 CFR 24.207(c)
RCW 8.26.085(1)(b)
WAC 468-100-207(3)

#### 12-6.6.3.1 Processing and Payment of Claims

A. When the displaced person is ready to make claims for any or all of their relocation entitlements, including moving costs, price differential payments and associated incidental costs, rent supplement or down payment, the Relocation Specialist provides the displaced person with appropriate forms for making the claim and secures necessary documentation from the displaced person, which includes a Substitute W-9 and SWV form.

B. The completed Substitute W-9 and SWV form are transmitted to region accounting to obtain a SWV number. The claim (voucher) and supporting documentation is sent to Headquarters for final approval and payment processing.

C. Upon final approval by Headquarters, the RAPM authorizes payment and the voucher is forwarded to the accounting section for processing and generation of the payment (warrant).

D. Both the region and Headquarters should monitor partial and advanced payments to assure that the displaced person does not receive payment in excess of their maximum entitlements.

Appendix 12-3

E. **Coding** – Relocation Assistance Vouchers are coded based on the type of relocation payment. The specialist must select the appropriate coding from the object codes and definition chart, i.e., residential replacement housing payments or moving expenses, non-residential reestablishment or moving expenses, and personal property only moving expenses.

## 12-7 Nonresidential Relocation Entitlements (Business, Farm, and NPO)

### 12-7.1 Eligibility

A. Displaced businesses, farms, and nonprofit organizations may become eligible to receive moving payments for the following:

1. Moving of personal property located within the acquired right of way.
2. Moving of personal property when the acquisition of real property used for a nonresidential use causes the displaced occupant to vacate a dwelling or other real property not acquired.
3. Reasonable and necessary moving payments for moving a property owner's nonresidential related personal property from a non owner occupied residential property.
4. One move, except where it is determined by the RAPM that it is in the public interest to authorize more than one move.

B. A nonresidential displacement must be in lawful occupancy of the displacement site at the time of initiation of negotiations or subsequent to the initiation of negotiations but prior to its acquisition.

C. Determining the Number of Businesses Displaced by Project – It is acceptable to apply the considerations discussed in the Fixed Payment section to determine the number of business that are displaced by a public project. It is important to remember that while multiple businesses can operate at a displacement site there is a possibility that there may only be one displacement depending on the factors for determining the number of businesses.

49 CFR 24.305
RCW 8.26.035(3)
WAC 468-100-304

Appendix 12-11

In determining whether two or more business activities constitute a single business or two or more separate businesses, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3. The entities are held to the public, and to those customarily dealing with them, as one business; and
4. The same person or closely related persons own, control, or manage the affairs of the entities.

D. In order to be eligible for reestablishment payments the Relocation Specialist must view a copy of the most recent tax return filed and document in their diary that it is an operational business, farm or NPO.

49 CFR 24.305(b)(1)

A landlord must provide a certified copy of their most recent year's tax return including the attached Schedule E. The tax return must be submitted to Headquarters for verification. This process needs to be completed before a Notice of Eligibility, Entitlements and 90-Day Assurance is delivered. A displaced person(s) that owns property and rents the property to a business they also own and operate is essentially renting to themselves. A business owner that rents the underlying land and/or business to themselves is often doing this for tax and liability reasons. In this instance the tax return and displaced person may consider themselves a landlord business but if no other rental property is shown on the displaced person's income tax returns WSDOT will consider this one displacement.

In situations where it is not as apparent that two businesses constitute a single business, and in order to avoid duplication of payment or unreasonable reimbursement, the criteria set out in 49 CFR 24.305(b) 1-4, is used and to determine whether a displacement constitutes one business or multiple businesses.

Certification of the tax return will need to be completed by the individual who prepared the return, i.e., accountant, attorney, business owner. Once the tax return is reviewed by Headquarters, the tax return will be destroyed or mailed back to the region in order to return to the displace. The statement can be as simple as the following: "I hereby certify that this tax return is a true and correct copy of my filed return."

49 CFR 24.301(d)
49 CFR 24.301(g)
RCW 8.26.035
WAC 468-100-301(4)
WAC 468-100-301(7)

## 12-7.2 Nonresidential Moving Payments

### 12-7.2.1 Move Costs

The determination of realty versus personalty should be resolved prior to working with the displaced business to prepare an inventory of the personal property items to be relocated. This should be accomplished early in the process (the occupancy survey stage) with the appraiser as described in Section 12-4.2 Relocation Planning. The specialist should be able to consult the Realty vs. Personalty Report (RES-217) in the appraisal for a list of those items determined to be real property or personal property.

49 CFR 24.301(g)
RCW 8.26.035
WAC 468-100-301(7)

A. A displaced business is entitled to payment for actual moving costs which are determined by the department to be reasonable and necessary. Actual moving costs include:

1. Transportation of personal property within a 50-mile radius.
2. Packing, crating, unpacking, and uncrating of personal property.
3. Disconnecting, dismantling, removing, reassembling, and reinstalling equipment, machinery, and other personal property.
4. Storage of personal property for a period not to exceed 12 months if such expense is determined to be reasonable and necessary. Requests for storage from the displaced person must be in writing and submitted to the RAPM for preapproval.
5. Insurance for the replacement value of the personal property during the move and necessary storage. The Relocation Specialist must obtain a copy of the insurance policy from the displaced business showing the amount of insurance coverage they have on their personal property at the displacement location. This amount will be used by the specialist when preparing the Request for Proposal (RFP) to obtain move cost estimates from commercial movers.
6. Any license, permit, or certification required or associated with the operation of the business at the replacement site, which the displaced business had at the displacement location if deemed actual, reasonable, and necessary. The amount of this payment may be based on the remaining useful life of the existing license, permit, or certification (FHWA Q&A #63).
7. The replacement value of property lost, stolen, or damaged during the move (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
8. Professional services for move planning, moving, and reinstalling the personal property. Refer to Section 12-7.5 for a list of those professional services considered to be eligible for reimbursement by WSDOT. The business owner should be advised to obtain at least two Scope of Work bids as outlined in Section 12-5 Advisory Services. The displaced business must hire a professional in order to be eligible for reimbursement.

However, in some instances the displaced business can apply for a waiver and request that their displaced business be reimbursed for their work.

Appendix 12-12

a. To apply for a waiver the displaced business must submit to WSDOT in writing a request to perform the professional services themselves. The request must include the following:

(1) Business qualifications.

(2) Reasons for wanting to complete the work instead of hiring an outside professional.

(3) Hourly rate.

(4) Scope of work – not to exceed the amount stated in the proposal submitted.

9. Relettering signs and replacing printed materials made obsolete by the move.

a. The specialist must work with the displaced business to complete an inventory (see Chapter 13 for appropriate RES form) of those items such as letterhead, business cards, checks that become obsolete due to the displaced business's change of address to that of the replacement location. This should be done no later than the day of the move and is recommended prior to the commencement of move. The specialist must obtain samples of any items to be reprinted. The department will reimburse the displaced business owner either the cost to reprint the stock on hand or the minimum print. Once the items have been reprinted, the specialist must obtain invoices and verify with the printing company the minimum print. The specialist is required to obtain original or copies of each obsolete item that will be reprinted. It is recommended to give the business owner a large manila envelope or folder so they can collect samples of each obsolete item. Discuss with the displaced business where stickers with new address/phone numbers, etc., may be more appropriate than reprinting. Go Green!

b. Costs incurred by a displaced business to notify its customers of its move to a replacement site, which may include but are not limited to post card mail-outs to existing customers or the revision of a yellow pages advertisement and/or website are eligible reimbursement costs subject to the following conditions:

(1) The cost must be documented, actually incurred, and reasonable. For example, the reimbursement for revising a website must be supported by documentation evidencing the costs incurred and would not extend beyond basic changes such as the change of address, phone number, directions, and/or map to the new site. The design and incorporation of product descriptions and photographs, links, etc., would not be reasonable.

(2) The costs for notifying customers and the public of the business' change of location are eligible as actual moving expenses and considered as other moving related expenses that are not listed as ineligible.

10. **Actual Direct Loss of Tangible Personal Property** – This payment is the lesser of the fair market value in place of the personal property item, as is, for continued use at the displacement site, or the estimated cost to move the item as is (not including storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site) (see Section 12-7.2.1.1 for details).
11. The reasonable cost incurred in trying to sell an item that is not to be relocated.
12. **Purchase of Substitute Personal Property** – If an item of personal property is not moved, but is promptly replaced with a substitute item, this payment is the lesser of the cost to purchase this substitute item, including installation, or the estimated cost to move the item (see Section 12-7.2.1.2 for details).
13. Expenses for searching for a replacement location, including transportation costs; meals and lodging; time or labor costs based on reasonable salary or earnings; fees paid to real estate agents or brokers to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites; time spent in obtaining permits and attending zoning hearings; and time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings. This payment shall not exceed $2,500. Search area is limited within 50 miles of the displacement location.

    The displaced business owner will be reimbursed up to the maximum payment of $2,500 for site search costs upon completion of the site search log (Form RES-522).
14. Reasonable costs to secure professional move bids.
15. **Low Value/High Bulk** – When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of:
    The amount which would be received if the property were sold at the site, or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency. It is WSDOT's responsibility to determine what is reasonable and necessary for the relocation of those items, for the purposes of establishing a reimbursement threshold. For example, if the personal property to be moved includes an item which, because of its bulk or excessive costs required for disconnecting, moving and reconnecting such item, would be cheaper to replace than to move, WSDOT must limit reimbursement to the cost to replace—even if the displaced person elects to move the item.

16. **Disposal of Personal Property and Hazardous Materials** – A displaced person is eligible to be reimbursed for relocating personal property to a replacement site. The requirement includes items that may be of little value or use, items which because of their bulk are more costly to move than to sell or replace, and contained or free-standing personal property which is considered to be hazardous material. WSDOT does not have the ability to preclude the displaced person from relocating these items; nor, can we refuse the reimbursement if these items are relocated. WSDOT does have the authority and the responsibility to base the reimbursement of these items on what is "reasonable and necessary." While the displaced person's wishes with regard to the move of the personal property will be considered, WSDOT is accountable for the expenditure of public funds and must apply the test of "reasonable and necessary."

    a. As a general rule, WSDOT will not pay disposal costs for personal property in addition to move costs. If the displaced person wishes to dispose of the personal property, any amounts that exceed the calculated move costs will not be reimbursed.

    b. In the case of hazardous materials which are considered to be personal property and eligible for moving cost reimbursement, the following guidelines will be used in applying the "reasonable and necessary" criteria:

        (1) The costs determined by bid, estimate, or other procedural process for moving these materials to the replacement site (for a business that is reestablishing) are eligible for reimbursement.

        (2) If the displaced person voluntarily elects to dispose of these materials at a dump or other authorized disposal site, they can be reimbursed for the actual costs to transport and dispose, but not to exceed the costs of transporting the materials to the replacement site to which the business is relocating. For example, if the estimated cost to move the materials to the replacement site is $5,000 and the cost to transport to a disposal site plus the disposal fees are $10,000, the reimbursement will be limited to $5,000 if the displaced person used the disposal option.

        (3) If the displaced person must transport those hazardous materials to a dump or disposal site based on federal, state, or local code or ordinance that precludes them from moving the materials to the replacement site, then the costs of transport and disposal would be eligible. Such code or ordinance must be adequately documented in the official relocation file.

        (4) If the displaced person cannot move these materials to the replacement site because of inadequate storage space, then WSDOT must determine whether there were reasonably available sites to which they could have moved that would have allowed storage space for these materials. If the determination is that alternate sites were not reasonably available, then WSDOT can

reimburse the displaced person for the costs of transporting and dumping of these materials at a disposal site. If, on the other hand, alternate sites were reasonably available, then reimbursement for the costs of transporting and disposing of the materials will be limited to the estimated cost to move the materials to the replacement site or, if there is any appreciable difference, the cost of moving the materials to a reasonably available alternate site. The key issue here is WSDOT will not reimburse the costs of disposing of these materials if WSDOT's project does not limit the displaced person's options for relocating these materials or necessitate disposal.

17. **Move Supervision** – Supervision expenses include reimbursement for the time necessary to supervise the move. Supervision is sometimes necessary to direct the placement of personal property and to facilitate the moving process. The time to supervise the move (does not include planning) is limited to no more than the length of time it would take a professional mover to complete the actual physical move and is based on reasonable salary or earnings and must be preapproved by the region Relocation Supervisor prior to the initiation of the move. All expenses must be actual, reasonable, and necessary as determined by the agency. If the move is considered complex and a move planner has been approved, it may be reasonable to reimburse time spent by the move planner to supervise the move. The specialist will need to ensure there is no duplication of payment when there is more than one person supervising the move.

49 CFR 24.301(d)
RCW 8.26.035(1)
WAC 468-100-301(4)

B. **Move Options** – Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods:

Appendix 12-6

1. **Commercial Move** – A commercial move is based on the lowest acceptable bid or estimate prepared by a commercial mover. WSDOT prefers to obtain three bids as it can be difficult to determine the lowest acceptable bid if only two bids are obtained and the dollar figures are too far apart. If the specialist only obtains two bids and there is a question, the specialist will be required to obtain a third bid. WSDOT will reimburse the bidder a reasonable amount to prepare requested bids. The specialist should discuss and come to an agreement with movers either prior to or during the walk through of the displacement site. The bid prep fee can be based on a flat fee or hours of preparation. The specialist must obtain written concurrence from the displaced business owner for the Request for Proposal and Moving Specifications (RES-521), and inventory prior to the solicitation of move proposals.

   a. The displaced person can request that WSDOT provide a commercial mover and pay that mover directly. The displaced person must indicate this option on the Moving Expense Agreement and cooperate with WSDOT by preparing a photo and written inventory, site drawing/layout, and working with the Relocation Specialist to prepare a Request for Proposal and Moving Specifications (RES-521).

b. Based on the inventory, moving specification, and any other information available, the Relocation Specialist must obtain three bids, if possible, from qualified commercial movers. If a mover submits a bid, they will be compensated for their reasonable costs of preparing said bid. The bids, Moving Expense Agreement, inventory, Request for Proposal and Moving Specification, and region recommendation are then submitted to the RAPM for review/approval.

2. **Self Move, Negotiated Cost** – A self move payment may be based on the lowest acceptable bid or estimate prepared by a commercial mover. WSDOT prefers to obtain three bids as it can be difficult to determine the lowest acceptable bid if only two bids are obtained and the dollar figures are too far apart. If the specialist only obtains two bids and there is a question, the specialist will be required to obtain a third bid. If the move is considered small, uncomplicated, and estimated move costs are less than $5,000 a qualified Agency staff person can prepare a "Specialist Move Estimate." Payment for a low cost or uncomplicated move may be based on a single bid or estimate. The specialist must provide a recommendation for approval to Headquarters requesting the use of a single bid or estimate.

   a. The displaced person may elect to take full responsibility for the move of their business or farm operation. In this event, the displaced business must prepare an inventory of the personal property to be relocated and assist the Relocation Specialist in the preparation of a Request for Proposal and Moving Specification. The Relocation Specialist then obtains three bids from qualified commercial movers. The region submits the bids with all supporting information to the RAPM for review and approval with their recommendation to offer a payment to the displaced business for move costs.

   b. The amount of the payment to be offered to the displaced person may not exceed the amount of the lowest acceptable bid (excluding sales tax and replacement value insurance (RVI)) submitted by a commercial mover. The Relocation Specialist may negotiate a move cost lower than the lowest acceptable bid, taking into account the profit and overhead costs which the commercial mover includes in their bids. For a displaced person to be reimbursed for RVI they will need to supply copies of the insurance policy and proof of payment.

   c. In cases where the move cost appears to be $5,000 or less and the move is considered small and uncomplicated, the Relocation Specialist can expedite the process and develop a specialist move cost estimate in accordance with Section 12-7.4. The displaced business, with the help of the Relocation Specialist, will prepare an inventory of the items to be moved. The region will submit the move cost estimate with all supporting documentation to the RAPM for review and approval.

3. **Self Move, Actual Cost** – An actual cost self move may be necessary if time constraints or unreasonable circumstances prevent the specialist from obtaining move bids or estimates.

   a. If bids cannot be obtained due to time constraints or unreasonable circumstances, the displaced business may move their business using their own resources. The displaced business will be reimbursed their actual and reasonable moving costs as documented by paid receipts or other reasonable evidence of expenses, including time sheets or account for the hours of the people who performed the move. The specialist reviews the supporting documentation submitted by the displaced business to make sure the charges are considered reasonable and necessary for the amount of personal property that was moved. If there is a question as to the reasonableness of the costs submitted, the specialist may have to provide both the photo and written inventory to a commercial mover and ask for an estimate.

   b. Hourly rates for labor should be supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to their employees who perform move activities. Equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover. These hourly rates can be obtained from local movers.

4. **Combination of Commercial and Self Move** – A displaced business may elect to have a combination of both a commercial and a self move. The displaced business must coordinate with the Relocation Specialist and the commercial mover to ensure that all parties have a clear understanding of the respective roles and responsibilities. The Relocation Specialist must closely monitor the move to confirm that each party is performing the correct tasks and duties. A moving expense agreement should be signed prior to the move.

49 CFR 24.301(i)
WAC 468-100-301(9)

5. **Move Monitoring** – The Relocation Specialist is responsible for monitoring the move of the displaced business. This can be accomplished by an on site visit or phone call (for uncomplicated moves) the day the move begins. This will ensure the personalty is moved to the replacement site, will help to support the accounting of the inventory, will help to identify those items not moved which could potentially lead to a claim for a direct loss of tangible or substitute personal property, and will help to answer any questions that may arise the day of the move. The specialist should document all monitoring activities in the diary in addition to move progress photos.

6. Upon completion of the move, the Relocation Specialist should perform a post move inventory. This may include photos of the vacated site, photos of the replacement site, identification of equipment requiring disconnects and reconnects, and/or any special considerations used to calculate the move cost estimate. For example, the specialist would need to substantiate that a crane was used to move a specialized piece of equipment if, in fact, the cost of crane was included in move cost estimate or bid. A post move inventory describes those personal property items identified as

part of the relocation and could be addressed in a list, a comment on the vacate inspection, a diary entry, or an e-mail to the reviewer, etc. The specialist needs to identify that all personal property was moved. This can be accomplished by comparing the premove inventory to the post move inventory. The results should be noted in the diary and the specialist should prepare a written/photo list along with the vacate inspection form.

### 12-7.2.1.1 Actual Direct Losses of Tangible Personal Property (DLT)

49 CFR 24.301(g)(14)
WAC 468-100-301(7)(n)
FHWA FAQ #64

A. **Eligible Items** – Actual direct losses of tangible personal property are allowed when incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

1. The fair market value in place of the item as for continued use at the displacement site, less the proceeds from its sale. The value in place can be obtained from a variety of resources, including an industry specialist, Fixtures, Furniture & Equipment (FF&E) appraisal, personal property appraisal, etc. The type of documentation needed will depend on the complexity of the personal property. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless WSDOT determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.)
2. The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (If the business or farm operation is discontinued, the estimated moving cost is based on a distance of 50 miles.)

B. **Evidence of Sale and Cost** – The owner is required to document the sale prices, if any, and the actual reasonable cost of advertising and conducting a sale. The owner must provide WSDOT with a copy of the bills of sale or similar documents and copies of any advertisements, offers to sell, auction records, and other data supporting the bona fide nature of the sale. Reasonable costs incurred in attempting to sell an item(s) that is not relocated is reimbursable as a separate move cost and is not included in the DLT calculation.

C. **Determination of Expenses and Losses (Specialist Recommendation)** – The region compares the amount of the loss (value for continued use) with the reasonable moving expense and recommends payment of the lesser amount in an explanatory memo addressed to the RAPM.

D. **Losses Due to Unsuccessful Sale and Transfer of Ownership** – Whenever a bona fide sale is not completed because no offer is received for the eligible item and ownership of the item is transferred to the department, the amount of the eligible payment is the lesser of the fair market value in place of the item(s) for continued use at its location prior to displacement or the estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used a the acquired site.

Appendix 12-5

49 CFR 24.301(j)
WAC 468-100-301(10)

E. When personal property is abandoned with no effort being made by the owner to dispose of such property by sale, the owner is not entitled to moving expenses or losses for the items involved. The abandoned personal property is transferred to the department via Transfer of Ownership (RES-548).

F. The cost for removal of abandoned personal property through the transfer of ownership will not be considered as an offsetting charge against other payments that the displaced person is entitled to receive.

49 CFR 24.301(g)(16)
WAC 468-100-301(7)(p)

FHWA FAQ #65

#### *12-7.2.1.2 Substitute Personal Property (SPP)*

A. If an item of personal property, which is used as part of a business or farm operation, is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item. To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless WSDOT determines that such effort is not necessary.
2. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. The estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

B. "Trade-in value" may be substituted for net proceeds of sale where applicable.

C. Losses Due to Unsuccessful Sale and Abandonment. Whenever a bona fide sale is not completed because no offer is received for the eligible item and the item is abandoned, the amount of the eligible payment is as stated in "A" above.

49 CFR 24.301(j)
WAC 468-100-301(10)

D. When personal property is abandoned with no effort being made by the owner to dispose of such property by sale, the owner is not entitled to moving expenses or losses for the items involved. The abandoned personal property is transferred to the department via Transfer of Ownership (RES-548).

E. The cost for removal of abandoned personal property will not be considered as an offsetting charge against other payments that the displaced person is entitled to receive.

#### *12-7.2.1.3 Calculating the Cost to Move an Obsolete Item When an Actual Estimate Cannot be Obtained – SPP*

First, the Relocation Specialist will need to determine whether the business will move and replace the item, or will either discontinue the business or continue but not replace the item in question. The regulatory references for these two options are 49 CFR 24.301(g)(14) for actual direct loss of tangible personal property (first option) and 49 CFR 24.301(g)(16) for substitute personal property (the second option). The reason why it is necessary to determine which option applies, for purpose of establishing the "cost to move," is to determine whether the "cost to move" will include the costs to reinstall/reconnect.

A. If the business discontinues or will not replace the item at the replacement site, installation/reconnection costs will not be included in the "cost to move" if the equipment is either in storage or otherwise not being used at the displacement site. However, if the equipment is installed at the displacement site then the installation/reconnection costs will be included in the "cost to move." In either case, the cost of code upgrades shall not be included in the cost to move.

B. If the business will continue and plans to replace the item at the new site, the "cost to move" will include the costs to the business for installation/ reconnection of the substitute personal property.

   Once this determination has been made, the "cost to move" will include the following:

   1. Disconnection from displacement site.
   2. Physical move to replacement site.
   3. Cost to install/reconnect at replacement site if the item is installed at the displacement site.

   If the item that is proposed to be replaced with substitute personal property is obsolete or in a condition where it cannot reasonably be moved and/or installed at the replacement site, the agency should take the following actions:

   1. Obtain an estimate of the cost to remove the item from the displacement site (including disconnect) and move it as if it was intact and capable of being moved. For example, if a storage tank or water heater at the displacement site is considered to be personal property rather than real property, but its age and condition are such that a mover or specialist considers it not capable of being moved intact, have the estimator(s) provide a price to move as if it was in movable condition.
   2. If the technology for the item in question has changed and it would not be adaptable for installation or reconnection at the replacement site, one option would be to obtain an estimate to install/reconnect a substitute item that most nearly matches the item in question but conforms to current technology.

   Once estimates have been obtained, the calculation would be done consistent with 49 CFR 24.301(g)(16).

### 12-7.2.2 Ineligible Moving and Related Costs

49 CFR 24.301(h)
WAC 468-100-301(8)

A displaced business is not entitled to payment for:

A. The cost of moving any structure or other real property improvement in which the displaced person retained salvage rights.

B. Interest on a loan to cover moving expenses.

C. Loss of goodwill.

D. Loss of profits.

E. Loss of trained employees.

F. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided as a reestablishment expense.

G. Personal injury.

H. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency.

I. Physical changes to the real property at the replacement location of a business or farm operation except as provided as a reestablishment expense.

J. Costs for storage of personal property on real property already owned or leased by the displaced person.

K. Refundable security and utility deposits at the replacement location.

49 CFR 24.304
RCW 8.26.035(1)(d)
WAC 468-100-306

### 12-7.2.3 Reestablishment Expenses

In addition to actual move costs, a small business, farm, or nonprofit organization may be eligible to receive a payment, not to exceed $50,000, for expenses incurred in reestablishing their operations at a replacement location. These reestablishment expenses must be actual, reasonable, and necessary as determined by the department.

Claims for reestablishment expenses must be considered by WSDOT to be "actual, reasonable, and necessary." In this context, reasonable means the costs are typical in the geographic area in which the displacement occurred for the type of goods or services being purchased. Necessary means that such goods or services are needed to carry out the reestablishment of your business in conformance with the requirements of the Uniform Act. The test for reestablishment expenses at times may deal with comparing or matching amenities or characteristics of the replacement site against the displacement site. Also, the test is one of necessity, i.e., is the expense necessary to reestablish the displaced business. This may be the main criteria when a business owner changes business use at the replacement site.

General guidelines for the Relocation Specialist to follow:

- Market test – determine the availability of suitable replacement sites that are functional and similar to the subject site.
- Is the claim submitted typical of the area or nature of the business operation?
- Is it really needed in order to carry out the move of the business?
- Is the business reestablishing at a level greater than what they currently operate?
- What is the size of the building where they currently conduct business?
- When dealing with redecoration expenses, the specialist will need to determine if the items in question are serviceable or if it can be fixed or repaired. If it can be fixed or repaired then the cost of the repair or service would be reimbursable as a reestablishment expense. It the item cannot be repaired or serviced and it meets the test of reasonable and necessary then we have the flexibility to replace the item as a reestablishment expense.

It is important to remember that such expenses should be necessary to reestablish the present operation, not to improve it, not to allow it to enter new markets, or do those things that the operation should have done itself or wanted to do at the displacement location. Displacement provides an excellent opportunity for an operation to do all of those things itself, but they should not be accomplished with public funds. In the situation where a displaced business selects a larger replacement site or a betterment, these tests allow the specialist to set a reasonable threshold for reimbursement based on the size or quality of the displacement site.

If the displaced business received a payment through acquisition, say, as a "cost-to-cure," reestablishment cannot be used as this would represent a duplication of payment. However, if deemed reasonable and necessary, all or part of the difference between the actual cost and what was previously paid as a cost to cure by the agency or any other funds paid by another agency for that purpose could be an eligible reestablishment expense.

Appendix 12-13

The Relocation Specialist is not expected to make an exhaustive search for other such payments; the specialist is only required to avoid creating a duplication based on their knowledge at the time the payment is made.

The Relocation Specialist must obtain a copy of the displacement site lease and the replacement site lease. Leases may be used for determining level of reimbursement for increased costs, tenant improvements and/or modifications to the replacement site. Many times a landlord will participate in or pay for tenant improvements and in order to avoid duplication of payment, we need verification of who is paying for what.

49 CFR 24.304(a)
WAC 468-100-306(1)

A. **Eligible Expenses**

1. Repairs or improvements to the replacement property as required by law or code.
2. Modification to the replacement property to enable the business to operate. Permits associated with modifications to the replacement are reimbursable.
   a. The Relocation Specialist must understand the difference between what constitutes an improvement (not required by code) to the replacement property which is considered not eligible for reimbursement versus what constitutes a modification to the replacement property which is considered a reimbursable reestablishment expense. The following definitions are for purposes of determining payment of relocation benefits:
      (1) Improvement – that which the displacement site did not have and which adds to, instead of replaces, the functionality of the business operation.
      (2) Modification – that which the displacement site had and which replaces the functionality of the business operation.
   b. Scenarios are listed in Appendix 12-1 to discuss eligibility of such items. The WSDOT specialist needs to have, regardless of the scenarios listed, a copy of the existing lease at the displacement site (if there is one) and a copy of the appraisal which distinguishes

Scenario #1
Scenario #2
Scenario #3
Scenario #4
Scenario #5

between real and personal property. This information is necessary to determine who owns the property in question and to determine how it was handled in the appraisal process. It is possible for improvements to be considered real property, personal property or trade fixtures which can result in different determinations. Each reimbursement decision must be based on the circumstances surrounding the individual details of the relocation, i.e., case-by-case basis.

In all cases, we must avoid duplication of payment as described in 49 CFR 24.3. No person shall receive any payment under this part if that person receives a payment under federal, state, local law, or insurance proceeds which is determined by the Agency to have the same purpose and effect as such payment under this part. So, if the displaced person was compensated for the improvement in the acquisition of the displacement site and then submits a claim under reestablishment expenses for the same or similar improvement at the replacement site, it is not eligible for reimbursement because they have already been paid for the item. Per 49 CFR 24.304(b)(1) a claim for a capital asset (improvement) under reestablishment expenses at the replacement site is not eligible for reimbursement.

FHWA FAQ #76

c. If a suitable replacement structure is not available and it is determined necessary for the owner of a small business, farm, or nonprofit organization to purchase or lease vacant property and build a structure to conduct business, adding the structure would generally not be an eligible reimbursement. Modifications to the structure to accommodate the business operation may be eligible for reimbursement. These modifications shall not include costs of substantial improvements normally found in a finished structure such as air conditioning and heating, septic or sewer service, well or water service, and walls and ceilings except as modifications specific to the nature of the displaced business. Site preparation may be included in modification costs.

FHWA FAQ #77

When a replacement property already contains a structure, costs for structure modifications necessary to accommodate the business operation (e.g., moving walls, changing doors, installing lighting) are eligible. An exception occurs if specific modifications are required to promote the proper operation of the relocated personalty (these costs are included as moving costs under Allowable Moving Expenses – Non-Residential, Removal, and Reinstallation. Reasonable and necessary are the determining criteria.

3. Construction and installation of new signage to advertise the business.
4. Redecoration or replacement of soiled or worn surfaces such as carpeting, paint, paneling.
5. Advertisement of the replacement location. This includes actual and reasonable costs incurred by the business to advertise the replacement location beyond notification to customers and public of the business' change of location, which are eligible reestablishment expenses. This may include newspaper ads, flyers, or other forms of media advertising

as long as the advertising focuses on the new location, i.e., the business might place a newspaper ad for a grand opening. Such costs are limited to advertisement of the replacement location and do not include costs to advertise products. The intent of this regulation is to pay for expenses associated with advertising the replacement location and not the general business. Promotional items such as pens, pencils, tee shirts, key chains, etc., are seen as general advertising of the business and not considered reimbursable under reestablishment expenses. A good guide to follow is if the advertising is intended to search for new clients then it would not be eligible. However, if the advertising is trying to get existing clients to the new location and not tied to marketing of the business then it would be eligible. This is true even if the business owner changes the use of the business. It must focus on advertising the new location not the business.

6. Increased cost of operations for two years at the replacement site for items such as rent, taxes, insurance, and utility costs. The Relocation Specialist must obtain copies of both of the leases, tax statements, insurance policies, and utility statements in order to calculate the level of reimbursement. Increased costs should be based on similar size locations.

Appendix 12-8

   a. **Mortgage to Lease** – If a displaced business elects to lease a replacement site instead of purchasing, the specialist must use the difference between the economic rent of the displacement site and the market lease rate of the replacement site. The specialist will need to refer to the appraisal to obtain economic or market rent of the displacement site.

   b. **Lease to Mortgage** – If a displaced business elects to purchase a replacement site instead of leasing, the specialist must use the difference between the rent or economic rent at the displacement site and what the market lease rate would be at the replacement site. The specialist may need to work with the appraisal department or an outside source to determine market rent of the replacement site. Outside sources could include but are not limited to real estate agents, appraisers, property management companies, etc.

   c. **Change of Business** – Change of business should not affect the calculation for increased costs since it is based on the real property and is limited to what is reasonable for that type of business.

7. Other items WSDOT considers essential to the reestablishment of the business.

B. **Ineligible Expenses**

49 CFR 24.304(b)
WAC 468-100-306(2)

1. Purchase of capital assets such as office furniture, machinery, trade fixtures.
2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of business.
3. Interior or exterior refurbishments at the replacement site for aesthetic purposes.

4. Interest on money borrowed to make the move or purchase the replacement property.
5. Payment to a part-time business in the home which does not contribute materially to the household income.

### 12-7.2.3.1 Reestablishment Expenses for Non-occupant Owners

A non-occupant landlord whose sole activity at the site is providing space to others, is eligible for a Reestablishment Expense Payment up to $50,000. The owner does not have to own personal property that must be moved in connection with the displacement.

Typical examples of leased space are:

- Mobile home parks.
- Business properties (e.g., warehouses, office space) including bare land used for storing equipment.
- Farms and ranches (or any bare land used for agriculture or livestock grazing).
- Coin operated laundries or any other vending operation (newspapers).
- Residential units.

Appendix 12-14

A. To be eligible for this payment, the displaced person must establish that the leasing of space is a bona-fide business activity, and not part of a real estate investment (displaced business owners that lease land and /or buildings to themselves for limiting tax or liability purposes is not likely a landlord displacement) or family situation (not an arm's length transaction such as but not limited to a son renting to his father at below market rent), as supported by the displaced person's income tax records.

B. In order to be eligible for reestablishment payments, the Relocation Specialist must view a copy of the most recent tax return filed and document in their diary that it is an operational business, farm, or NPO. In a landlord situation, it will be necessary for the specialist to obtain a complete/entire certified copy of the most recent year's tax return. In order to be considered complete, the tax return needs to include the 1040 form and appropriate attached schedule(s).

   Certification of the tax return will need to be completed by the individual who prepared the return, i.e., accountant, attorney, business owner. Once the tax return is reviewed by Headquarters, the tax return will be destroyed. The statement can be as simple as the following: "I hereby certify that this tax return is a true and correct copy of my filed return."

49 CFR 24.1
RCW 8.26.105(1)

C. To be eligible to receive a reestablishment payment <u>and avoid duplicate or unreasonable reimbursement</u>, the Non-occupant owner must:

   1. Acquire a replacement location within the 18-month time period.
   2. Lease and/or purchase the replacement property as evidenced by a copy of a new lease or purchase and sale agreement.

D. Specialist should obtain copy of the insurance policy and/or loan documents from the landlord business to determine the replacement site is being purchased for business purposes and will not be occupied by the owner.

E. FHWA has determined that a lessee who subleases space is not eligible for a Reestablishment Payment.

### 12-7.2.4 Related Nonresidential Eligible Expenses

49 CFR 24.303
RCW 8.26.035(1)
WAC 468-100-303

The following expenses, in addition to those move costs discussed in Section 12-7.2.1 are eligible for reimbursement provided they are actual, reasonable and necessary:

A. Connection to available nearby utilities will be reimbursed if expenses are considered to be reasonable and necessary and associated with running the utilities from the right of way adjacent to the replacement site to the improvements on the replacement site. This does not include the costs of installing/connecting a well or septic at the replacement site. This constitutes the purchase of a capital asset per WAC 468-100-306(2)(a) and are considered not eligible for reimbursement (definition of utility).

   For example, if a displaced business has to run utilities across or past multiple parcels, it would not be considered reasonable and reimbursement would be limited to expenses associated with making the connection from the right of way adjacent to the replacement site only. In some cases, WSDOT may consider it reasonable to reimburse a displaced business for the expenses associated with bringing the utility from the central connection point to the right of way adjacent to the replacement property as a reestablishment expense under WAC 468-100-306(1)(g) – other items the agency considers essential to the reestablishment of the business.

Appendix 12-12

B. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). The displaced business must hire a professional in order to be eligible for reimbursement. However, in some instances the displaced business can apply for a waiver and request that their displaced business be reimbursed for their work.

   1. To apply for a waiver the displaced business must submit to WSDOT in writing a request to perform the professional services themselves. The request must include the following:

      a. Business qualifications.

      b. Reasons for wanting to complete the work instead of hiring an outside professional.

      c. Hourly rate.

      d. Scope of work – not to exceed the amount of the proposal submitted.

C. Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by WSDOT. For clarification, the term "impact fees," as it appears in WAC 468-100-303(3), pertains strictly to heavy utility usage. The full sentence in that regulation reads: "Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency." The meaning of that sentence is that the prepositional phrase "for anticipated heavy utility usage" applies to both "impact fees" and "one time assessments."

49 CFR 24.305
RCW 8.26.035(3)
WAC 468-100-304

### *12-7.3 Fixed Payment for Nonresidential Moving Expenses*

A business, farm, or nonprofit organization may be eligible to choose a fixed payment in lieu of any payment(s) for actual costs for moving and reestablishment. This payment is sometimes referred to as an "In Lieu" payment. The payment is based on net earnings rather than actual moving costs. The minimum payment is $1,000 and the maximum payment cannot exceed $40,000 depending on the net earnings of the displaced business, farm, or NPO.

#### 12-7.3.1 Business Eligibility

49 CFR 24.305(a)
WAC 468-100-304(1)

A. The displaced business will be eligible for the fixed payment if the department determines that:

1. The business is not part of a commercial enterprise having more than three other establishments (not being acquired by the state) engaged in the same or similar business.
2. The business is not operated at the displacement dwelling or site solely for the purpose of renting said dwelling or site to others.
3. The business cannot be relocated without a substantial loss of its existing patronage.
4. The business contributed materially to the income of the displaced person during the two taxable years prior to the displacement. The term "contribute materially" is defined in WAC 468-100-002(7).
5. The business owns or rents personal property which must be moved as a result of WSDOT's acquisition and for which the displaced business would incur an expense.

49 CFR 24.305(b)
WAC 468-100-304(2)

B. **Determining the Number of Businesses** – It is acceptable to apply the considerations discussed in this section to determine the number of business that are displaced by a public project.

In determining whether two or more business activities constitute a single business (entitled to only one fixed payment) or two or more separate businesses (each entitled to fixed payment), all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared.
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.
3. The entities are held to the public, and to those customarily dealing with them, as one business.

4. The same person or closely related persons own, control, or manage the affairs of the entities.

C. **Loss of Existing Patronage**

1. Determination as to loss of existing patronage is made only after consideration of all pertinent circumstances, including but not limited to the following factors:
   a. The type of business conducted by the displaced person.
   b. The nature of the clientele of the displaced person.
   c. The relative importance of the present and proposed location to the displaced business and the availability of a suitable replacement location for the displaced person.
2. The term "loss of existing patronage" is construed to mean loss of support or loss of business by customers, patrons, clients, or paying guests. Whenever it is reasonably presumed that the net income of the business for the 12-month period after relocation will be less than the net income of the business before relocation, it can be construed that the business will suffer a "loss of existing patronage."
3. A business is presumed to meet the requirement for establishing loss of patronage unless WSDOT determines otherwise.

D. **Payment Determination** – The term "average annual net earnings" means one-half of the net earnings of the business before income taxes, during the two taxable years immediately preceding the taxable year in which the business relocated.

49 CFR 24.305(e)
WAC 468-100-304(5)

1. If the two taxable years immediately preceding displacement are not representative, the Relocation Specialist may use a period that would be more representative. Prior to using this alternative procedure, there must first be a determination that the proposed construction or other nontypical factors not within the control of the displaced business were the cause of a decline in net income for the business. The agent should refer to the reference material titled "How to Analyze Income Tax Forms . . . In Lieu of Payments" from the IRWA's 59th Annual International Education Conference in June 2013 in order to help them through the process of analyzing the returns. Contact Headquarters Relocation Review if you need a copy.
2. "Average annual net earnings" includes any compensation paid by the business to the owner, the owner's spouse, or dependents.
3. In the case of a corporate owner of a business, earnings include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation and do not include compensation paid to said owner. For the purpose of determining majority ownership, stock held individually, jointly, or in common by a husband, his wife, and their dependent children is treated as being held in one and the same interest.

E. **In Business Less Than Two Taxable Years** – If a business has been in operation for less than two years prior to displacement, the average annual net income is determined by averaging the monthly net income and prorating this amount for 24 months.

F. **Documentation from Displaced Business** – For the owner of a business to be entitled to this payment, the business must provide information to support its net earnings. The Relocation Specialist assists the displaced business in completing the Application for Fixed Payment for Moving Expenses: Business-Farm-NPO (see Chapter 13 for the RES form). This form indicates the requirements for eligibility and the method of computation of the payment. It also requires that the displaced business attach copies of income tax returns and/or other evidence from which "average annual income" is determined in the application.

1. Certified copies of income tax returns for the last two tax years need to be obtained from the business owner. The Relocation Specialist will need to obtain the following tax documents based on the filing status of the displaced business:
   - Sole Proprietorship
     - Form 1040
     - Schedule C
     - W-2 or payroll records of owner's spouse or dependent child
   - Partnership
     - Form 1065
     - W-2 for spouse/dependent wages
   - Limited Liability Company (LLC)
     - Form 1065/1120/1120S
     - Schedule C
   - Corporation
     - Form 1120/1120A
     - List of shareholders (owners) and a list of their spouses/dependents along with W-2's or payroll records
   - S Corporation
     - Form 1120S
     - W-2 for owners, spouses/dependents
     - List of owners and family members
   - Farms
     - Form 1040/1065/1120/1120S
     - Schedule F
   - Nonprofit Organization
     - Form 990
2. Other forms of information commonly used for official business purposes may also be accepted such as financial statements certified by a qualified practicing professional (such as a CPA or an attorney).

3. WSDOT may accept an affidavit from the owner certifying the amount of net earnings and granting WSDOT the right to review the records and accounts of the business. The owner's statement alone is not sufficient if the amount claimed exceeds the minimum payment of $1,000.
4. Strict confidence regarding tax returns is maintained and no other use is made of them. Headquarters Relocation will destroy or return the financial records once the review is complete and the specialist completes Fixed Payment Work Sheet (RES-519) and Application for Fixed Payment (RES-538).

### 12-7.3.2 Farm Operation

49 CFR 24.305(c)
WAC 468-100-304(3)

In lieu of actual cost payments, any owner of a displaced farm operation may be eligible to receive a payment equal to the average annual net earnings of the farm operation. Such payment shall be not less than $1,000 or more than $40,000 and will be paid if the following requirements are met:

A. The farm operator has discontinued the entire farm operation at the present location or has relocated the entire farm operation.

B. In the case of a partial acquisition, the operator is considered displaced from a farm operation whenever any one of the following applies:

1. The property remaining after the acquisition will not be an economic unit for the same farm operation as determined by WSDOT during the appraisal process.
2. The acquisition caused the operator to be displaced from the farm operation on the remaining land.
3. The acquisition caused such a substantial change in the principal operation or the nature of the existing farm operation as to constitute a displacement.

The Fixed Payment for farms is determined in the same manner as for a business.

### 12-7.3.3 Nonprofit Organization

49 CFR 24.305(d)
WAC 468-100-304(4)

A displaced nonprofit organization (NPO) may choose a fixed payment in lieu of actual moving and reestablishment if the NPO cannot be relocated without a substantial loss of its existing patronage, membership, or clientele. The payment will not be less than $1,000 nor more than $40,000 depending on financial records.

A. **Eligibility** – The region determines if the organization meets the definition of a NPO in Section 12-4.1 and is otherwise eligible.

B. The amount of the payment is the average of two years annual gross revenues less administrative expenses. Gross revenues may include titles, membership fees, or other forms of fund collection. Administrative expenses include rent, utilities, salaries, as well as fund raising expenses.

#### 12-7.3.4 Selection of the Fixed Payment Option by Displaced Business

A business owner may indicate their desire to apply for the fixed payment early in the relocation process; however the Relocation Specialist must compute the remainder of the displaced business' monetary entitlements prior to the delivery of the eligibility letter (RES-505) to the business owner. This means the specialist will need to either obtain moving bids or complete an agent estimate depending on the circumstances. Refer to Section 12-7.2 for complete procedures. The displaced business needs to have the full relocation picture in order to make an informed decision regarding the fixed payment option.

### *12-7.4 Move Cost Estimates by Relocation Specialists*

A. A Relocation Specialist, after appropriate training, may prepare a move cost estimate if the amount of the estimate does not exceed $5,000. The amount of such estimate may be used as the basis for negotiating an agreement for self moves and is particularly useful when dealing with moving the personal property of a small, uncomplicated business, a non occupant dwelling owner (or landlord) or moving personal property from storage.

   1. The Relocation Specialist works closely with the displaced person to develop a written and photo inventory of the personal property item to be moved.

B. **Computation** – The Relocation Specialist computes the move cost estimate in accordance with the Washington State Utilities and Transportation Commission Tariffs Rate Schedule and/or the personal property only schedule as set forth in the PPO section of this chapter. If the combination of move methods is used and the amount exceeds the $5,000 limit the specialist must obtain move cost estimates by a qualified mover.

   1. The computation and supporting documentation are sent to the RAPM for review and approval.

### *12-7.5 Claiming Nonresidential Entitlements*

#### 12-7.5.1 Timing Requirements

A. Claims for moving payments should generally be made after the move of personal property has been completed. The Relocation Specialist must monitor the move to assure that adequate progress is being made to complete the move. Once the move has been completed and verified by the Relocation Specialist, the Relocation Specialist assists the displaced business, farm, or NPO with filing their claim(s).

B. Claims for related moving expenses should be made once the paid receipt or invoice has been submitted for payment. The specialist should also supply Headquarters with a copy of the final product, i.e., newly printed business card, stationary.

49 CFR 24.207(d)
WAC 468-100-207(4)

C. Claims for moving payments must be made within 18 months after the following dates:

   1. Date of vacation for a tenant occupant.
   2. Date of vacation or date of payment for the property, whichever is later, for an owner occupant.

### 12-7.5.2 Reestablishment Claims

In order to provide adequate advisory services, the Relocation Specialist needs to work closely with the business owner to discuss potential claims and the business owner's plans to reestablish the site. Whenever possible, the Relocation Specialist should view the replacement site prior to any reestablishment expenses being incurred. Photos of the site should to be taken before and after any modifications are made.

A. See Section 12-7.2.3 prior to processing a reestablishment claim.

B. Claims for reestablishment expenses can be made by the displaced business as the expenses are incurred or all at once upon completion of the replacement site.

C. If the displaced business leases a replacement site, the specialist will need to obtain copies of both the existing lease at the displacement site and the signed lease at a replacement site. Upon receipt, this information should be forwarded to Headquarters review. This information is necessary in order to help determine if the claims submitted are reasonable and necessary and will help to avoid double payments for those items covered by the new lease.

D. In order to be eligible for reestablishment payments the Relocation Specialist must view a copy of the most recent tax return filed and document in their diary that it is an operational business, farm or NPO. In a landlord situation it will be necessary for the specialist to obtain a complete/entire certified copy of the most recent year's tax return. In order to be considered complete the tax return needs to include the 1040 form and appropriate attached schedule(s).

   Certification of the tax return will need to be completed by the individual who prepared the return, i.e., accountant, attorney, business owner. Once the tax return is reviewed by Headquarters, the tax return will be destroyed. The statement can be as simple as the following: "I hereby certify that this tax return is a true and correct copy of my filed return."

   It is highly recommended that the Relocation Specialist work closely with the business owner to discuss potential claims and the business owner's plans to reestablish the site. Whenever possible, the Relocation Specialist should view the replacement site prior to any reestablishment expenses being incurred. Photos of the site should to be taken before and after any modifications are made.

### Preapproval/Approval Process

When a business owner wants to make a reestablishment claim, the Relocation Specialist should:

- View the replacement site with the owner and discuss the details of the potential claim. Photos should be taken of the site to document the replacement site before the work is performed.
- Once scopes of work, bids, proposals, estimates, or invoices are received for the reestablishment claim, the Relocation Specialist needs to write a recommendation for approval. The recommendation can be an email or internal WSDOT Memo. The specialist should organize the claim so that it can be easily reviewed and provide an outline of the recommendation for reimbursement. It may be necessary for the Relocation Specialist to contact the business owner or service provider for clarification of the invoice. The recommendation is written to the reviewer and transmitted through the Region Relocation Supervisor. The recommendation should include the following information:

Appendix 12-4

  a. Date, who the recommendation is from, who it is to, project name, parcel number, displaced business name, and displacee number
  b. Brief description of the business and the service provided
  c. Detailed description of the reestablishment claim, i.e., what is the claim? Why does the business need it? Did they have it at the displacement location? Is it code required? If so, what is the code? If required by code, the specialist should provide a copy of the code requirement.
  d. The recommendation needs to cite which provision under WAC 468-100-306 applies.
  e. The specialist needs to make a statement recommending approval or denial of a specific contractor for work to be performed and/or dollar figure based on the above information.
  f. Attached supporting information (photos, invoices, local code sheets, market studies, etc.).
  g. An updated diary must be submitted with all recommendations.
- The reviewer may ask for additional information or clarification and either approve or deny your recommendation.

### Actual Claim Submittal

1. Once the business has completed the reestablishment work for which they are submitting a claim, the specialist will visit the replacement site and take photos of the completed product. The business owner needs to supply proof of payment (invoices or receipts) that clearly identifies the work performed. WSDOT can pay on their behalf if the business owner agrees the work was performed in accordance with the scope and to their satisfaction. If the claim is more than the preapproved amount then you cannot get the relocation assistance voucher signed by the displaced

business owner until the amount of the claim is approved by the relocation reviewer. In these situations, the Relocation Specialist should:

- Send an email or memo to the reviewer explaining why the actual amount is more than the preapproved amount. Be sure to reference the preapproval. Include a copy of the actual paid invoice/receipt. Once you receive approval from the reviewer you may move on to the next step.

2. If the claim has been preapproved or approved as described above, the Relocation Specialist can create a voucher for the amount of the claim (based on proof of payment or work performed in accordance with the scope and accepted by the business owner). If the claim has not been preapproved, the Relocation Specialist still needs to create a recommendation as described in the preapproval process. Once Headquarters approval is received, the business owner, Relocation Specialist, and Region Relocation Supervisor need to sign the voucher.
3. At the same time they are signing the voucher for the work performed, the business owner needs to sign the Application for Reestablishment Expenses (RES-523). The original form is then sent to Headquarters along with the voucher for signature and processing.

### 12-7.5.3 Professional Services Claims

A. Not every displaced business is considered a complex move and professional services may not be considered reasonable and/or necessary. Claims for professional services must be considered "reasonable and necessary" and should be preapproved by WSDOT in order to claim reimbursement. If the displaced business desires to perform their own professional services they need to apply for a waiver as set forth in Section 12-7.2.1.A.8 and Section 12-7.2.4.B. Relocation specialist should ask the displaced business to provide a minimum of two "Scope of Work" estimates from specialists prior to hiring them to provide professional services including acting as a move planner as discussed in the advisory services section of of this chapter. The reimbursement to the displaced business may not exceed the lowest acceptable "Scope of Work" submitted by the specialist. The Scope of Work will help WSDOT determine those costs that will be considered reimbursable to the displaced business. Reimbursement of certain claims will depend on the complexities and/or nature of the business and will be reimbursed based on product and level of effort as determined by the department. Only work performed in relation to relocating the personal property will be eligible for reimbursement. The following is a list of those items that may be considered eligible:

1. Preparation of floor plan layout/configuration and flow of business operation as it relates to the personal property at the displacement site.
2. Planning of which personal property items will be moved, replaced, abandoned, discarded, or not moved.

3. Depending on the complexity of the move—the preparation or analysis of process systems that relate to the personal property. An example of a process system could be a dust collection system for a woodworking company.
4. Research code requirements for installation of personal property currently grand-fathered at the displacement site that may require code modifications at the replacement site.
5. Preparation of floor plan layout/configuration and flow of business operation as it relates to the personal property at the replacement site.
6. Providing of professional services prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation includes but is not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of the site).

   This portion of professional services is reimbursed as a related nonresidential eligible expense.

49 CFR 24.303(b)
WAC 468-100-303(2)

B. WSDOT will be responsible for the following:
   1. Preparation of written/photo inventory with the help of the business owner.
   2. Work with business owner to create the Request for Proposal/Moving Specifications to secure move bids to move all personal property to the replacement site.
   3. Securing move bids including 3rd party bids.
   4. Coordination of movers.
   5. Monitoring all aspects of the move.
   6. Post move inventory.
   7. Obtaining inventory from business owner of all items needing to be reprinted that are considered obsolete prior to the actual date of the move.
   8. Review and approval of all claims for relocation as it relates to the personal property.
   9. Processing of all claims for payment.

C. Displaced Business Owner will be responsible for the following (items 8 thru 11 may be performed by the displaced business, WSDOT or a combination of both but can also be reimbursed if the displaced business hires a professional services specialist):
   1. Working with WSDOT specialist to prepare necessary inventory, identify all vendor owned equipment, and identify those items to be abandoned or replaced.
   2. Notifying WSDOT specialist when the replacement site has been located.
   3. Notifying WSDOT specialist of anticipated move date.

4. Preparing a sample file of all documents that must be reprinted due to change of address and/or phone number. Specialist should provide displaced business with appropriate inventory form (RES-545).
5. Providing valuation of personal property to WSDOT specialist for the purpose of obtaining replacement value insurance prior to the preparation of the Request for Proposal.
6. Obtaining preapprovals from WSDOT specialist before committing to financial obligations for the purpose of determining eligibility for reimbursement of claims.
7. Keeping WSDOT informed as it relates to their relocation.
8. Preparation of floor plan layout/configuration and flow of business operation as it relates to the personal property at the displacement site.
9. Planning of which personal property items will be moved, replaced, abandoned, discarded, or not moved.
10. Depending on the complexity of the move—the preparation or analysis of process systems that relate to the personal property. An example of a process system could be a dust collection system for a woodworking company
11. Verifying code requirements for installation of personal property currently grand-fathered at the displacement site that may require code modifications at the replacement site.

D. Claims for professional services can be made by the displaced business as the expenses are incurred or all at once upon completion of the work.

E. Claims must be supported by adequate documentation and should clearly identify work performed. Each claim should be supported by a visible product, which will help to determine level of effort.

1. Relocation specialist should organize the claim so that it can be easily reviewed and should provide an outline of the recommendation for reimbursement.
2. Once the claim is prepared, the package should be sent to the RAPM for review and approval.

F. The use of a hired professional services specialist is strictly between the displaced business and the specialist. WSDOT will reimburse eligible expenses, based on adequate documentation, but WSDOT has no responsibility/liability for what the professional services specialist does or how it is done. In rare cases, a displaced business may apply for a waiver and ask that their business be reimbursed for performing the professional task as set forth in Section 12-7.2.1.A.8 – Actual Move Costs and Section 12-7.2.4.B – Related Nonresidential Eligible Expenses.

### 12-7.5.4 Nonresidential Payment Claims

As a general rule, moving cost payments, reestablishment payments, or the fixed payment are not made prior to the completion of the move and/or the expense being incurred. However, exceptions arise where due to extenuating circumstances, the case merits special consideration. When these cases arise, the RAPM may authorize advance payment of relocation claims.

49 CFR 24.207(c)
RCW 8.26.085(1)(b)
WAC 468-100-207(3)

A. **Advance Moving Payments** – It is often necessary for a business to request advance payments during their move. The RAPM may approve advance payments based on the amount of the move that has been completed. The Relocation Specialist should monitor the move and determine the percent of the move that has been completed. The Relocation Specialist should then request an advance payment for the displaced business based on the amount of move that has been completed. Care must be exercised so advance payments do not create a shortage of remaining entitlements that would cause the move not to be completed. Advance move payments should not exceed 25 percent of total move costs unless requested and approved by the RAPM.

B. **Reimbursement of Nonresidential Moving Payments** – Moving payments for nonresidential claims can be made directly to the displaced business, directly to a commercial mover or third party on behalf the displaced business owner or a combination.

1. When the displaced business has selected a self move or a Fixed payment, the payment of entitlements should be paid directly to the displaced business. The Relocation Specialist should prepare the claims (vouchers) in accordance with procedures set forth in Chapter 10, obtain appropriate signatures, and submit the claim to Headquarters for processing and payment.

2. When the displaced business has requested the department to provide a commercial move, the Relocation Specialist must verify that the move is complete and that all personal property has been removed from the displacement site and moved to the replacement location. Upon verification, the moving company should submit an invoice to the department and payment will be made directly to the commercial mover on behalf of the displaced business. The Relocation Specialist must obtain the signature of the displaced business on the relocation assistance voucher. The Relocation Specialist should also obtain a Substitute W-9 and SWV form from the commercial mover in accordance with procedures set forth in Chapter 10.

3. If the displaced business asks that any payment be made directly to a third party for services rendered during the move, the Relocation Specialist should have the displaced business sign a claim (voucher) directing payment be made to a third party. In no event shall any such direct payment to a third party obligate the department to pay more than the agreed upon move amount as shown in the executed Moving Expense Agreement. The Relocation Specialist should also obtain a Substitute W-9 form from the 3rd party in accordance with procedures set forth in

Chapter 10. The Relocation Specialist should clearly document the request to make a 3rd party payment on the displaced business' behalf in the diary.

C. **Required Documentation** – If a displaced business owner elects to lease a replacement site, the specialist should obtain a copy of an executed lease and any applicable amendments for the replacement site from the displaced business owner as soon as feasible. The specialist should also obtain a copy of the existing lease.

49 CFR 24.207(a)
WAC 468-100-207(1)

1. The lease will help the specialist determine the reasonableness and level of reimbursement for potential claims associated with the reestablishment of the business, i.e., square footage requirements, increased cost of doing business based on property taxes, property insurance, utilities, and lease costs.
2. The lease is necessary to verify that duplicate payments are not made on items that will be covered in the lease at the replacement site by the building owner.

### *12-7.5.4.1 Processing and Payment of Claims*

A. When the displaced business is ready to make claims for any or all of their relocation entitlements, including moving costs, reestablishment payments and related moving costs, the Relocation Specialist provides Headquarters Relocation Reviewer with the appropriate recommendation for approval and the displaced business with appropriate forms for making the claim and secures necessary documentation from the displaced business, which includes a Substitute W-9 and SWV form.

B. Once these forms are signed by the displaced business and the SWV number obtained by the Relocation Specialist, the claim voucher and associated documentation are transmitted to Headquarters for final approval.

C. Upon final approval by Headquarters, the RAPM authorizes payment and the voucher is forwarded to the accounting section for processing and generation of the payment (warrant).

D. Both the region and Headquarters should monitor partial and advanced payments to assure that the displaced person does not receive payment in excess of their maximum entitlements.

E. **Coding** – Relocation Assistance Vouchers are coded based on the type of relocation payment. The specialist must select the appropriate coding from the object codes and definition chart, i.e., residential replacement housing payments or moving expenses; non-residential reestablishment or moving expenses; and personal property only moving expenses.

Appendix 12-3

49 CFR 24.301(j)
WAC 468-100-301(10)

### 12-7.6 Abandonment of Personal Property

The specialist should work closely with the displaced business to remove all personal property items from the right of way. The agency will pay the cost to move the items as set forth in Section 12-7.2 – Actual Move Costs and appropriate calculations should be performed and required notices provided. Disposal costs are not paid in addition to the move costs. The specialist should not encourage items to be left on the property. In some cases personal property is left at the displacement property due to the agency waiving the need for the displaced person to make a reasonable attempt to sell the personal property under a SPP or DLT or in rare instances just abandoned, the Relocation Specialist will need to obtain the region RESM approval prior to obtaining a signed abandonment letter from the displaced business stating the displaced person is abandoning the personal property to the state and cannot claim additional relocation payments for the abandoned property. The approval should be documented in the specialist's diary. The abandoned personal property will become the property of WSDOT through the transfer of ownership provision discussed in WAC 468-100-301(10) or through a Bill of Sale to WSDOT. In either case, the personal property will be managed by our Property Management Department. Once the region RESM approval is obtained, the moving expense attributable to the abandoned property must be deducted from the displaced business' final move payment. The Relocation Specialist should make the necessary arrangements through the Relocation Assistance Program to hire a mover to clear the property or check with Property Management to get the items removed from the property according to procedures set forth in Chapter 11. If the property is clear at the vacate inspection, there is no need for the specialist to obtain a signature from the displaced business on the abandonment notice.

49 CFR 24.501
WAC 468-100-501

## 12-8 Mobile Homes

Mobile homes as defined in Title 49 of the Code of Federal Regulations (49 CFR), may be determined to be either real property or personal property during the appraisal process. A mobile home includes manufactured homes and recreational vehicles (RV) used as permanent residences. As detailed in Chapter 4, the department may acquire mobile homes as real or personal property. The acquisition of the mobile home is accomplished as outlined in Chapter 6. A Mobile Home Work Sheet (RES-220) is available to assist the RESM with determining whether or not to acquire a mobile home. 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 relocation section in each region should obtain move costs from mobile home movers and subcontractors within their area to establish typical costs to tear down, move, set up, and reconnect utilities for an RV used as a permanent residence, a single wide, double wide, and triple wide mobile home. These typical costs and research information should be recorded on the Mobile Home Move Cost Work Sheet (RES-546) and given to the appraisal department on an annual or as needed basis. These typical costs established can be used by the appraisal section each time a mobile home is within the acquisition area and considered personal property.

### 12-8.1 Eligibility

49 CFR 24.502(a)
49 CFR 24.503
WAC 468-100-502(1)
WAC 468-100-503

A. Owners and/or occupants of mobile homes, as defined in WAC 468-100-002, that are displaced by a public project may be eligible for different types of relocation replacement housing payments depending on different situations in relation to ownership and occupancy.

B. There are different combinations of ownership and occupancy when dealing with mobile homes, as follows:

   1. A displaced person owns both the mobile home and the site on which the mobile home is located.

   2. A displaced person owns the mobile home but rents the site on which the mobile home is located.

   3. A displaced person rents the mobile home. The lot rent may or may not be included in the rent of the mobile home. This situation will be handled as a typical residential relocation of a 90-day tenant.

   4. A displaced person rents the mobile home and owns the site on which the mobile home is located.

C. All occupants of mobile homes being displaced are eligible for the costs to move their personal property located inside the mobile home and outside on the site of the mobile home and for advisory services.

### 12-8.2 Mobile Home Relocation Situations

The entitlement relating to personal property is the payment of the cost to move such personal property when it is economically feasible. However, this can vary when dealing with mobile homes depending on the following situations:

A. Mobile home is considered personal property and can be moved to a replacement location:

   1. The mobile home will not be acquired by the department.

   2. A replacement housing payment (price differential payment) for the mobile home will not be calculated for an owner-occupant. However, a replacement housing payment (rent supplement or price differential payment) for the site will be computed.

   3. The owner of the mobile home may be reimbursed for the actual and reasonable costs which include cost of moving the mobile home from the displacement site to an acceptable replacement location, for making that mobile home meet decent, safe, and sanitary standards, and per diem costs while the mobile home is being moved and reconnected. Reasonable per diem rates should be established prior to the move as follows:

      a. The Relocation Specialist secures three estimates, if possible, to move the mobile home from the displacement site to the replacement site. The estimates should include all disconnect, tear down, transportation, set up, and reconnect costs associated with the move of the mobile home as well as any costs to bring the mobile home up to code or to meet DSS standards.

49 CFR 24.301(g)(9)
WAC 468-100-301(7)(i)

49 CFR 24.301(g)(8)
WAC 468-100-301(7)(h)

b. The estimate should also include the cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings; anchoring of the home; and utility hookup charges. If any of the attached appurtenances need to be replaced, the department should pay for these costs as well.

c. The lowest acceptable estimate will be selected as the mover if the displaced person wants to have their mobile home moved. If the displaced person wants to move their mobile home themselves, they should be offered a self move in an amount not to exceed the amount of the lowest acceptable estimate.

d. Any utility connections that are not included in the move estimates will have to be paid as incidental move expenses.

49 CFR 24.301(g)(10)
WAC 468-100-301(7)(j)

e. Mobile Home Park Entrance Fees. If a displaced mobile home owner is required to pay a nonrefundable entrance fee to move their mobile home into a mobile home park, that fee will be paid as an incidental moving cost.

f. Relocation will need to address personal property taxes on all mobile homes being moved by the department that are considered personal property. Delinquent personal property taxes should be handled as a Last Resort incidental relocation expense only if the displaced person does not have the financial means to bring the taxes current.

B. Mobile home is considered personal property and cannot be moved to a replacement location or move is considered not cost effective:

1. The RESM can authorize the purchase of the mobile home. Upon authorization the department will acquire the mobile home through the acquisition process according to procedures set forth in Chapter 6. ***Note:*** Any personal property taxes will be handled by Acquisition and the mobile home will not be salvaged back to the owner.

2. The Relocation Specialist will calculate a replacement housing payment depending on occupancy status (owner/tenant) of the unit. This could include both a price differential payment and a rent supplement payment.

C. Mobile home considered real estate:

1. The mobile home will be acquired through the acquisition process as real estate according to the procedures set forth in Chapter 6.

2. No payment will be made to the mobile home owner for moving it to a replacement site.

3. If the owner retains salvage of the mobile home no moving entitlement will be paid to disconnect, move, and reconnect the mobile home. Salvage of the mobile home needs to be consistent with procedures set forth in Chapters 6 and 11.

4. The Relocation Specialist will calculate a replacement housing payment depending on occupancy status (owner/tenant) of the unit.

## 12-8.3 Replacement Housing Payments for Mobile Home Owners

49 CFR 24.502(a)(3)
WAC 468-100-502(1)(c)

### 12-8.3.1 Circumstances Requiring Replacement Housing for Mobile Home Owners

The following list of circumstances will be addressed during the appraisal process in accordance with the procedures outlined in Chapters 4 and 6.

A. If the mobile home being displaced will not meet entrance requirements for mobile home parks in the area, a replacement mobile home will have to be made available that will meet park requirements.

B. If the mobile home is determined to be incapable of being moved without complete or substantially irreparable damage, a replacement mobile home will have to be made available to the displaced person.

C. If a mobile home cannot be relocated because there is no available comparable replacement site, a replacement mobile home will have to be made available to the displaced person.

D. If the RESM authorizes the purchase of the mobile home because it has been determined the mobile home is not, and cannot be made decent, safe, and sanitary and/or determined not to be cost effective to move the mobile home, a replacement mobile home will have to be made available to the displaced person.

### 12-8.3.2 Eligibility Requirements

49 CFR 24.502(a)
49 CFR 24.503
WAC 468-100-502(1)
WAC 468-100-503

Ownership and occupancy requirements for receiving any replacement housing entitlement as a mobile home owner/tenant are the same as for a regular residential housing situation. The requirements for an owner/tenant occupant in a typical, constructed residential dwelling are to be applied to the occupant of a mobile home in all respects. Refer to Section 12-6.1 for these requirements.

### 12-8.3.3 Replacement Housing Payments for Mobile Home's Acquired by the Agency

WAC 468-100-504(1)

All calculations of Replacement Housing Payments for mobile homes are to be prepared in the same manner as for residential displacements described in Section 12-6. The types of Replacement Housing Payments for the different combinations of ownership and occupancy of mobile homes being acquired by the department as either real property or personal property as determined by the RESM and as established in Chapter 4 are as follows:

A. Mobile Home Relocation Situations

WAC 468-100-502(2)
WAC 468-100-502(4)

1. If the displaced person owns both the mobile home and the site, the Relocation Specialist should calculate the following:

   a. A Price Differential for the mobile home and Price Differential for the site; or

   b. A single Price Differential using both the mobile home and site.

WAC 468-100-502(2-4)
WAC 468-100-503

2. If the displaced person owns the mobile home, but rents the site, the Relocation Specialist should calculate the following:

   a. A Price Differential for the mobile home and a Rent Supplement for the site. The rent supplement for the site can include the cost of utilities as needed.

      (1) For a 90-day owner occupant of a rented mobile home site their rental assistance payment may be used to rent a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe, and sanitary dwelling.

WAC 468-100-503

3. If the displaced persons rent the mobile home and the site, the Relocation Specialist should calculate the following:

   a. A Rent Supplement for the mobile home and a Rent Supplement for the site; or

   b. A single Rent Supplement if the lot rent is included in the mobile home rent.

   A displaced tenant eligible for a rent supplement payment who elects to purchase a replacement dwelling (down payment assistance) is eligible to receive an amount, not to exceed the amount of the calculated maximum rent supplement or $7,200 whichever is greater, to enable the displaced tenant to make a down payment toward the purchase of a replacement dwelling. Both rent supplements can be combined toward the purchase of the replacement dwelling.

WAC 468-100-502(2)
WAC 468-100-502(4)
WAC 468-100-503

4. If the displaced person rents the mobile home and owns the site on which the mobile home is located, the Relocation Specialist should calculate the following:

   a. A Rent Supplement for the mobile home and a Price Differential for the site.

B. **Taxes** – The transfer of a mobile home is subject to either real estate excise tax or sales tax depending on the characteristics of the situation, regardless of whether the mobile home is classified as real or personal property. If the actual replacement is a mobile home the acquiring agency will pay sales tax as an incidental expense if:

- The purchase of the mobile home is the initial retail sale of the mobile home.
- The mobile home is purchased from a dealer's lot, regardless of the mobile home being new or used.
- The removal of the mobile home from the land is a condition of the sale.
- The mobile home is not affixed to the land by a foundation and does not have connection for utilities.

The buyer pays sales tax when they transfer title. The tax is based on the purchase price and the county taxes where the mobile home is located. The reimbursement is limited to the amount necessary to purchase the most comparable replacement dwelling selected by the department and used to establish the RHP. Sales tax rates can be obtained by visiting the Washington State Department of Revenue website at http://dor.wa.gov/content/findtaxesandrates/salesandusetaxrates/lookupataxrate.

C. **Transfer Fees** – There are transfer fees associated with transferring the title of a mobile home into the purchaser's name. Transfer fees should be handled as an incidental expense and paid based on the actual cost. The reimbursement is limited to the amount necessary to purchase the most comparable replacement dwelling selected by the department and used to establish the RHP. This information can be located on the Department of Licensing website at www.dol.wa.gov/vehicleregistration/fees.html.

### 12-8.4 Other Considerations

A. **Partial Acquisition of Mobile Home Park** – If WSDOT determines that its land acquisition will result in mobile home dwellings not within the actual acquisition area being forced to move, those mobile home owners and/or occupants may be eligible to receive the same payments as though their dwellings were within the actual taking. Prior to any contact with such owners and occupants relative to relocation entitlements, the region conducts an investigation and submits a report to the RAPM for authorization to provide relocation entitlements. Such report includes the basis for such determination about being displaced, the number of mobile homes being forced to move and any other relevant facts or information.

49 CFR 24.501(b)
WAC 468-100-501(2)

B. **Computation on Next Highest Type Dwelling** – When a comparable mobile home is not available, the replacement housing payment is calculated using the next highest type of dwelling that is available and meets applicable requirements and standards, i.e., a higher type mobile home or a conventional dwelling.

49 CFR 24.502(b)(3)
WAC 468-100-502(2)(c)
WAC 468-100-504(2)(a)

C. **Trading in a Mobile Home** – If a mobile home is considered personal property and the region RESM makes a decision to administratively purchase the mobile home and the owner decides to use the mobile home as a trade-in on the purchase of a replacement home instead of selling (or transferring title in the case of a zero value), the price differential payment will not be adjusted to make up the difference if they take a loss on the mobile home.

D. **Mobile Home Determined to have Zero Value** – It is acceptable to make an administrative offer to purchase a mobile home even if the value of the mobile home is determined to be zero. The acquisition specialist should follow the procedures set forth in Chapter 6. It is highly recommended that the Relocation Specialist accompany the acquisition specialist when delivering the letter so the mobile home owner is aware of the relocation assistance available to help them obtain replacement housing.

E. **Two-Part Insurance for Mobile Homes That Will Be Moved to a Replacement Location** – Mobile home insurance supplied by a mobile home moving company consists of liability insurance and cargo insurance ("moving insurance"). Liability insurance covers damage to the mobile home prior to or after the move, during tear down and set up, and cargo insurance covers damage to the mobile home during transit. In addition to the moving insurance, as part of Advisory Services, it is recommended that the displaced person has homeowners insurance prior to the relocation as the insurance provided by the mover does not cover vandalism during the move of the mobile home.

F. **RVs Used as a Permanent Residence** – The specialist should compute the cost to move the RV in the same manner as a mobile home using RES-546. Move costs for personal property should be done utilizing the room count method, a commercial move, or actual costs as described in Section 12-6.5.

G. **RVs Used as a Non-Permanent Residence** – The specialist should compute the cost to move the RV as described in the personal property Section 12-9.3.

## 12-9 Personal Property Only (PPO) Relocation

### *12-9.1 Definition*

49 CFR 24.301(e)
RCW 8.26.035(1)(a)
WAC 468-100-301(5)

A Personal Property Only (PPO) relocation is defined as a move of personal property from property acquired for right of way or project purposes where there is NOT a need for a full relocation of a residence, business operation, farm operation, or NPO from the acquired property. Business, farm, and NPO operations that must incur reestablishment expenses to facilitate the continuous operation of their business on the subject property should be relocated under the provisions of Section 12-7.

### *12-9.2 Types of Personal Property Only Relocations*

A. Personal Property is stored on property where there is no residence or business on such property.

B. Personal Property is located on a portion of property that is being acquired but where the residence located on the property will not be affected.

C. Personal Property is located on a portion of property that is being acquired but where the business located on the property can still operate after the acquisition of the needed property and where the business will not incur reestablishment expenses.

D. Personal Property is located in a unit (or units) in a storage facility that will be acquired in whole or in part.

E. Minimal personal property is located in a rented mailbox in a commercial mailbox business that is being acquired in whole or in part.

F. Vehicles, trucks, recreational vehicles, boats and other miscellaneous trailers, either operational or not, that are located on property that will be acquired.

### 12-9.3 Personal Property Only Relocation Entitlements

49 CFR 24.301(e)
RCW 8.26.035(1)(a)
WAC 468-100-301(5)

A. The basic entitlement for the relocation of personal property only shall be a payment for the expense of moving said personal property to a replacement location of the owner's choosing. The payment shall be limited to expenses for moving within a 50-mile radius of the displacement location.

B. The owner of personal property that must be moved has the option of selecting a Commercial Move, a Self Move, or an Actual Cost Move:

1. **Commercial Move** – The displaced person can request that WSDOT provide a commercial mover and pay that mover directly. The displaced person should indicate this option on the Moving Expense Agreement and work with the Relocation Specialist to prepare a written and photo inventory of the items to be moved.

   a. Based on the inventory, moving specification, and any other information, WSDOT will obtain two bids from qualified movers and select the successful bidder. If a mover submits a bid, they will be compensated for their reasonable costs of preparing said bid. The Moving Expense Agreement, inventory, Moving Specifications, and region recommendation are then submitted to the RAPM for review/approval.

2. **Self-Move** – A self-move by the displaced person can be based on bids from qualified movers, an estimate by the Relocation Specialist, or the following move cost schedules provided in this section.

   a. The displaced person may elect to take full responsibility for the move of their personal property. In this event, the displaced person, working with the Relocation Specialist prepares a written and photo inventory of the items to be moved. The Relocation Specialist then prepares a Request for Proposal and Moving Specification. WSDOT then obtains at least two bids from qualified movers and offers the displaced person an amount not to exceed the acceptable low bid. The Relocation Specialist may negotiate a move cost lower than the lowest acceptable bid, taking into account the profit and overhead costs which the commercial mover includes in their bids. The region will then submit the bids with all supporting documentation and their recommendation to the RAPM for review and approval.

   b. If the move costs appear to be $5,000 or less, WSDOT may offer an amount based on a single estimate prepared by a trained Relocation Specialist in accordance with Section 12-7.4. The region will submit the move cost estimate with all supporting documentation to the RAPM for review and approval.

c. The move of personal property from a commercial storage facility shall be based on the following schedule:

| Size of Storage Unit | Move Cost |
|---|---|
| 5′ by 5′ | $200.00 |
| 5′ by 10′ | $250.00 |
| 10′ by 10′ | $350.00 |
| 10′ by 15′ | $550.00 |
| 10′ by 20′ | $750.00 |
| 10′ by 30′ | $1,000.00 |

The move cost is based on the size of the storage unit. The move cost should be documented by the Relocation Specialist in their diary and approved by the Region Relocation Supervisor.

d. A dislocation allowance in the amount of $35 shall be paid to each person or business that rents a mailbox in a commercial mailbox operation. The move cost should be documented by the Relocation Specialist in their diary and approved by the Region Relocation Supervisor.

e. Move costs for vehicles, trailers not connected to utilities, etc., shall be based on the following schedule:

1. Operational vehicles and motor homes. $35.00 each
2. Boats w/trailers, utility trailers, car trailers, travel trailers, and fifth-wheel trailers. $150.00 each
3. Nonoperating vehicles and smaller motor homes that require towing. $125.00 each
4. Nonoperating trucks and larger motor homes that require towing. $150.00 each

The move cost is computed based on the type of vehicle. The move cost should be documented by the Relocation Specialist in their diary and approved by the Region Relocation Supervisor. If recreational vehicles are connected to utilities, the specialist can prepare an agent estimate as described in Section 12-7.4, obtain an estimate from a professional, or use actual costs.

f. Move costs for appliances shall be based on a fixed rate of $50 per appliance which includes the cost to disconnect and reconnect. The move cost should be documented by the Relocation Specialist in their diary and approved by the Region Relocation Supervisor.

In all cases, the displaced person must enter into Moving Expense Agreement prior to moving their personal property. It is the responsibility of the Relocation Specialist to monitor the move.

3. **Actual Cost Move** – Actual and reasonable costs to move the personal property is based on acceptable documentation of said actual costs. Prior to the start of the move, a written and photo inventory of the personal property items to be moved must be completed. Acceptable documentation includes receipts for payments, paid invoices, copies of payment documents, time sheets of people hired to perform the move, etc. If a question arises about the "reasonableness" of submitted costs, WSDOT may obtain one or more bids or estimates from qualified movers to use as a standard to determine if costs are reasonable.
   a. The Relocation Specialist should prepare claim and send to RAPM with region recommendation for review and approval.
   b. **Move Monitoring** – Specialist should follow procedures outlined in Section 12-7.2.1.
   c. **Post Move Inventory** – Specialist should follow procedures outlined in Section 12-7.2.1.

### *12-9.4 Payment of Personal Property Only Entitlements*

A. Payment for commercial move expenses will be paid directly to the mover upon receipt of an invoice and upon verification by the Relocation Specialist that all personal property to be moved by the mover has been moved to the appropriate replacement location.

B. Payment for self-move and actual move costs will be paid to the displaced person upon receipt of documentation from the displaced person that sufficient costs were expended to perform the move and upon verification by the Relocation Specialist that all personal property to be moved has been moved to the appropriate replacement location. Acceptable documentation may include invoices, paid receipts, time sheets, labor statements, other appropriate information to support that actual costs were incurred for the move, or move monitoring in accordance with Section 12-7.2.1.

C. Payment for scheduled move costs will be paid upon verification by the Relocation Specialist that all personal property has been moved from the acquired property to an appropriate replacement location.

D. In all cases, the Relocation Specialist will need to obtain a Substitute W-9 and SWV form from the payee in accordance with procedures set forth in Chapter 10.

E. **Coding** – Relocation Assistance Vouchers are coded based on the type of relocation payment. The specialist must select the appropriate coding from the object codes and definition chart, i.e., residential replacement housing payments or moving expenses; non-residential reestablishment or moving expenses; and personal property only moving expenses.

Appendix 12-3

49 CFR 24.101(b)(1)
WAC 468-100-101(2)(a)

## 12-10 Voluntary Transactions

### 12-10.1 Requirements

In order to be considered voluntary, the transaction must meet all of the conditions outlined in WAC 468-100-101. See also 49 CFR 24.101.

### 12-10.2 Relocation Eligibility

Refer to WAC 468-100-002(15) for information relating to mutual acceptance of the offer to purchase prior to a tenant becoming eligible to receive relocation assistance.

49 CFR 24.2(a)(9)(ii)(D)
WAC 468-100-004(2)

Appendix A
Sec 24.2(a)(9)(ii)(D)

## 12-11 Temporary Relocations

There are circumstances where the acquisition of real property takes place without the intent or the necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" great care must be exercised to ensure that they are treated fairly and equitably.

> For example, if the tenant-occupant of a dwelling will not be displaced but is required to relocate temporarily in connection with the project, the temporarily occupied housing must be decent, safe, and sanitary, and the tenant must be reimbursed for all reasonable out-of-pocket expenses including moving expenses and increased housing costs incurred in connection with the temporary relocation.

A temporary move is considered to be less than one year. Anything beyond 12 months is considered a permanent displacement and the displaced person would be moved and relocation benefits would be paid based on their occupancy status. FHWA will only participate in one reestablishment payment for temporary non-residential displacements.

Temporary move costs can be paid as part of the relocation assistance program, as part of a cost to cure, or can be handled administratively. Sometimes the project office handles temporary relocations by paying actual costs directly.

If a temporary move is authorized by the RAPM for a residential or nonresidential displacement and later withdrawn, all actual, reasonable, and necessary out-of-pocket expenses incurred in connection with the temporary relocation will be reimbursed to the displaced person(s) as related moving costs and not subject to the limitations of the displaced persons permanent relocation assistance entitlements.

## 12-12 Temporary Construction Easements (TCE)

If there are displaced persons or personal property to be moved within a temporary construction easement area, the displaced person must be provided with relocation assistance including proper notices. This is also true in situations where the project office handles the relocation of the property (cured in contract) out of the TCE area and then back once the project is complete.

## 12-13 Relocation Inventory

WSDOT Accounting and Financial Services (AFS), in conjunction with the Governmental Accounting Services Board (GASB) have altered the way that Real Estate Services will be inventorying real property purchases. This section, along with changes to the "User Manual for IRIS" found in the Report tab of IRIS will detail the process on how to properly include relocation dollars as part of the inventory of properties purchased by WSDOT for our highway facilities.

In coordination with WSDOT Property Management, any property rights acquired shall be assigned an Inventory Control Number (ICN). A separate ICN will be assigned to each type of property right acquired for the parcel. Payments for relocation activities are identified in TRAINS and IRIS by the JN object code. WSDOT will distinguish relocation dollars (JN activity) paid to displaced persons as part of the overall land rights being acquired and the dollar amounts will be added to the Property Management side of IRIS.

Inventory of relocation dollars will be accomplished by either of the following:

1. Generate a JN report (IRIS or TRAINS) to compute relocation dollars paid to a displaced person from both IRIS and TRAINS on a specific parcel at the time the relocation file is closed if the closure date is prior to July 1st.
2. Generate a JN report (IRIS or TRAINS) to compute relocation dollars paid to displaced persons on all open relocation files for the July 1st to June 30th fiscal year reporting period. The report will be generated on or around 15th of July each year.
3. A total dollar figure for the reporting period will be entered into the Property Management side of IRIS by the State Relocation Reviewer by the end of each July. Relocation dollars will be identified as part of the land value and will be added to the appropriate ICN that identifies the land value.

**Scenario #1 – Business owner is the property owner and improvements are considered real property.**

Under this scenario, the improvements contributed to the overall value of the building, so the property owner was compensated for those items as part of the acquisition. Because of this, the business owner would be ineligible for reestablishment expenses to make similar modifications at the replacement site (such as cabinets, sink) because it would be considered a duplication of payment.

**Scenario #2 – Business owner is a tenant and improvements are considered real property and the existing lease specifies they are tenant owned improvements**

Under this scenario, the improvements contributed to the overall value of the building, so the tenant should have been compensated for the tenant-owned improvements as part of the acquisition. Because of this, the business owner would be ineligible for reestablishment expenses to make similar modifications at the replacement site, i.e., install kitchen fixtures such as cabinets, sink) because it would be considered a duplication of payment.

**Scenario #3 – Business owner is a tenant and improvements are considered real property and the existing lease specifies they become the landlord's property.**

Under this scenario, the improvements contributed to the overall value of the building but they became the property of the building owner (landlord). The building owner was compensated for the improvements installed by the tenant as part of the acquisition. The tenant business owner did not receive compensation from the acquiring agency. Because of this, the tenant business owner could be eligible for the reimbursement of items considered to be modifications (such as cabinets, sink) that were not characterized as improvements for which the building owner (landlord) was compensated. As defined in definition Scenario #1, improvements are not considered eligible for reimbursement.

**Scenario #4 – Business owner is a tenant and improvements are considered trade fixtures and the existing lease specifies they remain the property of the tenant business owner and the acquiring agency does not purchase the improvements.**

Under this scenario, the improvements are considered trade fixtures and the tenant's personal property and thus not eligible for reimbursement under reestablishment expenses. However, the tenant business owner will be provided with relocation assistance to move the trade fixtures to the replacement location.

**Scenario #5 – Business owner is a tenant and improvements are considered trade fixtures and the existing lease specifies they remain the property of the tenant business owner and the acquiring agency appraises and purchases the improvements from the tenant.**

Under this scenario, the improvements are considered trade fixtures and purchased by the acquiring agency, so not eligible for reimbursement under reestablishment expenses. In addition, the tenant business owner will not be provided with relocation assistance to move the trade fixtures to the replacement location.

In those cases where it is specifically stated in the appraisal that there is "no contributory value" for the improvements, then the cost to install/construct the same or similar modifications at the replacement site could be eligible for reimbursement as a reestablishment expense. If the appraisal is silent, it may be necessary to contact the appraisal department to determine how the item was considered in the appraisal process. In those cases where the appraisal provides a specific contributory value and the displaced business submits a claim for a modification that is similar to that of the displacement site, the value discussed in the appraisal will need to be deducted from the claim to avoid duplication of payment.

## Reconsideration of a WSDOT Decision and Right to Appeal

If you disagree with a determination made by me or another relocation specialist regarding your eligibility for, or the amount of your relocation entitlement, you may seek reconsideration of such determination by sending a letter explaining your grievance within 60 days after receipt of such determination to:

Washington State Department of Transportation
Relocation Assistance Program Manager
Real Estate Services
PO Box 47338
Olympia, WA 98504-7338

You also have the right to appeal a determination WSDOT should make as to your eligibility for, or the amount of any payment. The appeal procedure is explained in the Relocation Assistance Program Brochure as well as the General Notice Letter previously given to you.

**JN70 Moving Households-Self-Move: Schedule Payments**

Amounts paid to residential occupants displaced by a project based on the number of rooms and whether the dwelling is furnished or unfurnished.

- Payment includes dislocation allowance.
- Room count should include any personal property located outside the residence, i.e. garage, sheds, patio furniture, etc.

**JN71 Moving Households—Actual Expenses (Commercial Move/Actual Cost Self Move)**

Amounts paid to or on behalf of a residential occupant displaced by a project. Payments for an actual cost self move can be made on behalf of the displaced person to a commercial mover or to the displaced person w/supporting receipts.

- Payment includes all eligible costs associated with the displaced person's move.
- This method should be encouraged in those situations where there is an abundance of personal property located on the exterior of the residence and it doesn't fit well into the scheduled room count.
- Can include fees paid to obtain move bids to relocate a mobile home considered to be personal property or for fees paid to obtain a value of the unit.
- Residential storage costs

**JN72 Moving Business/Farms/Nonprofit Organizations— In Lieu Payment (Fixed Payment)**

Amounts paid to businesses, farms, or nonprofit organizations in lieu of all other actual moving expenses. (Not available to a landlord business)

- Minimum payments $1,000 to maximum payment of $40,000.

**JN73 Moving Business/Farms/Nonprofit Organizations— Actual Costs, Negotiated Cos, Self Move, Commercial Move**

Amounts paid to or on behalf of Business/Farms/or Nonprofit Organizations for all eligible moving costs, excluding a payment in lieu of actual moving expenses.

- Actual costs include—Move costs, site search expenses, moving bid preparation fee, reprinting costs, disconnect/reconnect fees, planning expenses, move supervision expenses, connection to nearby utilities from the right of way, professional services performed prior to the purchase or lease of a replacement site, and impact fees or one time assessments for anticipated heavy utility usage.

**JN74 Re-Establishment—Non-Residential Moves**

Amounts paid to or on behalf of a farm, nonprofit or small business displace for eligible expenses actually incurred in re-establishing the displaced activity at a replacement site.

- Expenses not to exceed statutory maximum of $50,000.
- See Chapter 12 of the R/W Manual for eligible expenses.

**JN75 Replacement Housing—90-day owner ($31,000)**

Amounts paid to or on behalf of residential owner-occupants, displaced by a project, (who have been in occupancy of the acquired dwelling for at least 90 days prior to initiation of negotiations) for a purchase or rent supplement payment.

- Payment includes reimbursement for loan fees and incidental purchase expenses. i.e. loan origination, appraisal, credit report, settlement fee, escrow fee, tax fee, flood determination, document preparation, lender's title insurance.
- ADA Requirements.- This amount may exceed the calculated RHP. Includes fees paid for a home inspection.
- First $31,000 should be coded in this area with the remainder being paid under JN79.

**JN76 Increased Mortgage Interest Payment**

Amounts paid to compensate residential owner-occupant for increased interest costs associated with financing the purchase of a replacement dwelling.

**JN77 Rental Assistance—Tenants and Certain Other Displacees ($7,200)**

Amounts paid to 90-day tenants and owner occupants for rental supplement.

- First $7,200 should be coded in this area with the remainder being paid under JN80.
- ADA Requirements – This amount may exceed the calculated RHP.

**JN78 Down Payment Assistance—Tenants and Certain Other Displacees Amounts paid to 90-day tenant for a down payment allowance.**

- Full amount of payment should be coded under JN78.
- Closing costs paid under this provision can't exceed total RHP calculation.

**JN79 Last Resort Housing—Owner**

Amounts paid under category of Last Resort Housing to or on behalf of a residential owner-occupant displace.

- First $31,000 paid under JN75. Includes all items listed under JN75.
- For those displaced persons who do not meet the length of occupancy requirements (less than 90 day occupant) the entire payment should be coded as JN79.

**JN80 Last Resort Housing—Tenant**

Amount paid under category of Last Resort Housing to or on behalf of a residential tenant—occupant displace.

- First $7,200 paid under JN77.
- Includes all items listed under JN77.

**JN81 Personal Property Only Moves—Non-residential and Non-business moves Amounts paid to displaced persons who have personal property to be moved from the right of way due to an acquisition or project purpose where there is NOT a need for a full relocation of a residence, non-residential operation (vacant land), business, farm operation, or non-profit organization (NPO).**

- See Chapter 12 of the R/W Manual for move cost schedules & move options.

Washington State
Department of Transportation

Memorandum

April, 5, 2010

TO: Leslie Beaird

FROM: Danny Johnson

THROUGH: My Boss Donald Trump

SUBJECT: Recommendation for Reestablishment
Project: SR99, Alaskan Way Viaduct & Seawall Replacement
Parcel No.: 1-12345, Displacee No.: 001, Bob the landlord

Bob the landlord purchased a replacement rental home at 1234 25th Ave SE, Olympia. The home is a 2 bedroom, 1 bathroom home with a single car garage. The previous owner of the home smoked indoors and had pets. The interior paint, carpet, and linoleum are extremely soiled and worn.

Bob received two proposals to replace the flooring and two proposals to paint the interior. Joe Dirt Painting bid to paint the interior for $4,250.00 plus tax. Pricey Painting bid to paint the interior for 5,900.00 plus tax.

Awesome Floors Inc. bid to replace the carpet, pad, and linoleum for $4,954.94. Included in the bid is the cost to remove and replace the appliances and toilet during the proposed work. Crummy Carpet Co. bid to replace the carpet and linoleum for $7,986.96. Their bid did not include the cost of a new pad or removing and replacing the appliances and toilet.

**Recommendation**
Joe Dirt Painting supplied the lowest acceptable bid to paint the interior. Awesome Floors Inc supplied the lowest acceptable bid to replace the flooring. I recommend approving these expenses as eligible reestablishment expense in the amount of $9,204.94 (plus WSST for painting) per WAC 468-100-306(d), redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

DJ

Attachment: Estimate from Joe Dirt Painting, Pricey Painting, Awesome Floors, Crummy Carpet Co, replacement photos, and diary

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Revised 5/99

## Perishable Inventory

When taking inventory of a business with perishable inventory it is the relocation specialist's job to:

- Advise the business owner of the direct loss of tangible personal property process (DLT) for perishable items. Some items in these types of establishments have "best if used by" dates, "born on" dates and/or expiration dates.
- Take an inventory of the perishable items initially and discuss how to handle these items. The displacee has the option of returning those items to the vendor or selling those items prior to the move date.
- Advise the business owner that he is required to make a reasonable attempt to sell these items prior to the move. This can be done by selling the items at full price, a discounted price or returning the items to the vendor. It is in the owner's best interest to sell the items. The business is only entitled to the lesser of:
    - The wholesale value (not the retail value) less the proceeds from its sale, or
    - The estimated cost of moving the item.

  For perishable inventories the cost to move the items will most generally be less than the wholesale value. So if they sell the items they will most likely receive more money as they will get the money from the sell and they will also get a payment for the move cost.

  **For example:**

  - Move estimate = $100
  - Wholesale value = $500
  - Proceeds from the sale = $300
  - Value not recovered from sale = $200
  - Payment is the lesser of move cost or value not recovered = $100

  So, the business owner received $300 for the sale of the items and $100 from WSDOT for the DLT calculation which means the business owner gets a total of $400. If the business does not sell the items and transfers ownership to WSDOT or throws the product away then he only nets $100.

- Just before the move a final inventory of the perishable items should be prepared. Items that were returned to the vendor, sold and are to be disposed of must be identified.

  Note: To be eligible for payment, the displacee must make a good faith effort to sell the inventory, unless WSDOT determines such effort is not necessary (approval by RAPM required). WSDOT will reimburse them for any expenses in attempting to sell these items. The owner is required to:

- Document the sale prices, if any, and the actual reasonable cost of advertising and conducting the sale.
- Provide WSDOT with a copy of the bills of sale or similar documents and copies of any advertisement, offers to sell, auction records, and other data supporting the bona fide nature of the sale.

Alcohol & Tobacco:

Items such as alcohol and tobacco can also be returned to the vendor. It is understood that if a bottle or can is missing from a six pack the vendor cannot take it back. With cartons of cigarettes it is understood that once a carton is opened the vendor cannot take that carton back. These items have "born on" dates and "best if used by" dates. Be sure the displaced business takes great measures to sell these items, even if it is at a discounted price. If these items are not sold an inventory of these items is required and the location of disposal must be noted. The displaced business cannot keep the items; however, they can transfer or sell these items to another store. Disposal of these items are regulated by a federal agency and the business must follow proper procedures for disposal.

Any personal property inventory not sold (abandoned) requires the displaced business owner to transfer ownership of the personal property to WSDOT per WAC 468-100-301(10). WSDOT will then follow procedures set forth in the WSDOT Disposal of Personal Property Manual (M 72-91).

Others examples of items that expire are: batteries, over the counter medications, etc.

**Fluctuating Inventory, i.e. Mobile Home Sales Lot and Vehicle Sales Lot:**

When creating the personal property inventory for a business with fluctuating inventory the specialist must:

- Make it clear to the business owner that an initial move estimate will be performed based on the items currently in stock to establish a move cost range or threshold.

    - Car Lot **Example**: An operating vehicle is $35 to move according to the personal property schedule. In the event you are acquiring a strip from a car sales lot and only requiring the business to move the cars in the acquisition area:
        1. In writing inform the owner that he is eligible to receive $35 per operating vehicle moved.
        2. On the date of the move the relocation specialist must be there to perform a current vehicle inventory.
        3. Prepare the Moving Expense Agreement based on current inventory.
        4. Monitor the move.

    - Mobile Home Sales Lot **Example**: Prior to the move date;
        1. Relocation specialist must obtain move estimates from professional mobile home movers in order to establish an amount for certain size and type of units. The successful bid amounts set a threshold for a specific size and type of units to be moved.
        2. The date the move starts the agent must create a revised inventory of all units on site to be moved that day.
            - This inventory must contain at a minimum a
                1. photograph of each unit
                2. the unit size
                3. VIN# or serial number (a photograph of this tag would be good too)
        3. Prepare the Moving Expense Agreement based on current inventory.
        4. Monitor the move.

In the event some units have sold since the initial inventory and move bid were completed we have the VIN#/serial number and photograph of the units eligible for moving.

In the event the move takes more than one day, the business owner is not eligible to receive move cost reimbursement for units received after the initial move date or move cost reimbursement for units initially there that have sold prior to the initial move date.

## FHWA ANNUAL STATISTICAL REPORT

| | |
|---|---|
| Reporting Agency | Washington State Department of Transportation, Real Estate Services |
| Date of Report | October 1, 2007 to September 30, 2008 |

| | | |
|---|---|---|
| 1 | Total number of parcels acquired | 1,007 |
| 2 | Number of parcels in line 1 acquired by condemnation | 30 |
| 3 | Number of parcels in line 1 acquired by administrative settlement | 423 |
| 4 | Compensation- Total costs excluding appraisal costs, negotiator fees, and administrative costs. | $120,254,094.00 |
| 5 | Total number of residential displacements. | 215 |
| 6 | Residential moving payments (total costs). | $496,353.00 |
| 7 | Replacement housing payments (total costs). | $3,082,629.00 |
| 8 | Number of last resort housing displacements in line 5. | 158 |
| 9 | Number of tenants converted to ownership in line 5. | 19 |
| 10 | Total costs for residential relocation (excluding admin costs) add lines 6 & 7. | $3,578,981.00 |
| 11 | Number of non-residential displacements. | 173 |
| 12 | Non-residential moving payments (excluding reestablishment) total costs. | $2,538,962.00 |
| 13 | Non-residential reestablishment payments- total costs. | $2,028,260.00 |
| 14 | Non-residential moving payments- total. Add lines 12 & 13. | $4,567,222.00 |
| 15 | Number of grievances (appeals) files. | 18 |

Washington State Department of Transportation

Memorandum

Date: June 3, 2011

To: Dianna Nausley, Relocation Assistance Program Manager (RAPM)
Reviewer's Name, State Relocation Reviewer

From: Supervisor's Name, Region Real Estate Services Supervisor
Relocation Specialist's Name, Region Relocation Specialist

Subject: **Reestablishment Recommendation – Estimated Increased Costs for Operation**
Project Name
Displacee Name
WSDOT Parcel No.
Displacee No.

**Displacee's Claim - $50,000**

Ruff's Pet Supplies is requesting reimbursement of $50,000 under reestablishment expenses for the increased cost to operate their business at their new location, 12345 State Route 455 in Kelso, WA based on the rent difference at their displacement location and the new location.

**Background**

WSDOT initiated negotiations with Ruff's Pet Supplies landlord at the displacement site on September 2, 2010 for the State Route 42 highway improvement project. Ruff's Pet Supplies, a non-residential displacee, expressed their desire to expand their business due to this relocation. They vacated the displacement site on January 31, 2011. Ruff's signed a lease agreement with Stone Properties, Inc. on January 25, 2011 to commence occupancy of the replacement site on March 1, 2011.

The monthly rent at the displacement site was $1,500 per month and the business was responsible for paying all utilities. Per Lewis County Assessor records for Parcel No. 12345-001-01-0000, the 2,000 s.f. building was built in 1945 and zoned Commercial General Retail.

Ruff's new location is located at 12345 State Route 55 in Cowlitz County. Per County records, the 1954 building is split-level with a total of 4,041 s.f. Contract rent is $4,041 per month and includes the base monthly rent of $2,997.44 plus an additional $602.50 for other property charges, such as insurance premiums, repair and maintenance charges (or $1.00 per square foot per year). Ruff's is also responsible for paying all utilities. Per terms in the rental contract, Ruff's is not required to pay rent for the first three months.

**Analysis**

Actual Test: Ruff's signed a rental contract with Stone Properties, Inc. on February 25th and rent is $4,041 per month. Actual costs for increased operation should consider the three-month rental credit the business has per terms in their rental contract (see Rent Rider, last page of the contract). A copy of the rental contract is attached to this Recommendation Memo.

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Ruff's Pet Supplies
June 3, 2011
Page 2

Reasonable Test: The new site is larger in square footage, slightly more than twice as large as the displacement site. It's not reasonable to reimburse the business for the entire rental cost increase as their new site is much larger than the displacement site. Instead, increased operation costs should be based on the size of the displacement structure, or 2,000 s.f.

Rent at the 2,000 s.f. displacement site was $0.75/s.f. ($1,500/month divided by 2,000 s.f.). Based on the rental rates of available Kelso commercial rentals, rents range from $0.83/s.f. to $2.17/s.f., of those comparable sites within one mile of the replacement site averaged $1.04/s.f.

Necessary Test: Commercial rental properties are scarce in the Longview area. Using Craigslist.com and www.commercialmls.com , I located one 2,500 s.f. rental available in downtown Longview. Market rent is between $13.20-$15.00 s.f. or $2,750 month.

There are more commercial rental opportunities in the Kelso than Longview area – a summary is attached to this Recommendation Memo. In short, I found 18 available sites that were within 1,800-2,700 s.f. and as close as 0.51 mile to 5 miles away from the actual replacement site.

I recommend calculating reimbursement for increased costs to operate the business at the new location based on the size of the displacement site, or 2,000 s.f. as follows:

| | | | |
|---|---|---|---|
| Dollar per s.f. for replacement location: | $4,041 divided by 4,041 s.f. | = | $1.00/s.f. |
| Adjusted s.f. for replacement location: | | = | 2,000 s.f. |
| Adjusted rent at replacement location: | | = | $2,000/month |
| Rent at displacement location: | | = | $1,500/month |
| Difference in monthly rent: | | = | $500/month |
| Multiplied by 21 months (3 months rent-free at new location): | | = | $10,500 |

**Total recommended eligible reimbursement for increased cost to operate under WAC 468-100-306(1)(f)(i) is $10,500.**

Attachments:
Copies of leases for displacement and replacement sites
County Assessor Parcel Information on displacement and replacement sites
Comparable Rental Summary

*Note – the attachments are not included*

This is a total acquisition of a single family residential property in Tacoma, Washington. The owners have lived there for 19 years. The appraised value is $325,000. The appraisal states that the replacement value of the in-ground swimming pool is $20,000 but it only contributes $10,000 to the total property value. Pools are not typical in the Tacoma area. Three comparables are found, none of which have an in-ground pool. The most comparable is listed at $320,000.

How do you calculate the Maximum Price Differential payment?

| | |
|---|---|
| Appraised Value | $325,000 |
| Less value of pool from appraisal | 10,000 |
| Adjusted Value of Displacement | $315,000 |
| | |
| Price of Most Comparable | $320,000 |
| Less Adjusted Value of Displacement | 315,000 |
| Maximum Purchase Price Differential | $ 5,000 |

## Larger Than Typical Lot Example

This is a total acquisition of a single family dwelling on three acres. The appraised value of the land is $105,000. Each acre is valued at $35,000 and the dwelling is valued at $80,000. The total appraised value is $185,000.

The agent determined that typical residential tracts in the area are one acre. Three comparables were found situated on a typical tract of one acre. The most comparable is listed at $200,000.

How do you calculate the Maximum Price Differential payment?

| | |
|---|---|
| Appraised Value | $185,000 |
| Less two acres valued at $35,000 | 70,000 |
| Adjusted Value of Displacement | $115,000 |
| | |
| Comparable Replacement Dwelling | $200,000 |
| Less Adjusted Value of Displacement | 115,000 |
| Maximum Purchased Price Differential | $ 85,000 |

## Mixed Use Example

This is the total acquisition of a two acre tract that contains a grocery store and a residential home. The owner of the home is also the occupant and the operator of the store. Because the property is considered mixed use, the value of the business portion of the property must be carved out from the value of the residential portion of the property.

The appraisal indicates the following:

| | |
|---|---|
| Value of land | $300,000 |
| Value of Commercial Building | 100,000 |
| Value of Residential Dwelling | 150,000 |
| Total Appraised Value | $550,000 |

It is determined that the property is equally divided for residential use and commercial use. Therefore, the value of the land that pertains to the residential portion of the property is $150,000, giving the residential portion of the property a total value of $300,000, leaving $250,000 of the value for the commercial portion where the convenient store is located.

How do you calculate the Maximum Price Differential payment?

| | |
|---|---|
| Value of land for residential purposes | $150,000 |
| Plus Value of Residential Dwelling | 150,000 |
| Total Appraised Value of Residential Portion | $300,000 |

Three comparables were found located on similar size property comparable to the residential portion being acquired. The most comparable is listed at $325,000.

| | |
|---|---|
| Comparable Replacement Dwelling | $325,000 |
| Appraised Value of Residential Portion | 300,000 |
| Maximum Purchase Price Differential | $ 25,000 |

# Appendix 12-11 Determining the Number of Businesses

While multiple businesses can operate at a displacement site, there is a possibility that there may only be one displacement depending on the factors for determining the number of businesses.

The Washington State Department of Transportation (WSDOT) is displacing a hair salon that operates under the business name "Hair Dos to Go." Each of the six stations is leased to individual stylists who each file their taxes separately. All six stylists share the same wash bowl and back bar of shampoos, colors, etc. The salon has one receptionist that books appointments for all stylists and collects payments. All checks are made payable to either Hair Dos to Go or to the individual stylist. The relocation specialist completed the occupancy survey for each of the stylists and now must determine how many businesses are displaced. According to the occupancy surveys, the entire salon will relocate to the same replacement site.

The specialist must apply the considerations listed in WAC 468-100-304 *Fixed payment for moving expenses — Nonresidential moves* to determine how many displacements are eligible to receive relocation assistance.

- The same premises and equipment shared.
- Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.
- The entities are held to the public, and to those customarily dealing with them, as one business.
- The same person or closely related persons own, control, or manage the affairs of the entities.

In this example, all the stylists share the same premises and equipment. They have identical or interrelated business functions but their financial affairs are not commingled. The stylists are held out to the public as one salon "Hair Dos to Go" and the customers think it is one business. It is clear that not the same persons own control and manage the affairs of the salon.

Based on the outcome of these considerations, WSDOT would recognize that there are multiple operational business but only one displacement and thus eligible for only one reestablishment payment. If the stylists choose to move separately, it would be appropriate to treat them as a separate business, allow them a separate searching expense, AND a separate reestablishment payment. BUT how much they could actually receive for a reestablishment payment is going to be limited to what is "actual, reasonable, and necessary." So if the "Hair Dos to Go" business is moving to a replacement site where each of

the stylists could relocate and continue on as before, most of the items under 24.304 would not be "reasonable and necessary," perhaps with the exception of exterior signing and advertisement of the replacement location; although, even those items may not be "reasonable" if the stylist would not have incurred such costs had she moved with "Hair Dos to Go."

## Example

The Washington State Department of Transportation (WSDOT) has displaced an architect firm that is qualified to perform space planning which is a service they offer as part of their business operation. In this situation, the displaced business could apply for a waiver. In the case of a waiver, WSDOT must pre-approve a reasonable hourly rate and a scope of work prepared by the business. This hourly rate and number of labor hours cannot exceed what a professional would charge to perform the same task.

The displaced farm is paid $5,000 in the acquisition process for the loss of a pond as a source of water to feed livestock. It is necessary to replace the pond and the cost of replacement is $10,000. If the displaced business received assistance from another governmental agency to make up the difference in the cost, there would be no reestablishment expense incurred. If the displaced business received a portion, say $3000, from another governmental agency, the difference, or $2,000, could be reimbursed as a reestablishment expense. If the displaced business has not received any payments other than the $5,000 paid during the acquisition process, or the relocation specialist does not have knowledge of any other payment for this purpose, then $5,000 can be reimbursed to replace the pond as a reestablishment expense.

Determining eligibility of a displaced person who owns property and rents the property to a business owned by themselves.

Essentially, they are renting to themselves. For example, John Doe owns a piece of property and is renting to a car dealership also owned by him. The property is being purchased by WSDOT for a transportation improvement project. Do they qualify as two business displacements and eligible to receive relocation entitlements on both?

Generally speaking, this issue would be of concern when considering business reestablishment expenses (49 CFR 24.304), certain actual cost move expenses (e.g., searching expenses) as per 24.301, related nonresidential expenses (such as impact fees) as per 24.303, or the fixed payment in lieu of moving expenses as per 24.305. The need to be able to distinguish whether the "business" qualifies as one or more businesses would not normally be an issue with those costs directly attributable to moving personal property, such as disconnect/reconnect, packing, transporting.

However, in those situations where it is necessary to determine whether a displacement constitutes one business or multiple businesses in order to avoid duplicate or unreasonable reimbursement, you can apply the criteria set out in 49 CFR 24.305(b), even if the displaced person is not applying for the fixed payment. Following is that regulation:

In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared.
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.
3. The entities are held out to the public, and to those customarily dealing with them, as one business.
4. The same person or closely related persons own, control, or manage the affairs of the entities.

When applying the test for the number of businesses, we should apply all relevant factors and weigh their applicability. The four tests to determine the number of businesses are things to consider when making this determination, not all are required, but other things may also be considered.

Taking the example about John Doe's car dealership noted above and applying the criteria from 24.305(b), here is how that decision might be made:

a. John Doe's car dealership is sharing the same premises as the property he is leasing to the car dealership, which suggests this might be one business.

b. If the business and financial affairs of both the car dealership and John Doe's leasing of the property to his business are commingled—for example, if they are reported as part of one tax filing—this would suggest this is one business.

c. If John Doe is only a landlord for the site that the car dealership occupies—i.e., he has no other related rental properties—and he does not hold his "leasing" activity out as a separate business, this also would suggest this is one business.

d. If John Doe is the sole owner of the car dealership and of the underlying property which he is leasing to the car dealership, this is a pretty solid indication this is one business.

Of course, there are many different situations that may arise, so you will have to consider each situation on its own merits. While applying the criteria from 24.305(b) will help, what you are likely to find is that a particular situation might fit a couple of these criteria, but not all of them. For example, what if John Doe (using the example above) has other properties that he leases to businesses that he does not own, so that his income derives both from the car dealership and from his rental properties? Or, what if he is co-owner of the car dealership but sole owner of the real estate he is leasing to the car dealership?

The bottom line is—do the business operations really function as separate entities, or are they so closely intertwined that they constitute a single business displacement? Applying the criteria from 24.305(b) is a good starting point.

## Situation

The property is occupied by the owner who is operating a business from the site as well as another tenant who is also operating a business on site. The occupants of the property purchased by WSDOT have interrelated business functions. The settlement agreement paid all funds to the displaced property/business owner and did not pay anything to the tenant. The tenant was on a month-to-month lease so no release of lease was required. The tenant business is now submitting relocation claims for property which is considered by the appraisal to be realty and was paid to the owner in the settlement agreement. The tenant business shared the space and many of the real property improvements and now wants them relocated to their replacement property. The tenant wants the real property improvements or fixtures that they were sharing with the owner at the displacement site relocated to their replacement site.

## Result

The language of the regulation, both at 49 CFR 24.3 and in the federal appendix, does make it clear that the duplication of payment prohibition deals with "the person." That is, it is specific to the person receiving the original payment. WAC 468-100-003 is modeled after this federal regulation.

With that said, however, that does not confer upon the tenant any right to compensation for an item that is part of the real estate and for which the owner has already been paid. By way of analogy—just because the owner of a piece of real estate receives just compensation for the value of that real estate, it does not mean that a tenant of that site should also receive just compensation for the same piece of property just because the tenant is using that real estate.

Now, if the tenant has improvements on the real estate and the agency establishes that such improvements are owned by the tenant and the property owner disclaims any right to compensation for those improvements, then the tenant would be compensated through the appraisal and acquisition process for those improvements. In such case, the property owner would not be paid for such improvements as well. Consider this example:

> Total appraised value of real estate to be acquired is $500,000.
>
> The property is improved with an auto repair shop owned and operated by a tenant of the site.
>
> The contributory value of the auto repair shop to the total appraised value of the real estate is $300,000.

The lease allowed the tenant to build on the site and the property owner disclaims any interest in the improvements.

Consequently, the agency will make an offer of $200,000 to the property owner for his interest in the real estate and an offer of $300,000 to the tenant for the improvements.

In this example, neither the property owner nor the tenant is eligible to receive relocation assistance to relocate any improvements, including fixtures, that the agency's appraiser included in the appraisal and that the agency acquired.

As for fixtures, machinery, equipment, etc., that were NOT included in the appraisal as part of the real property, then it is necessary to establish who owns them and the appropriate party—either the owner or the tenant—may be paid to relocate them. It might be necessary to consult with the review appraiser about this matter. If just compensation was set by the agency based on an understanding from the appraisal that these items are part of the real estate rather than personal property, then they have been acquired and the tenant could not receive a separate payment for them.

For clarification: Words like "fixtures," "machinery," "equipment," "fixed assets," or many other similar terms may often be used by property owners, tenants, appraisers, etc. Regardless of the terminology used, the bottom line is this—what did the agency actually buy from the property owner (or from the tenant, in the case of tenant-owned improvements)? If the appraiser did not make it clear in the appraisal how such things as machinery, equipment, fixtures, furniture, etc., was dealt with, the review appraiser needs to get that clarified. Relocation must know what was acquired and what was treated as personal property.

***Note:*** If both the owner and the tenant are paid either acquisition funds for the same item, or moving expenses for the same item, FHWA will participate only in one of those payments and the other must be coded non-Federal-aid participating.

The forms listed for various chapters can be located as follows:

## 13-1 Access for WSDOT Employees

The WSDOT Agency Forms are located at:
wwwi.wsdot.wa.gov/fasc/adminservicesforms

The RES Forms for Property Management and Acquisition are located at:
wwwi.wsdot.wa.gov/design/realestateservices

The RES Forms for Appraisal, Relocation, and the Local Agency Program are located at:
www.wsdot.wa.gov/realestate or
wwwi.wsdot.wa.gov/design/realestateservices

## 13-2 Access From Outside of WSDOT

The WSDOT Agency FileMaker Forms are located at:
www.wsdot.wa.gov/forms

This site provides downloads of WSDOT FileMaker Forms and software if needed. If you do not have FileMaker Pro software, you will need to make sure you download the runtime engine from the Forms Management website prior to downloading the actual form. If you are experiencing problems downloading a FileMaker Form, you may want to contact Forms Management at 360-705-7424. This website also provides links to the Real Estate Services web page for RES Word Forms.

The RES Word Forms for Appraisal, Relocation, and the Local Agency Program are located at: www.wsdot.wa.gov/realestate

To receive copies of forms by mail or fax, call Real Estate Services in Olympia at 360-705-7317.

## 13-3 Appraisal Forms (Chapters 4 and 5)

***WSDOT Agency Forms***

| | |
|---|---|
| 220-015 EF | Environmental Checklist for Surplus Property Disposal |

***WSDOT Real Estate Services Forms***

| | |
|---|---|
| RES-203 | Staff Appraiser Assignment Form |
| RES-204 | Report of Contact With Owner |
| RES-205 | Certificate of Appraiser |
| RES-206 | Summary of Conclusions |
| RES-207 | Subject Sketch and Photographs |
| RES-208 | Narrative Report Template |
| RES-210 | Market Data |
| RES-210B | Sale Sketch and Photographs |

| | |
|---|---|
| RES-211 | Appraisal Assumptions and Limiting Conditions |
| RES-212 | Salient Information |
| RES-213 | Abbreviated Appraisal Report Format |
| RES-214 | WSDOT Review DV Document |
| RES-214A | Fee Review DV Document for WSDOT |
| RES-214B | Local Agency Certification of Value |
| RES-215 | PFE Parcel Work Sheet |
| RES-216 | Administrative Offer Summary |
| RES-217 | Residential Realty/Personalty Report |
| RES-218 | Commercial or Industrial Realty/Personalty Report |
| RES-219 | WSDOT Surplus Appraisal |
| RES-220 | Mobile Home Work Sheet – Personal Property |

## 13-4 Acquisition Forms (Chapters 6, 8, and 9)

***WSDOT Agency Forms***

| | |
|---|---|
| 120-020 EF | Work Order Authorization |
| 130-005 EF | Agreement Edit Information |
| 134-139 EF | Invoice Voucher |
| 220-025 EF | Damage Claim Evaluation |

***WSDOT Real Estate Services Forms***

| | |
|---|---|
| RES-300 | Cover Sheet |
| RES-301 | Diary |
| RES-302 | Warranty Deed |
| RES-303 | Special Warranty Deed |
| RES-305 | Warranty Deed (Access Rights Only) |
| RES-306 | Quitclaim Deed |
| RES-307 | Quitclaim Deed (Access Rights Only) |
| RES-308 | Partial Release of Mortgage |
| RES-309 | Partial Release of Mortgage (Access Rights Only) |
| RES-310 | Request for Partial Reconveyance |
| RES-311 | Partial Reconveyance |
| RES-312 | Partial Release of Lease |
| RES-313 | Release of Lease |
| RES-314 | Subordination Agreement for Utilities |
| RES-315 | Release of Damages |
| RES-316 | Partial Release of Judgment |
| RES-317 | Possession and Use Agreement |
| RES-318 | Compensation Agreement for Condemnation |
| RES-319 | Stop Condemnation Request |
| RES-320 | Negotiators Report |

| | |
|---|---|
| RES-321 | Real Property Voucher (Excel) |
| RES-322 | Exchange Agreement |
| RES-323 | Consent to Change of Grade |
| RES-324 | Easement |
| RES-325 | Temporary Easement |
| RES-326 | Permit |
| RES-327 | Option to Purchase Quarry/Pit |
| RES-328 | Option to Purchase Lands |
| RES-329 | Lease |
| RES-330 | Bill of Sale |
| RES-331 | Memorandum of Lease |
| RES-332 | Notice of Lien |
| RES-333 | Request to Accept Encumbrance |
| RES-334 | Tax Set Over Letter |
| RES-335 | Fixtures and Improvements Agreement |
| RES-336 | Memo for Excess Lands |
| RES-337 | Escrow Agreement |
| RES-338 | Water System Agreement |
| RES-339 | Water System Connection Agreement |
| RES-340 | Septic System Agreement |
| RES-341 | Septic System Connection Agreement |
| RES-342 | Lease for Quarry/Pit |
| RES-343 | Agreement Not to Rent |
| RES-344 | Construction Memo |
| RES-345 | Release and Transfer of Jurisdiction |
| RES-346 | Mobile Home Bill of Sale |
| RES-347 | Acquisition and Title File Contents |
| RES-348 | Emergency Permit and Right of Entry |
| RES-349 | Mobile Home Offer Letter |
| RES-350 | Offer Letter |
| RES-351 | Revised Offer Letter |
| RES-352 | Landlord/Tenant Form |
| RES-353 | Right of Way Parcel Transmittal |
| RES-354 | Special Handling Memo |
| RES-355 | Quitclaim Deed (Release Easement) |
| RES-356 | Quitclaim Deed (Access Use for Easement) |
| RES-357 | EFT Escrow Cover Letter |
| RES-358 | OFM Escrow Cover Letter |
| RES-359 | WSDOT Escrow Cover Letter |
| RES-360 | EFT Payment Letter |

| | |
|---|---|
| RES-361 | OFM Payment Letter |
| RES-362 | WSDOT Payment Letter |
| RES-365 | Individual Notary |
| RES-366 | Corporate Notary |
| RES-367 | Attorney In Fact Notary |
| RES-368 | Self and Attorney In Fact Notary |
| RES-369 | Guardian, Executor, Administrator Notary |
| RES-370 | Mayor City Commissioners Notary |
| RES-371 | County Commissioners Notary |
| RES-372 | School District Notary |
| RES-373 | Signature By Mark Notary |
| RES-374 | Partnership Notary |
| RES-375 | Trustee Notary |
| RES-376 | Limited Liability Company Notary |
| RES-377 | RES Notary |
| RES-381 | RW Manual Miscellaneous Clauses Chapter 9 |
| RES-382 | Relocation Eligibility Report |
| RES-383 | No Right of Way Certificate |
| RES-384 | Certificate 1, No Relocation |
| RES-385 | Certificate 1, Residential Relocation |
| RES-386 | Certificate 1, Non-Residential Relocation |
| RES-387 | Certificate 1, Combination of Relocation Types |
| RES-388 | Certificate 2, No Relocation |
| RES-389 | Certificate 2, Residential Relocation |
| RES-390 | Certificate 2, Non-Residential Relocation |
| RES-391 | Certificate 2, Combination of Relocation Types |
| RES-392 | Certificate 3, No Relocation |
| RES-393 | Certificate 3, Residential Relocation |
| RES-394 | Certificate 3, Non-Residential Relocation |
| RES-395 | Certificate 3, Combination of Relocation Types |
| RES-396 | Certificate 3, Design Build Phased – Under Construction |
| RES-397 | Certification Worksheet |
| RES-398 | Certification Worksheet – Design Build |
| RES-399 | WSDOT Certification Concurrence Letter |

## 13-5 Property Management Forms (Chapter 11)

***WSDOT Agency Forms***

| | |
|---|---|
| 130-005 EF | Agreement Edit Information |
| 220-015 EF | Environmental Checklist for Surplus Property Disposals |
| 224-011 EF | Reimbursable Agreement: RES Review and Approval of Personal Wireless Services Facilities |
| 224-031 EF | Reimbursable Agreement: RES Review and Approval of Personal Wireless Services Facilities |
| 260-051 EF | Bid for Purchase of Surplus Real Estate |
| 261-005 EF | Surplus Property Report |
| 263-003 EF | Salvage Appraisal Report |
| 263-004 EF | Assignment of Lease |
| 263-006 EF | Application for Deferred Payments |
| 263-007 EF | Property Inspection and Status Report |
| 263-008 EF | Residential Property Inspection |
| 263-009 EF | Rental Agreement Transmittal |
| 263-010 EF | Right of Way Property Acquisition Procedures |
| 263-016 EF | Memorandum of Lease Benefiting Appurtenant Property |
| 263-017 EF | Memorandum of Lease |
| 263-018 EF | Memorandum of Lease Termination |
| 263-023 EF | Personal Property Sale and Removal Agreement |
| 263-024 EF | Waiver of Abutter's Rights |
| 265-001 EF | Disclosure of Information on Lead-Based Paint and Lead Based Paint Hazards – Sales of Pre 1978 Housing |
| 265-002 EF | Disclosure of Information on Lead-Based Paint and Lead Based Paint Hazards – Rental of Pre 1978 Housing |
| 410-100 EF | Purchaser Certification for Export Restricted Timber |

***WSDOT Real Estate Services Forms***

| | |
|---|---|
| RES-401 | Request for Title Check and Legal Description |
| RES-402 | Waiver of Abutter's Rights |
| RES-403 | Bill of Sale |
| RES-404 | Employee Request – Permission to Bid on Surplus Real Estate |
| RES-405 | Contract Insurance Requirements Information |
| RES-406 | Surplus Real Estate Purchase Form |
| RES-407 | Disposal Memorandum |
| RES-408 | Estimate of Value for Parcel under $10,000.00 (under development) |
| RES-409 | Option Agreement |
| RES-410 | Real Property Purchase and Sale Agreement |
| RES-411 | Quitclaim Deed |

| | |
|---|---|
| RES-412 | Quitclaim Fulfillment Deed |
| RES-413 | Easement Deed |
| RES-414 | Real Estate Contract |
| RES-415 | Residential Displacee Lease |
| RES-416 | Commercial Displacee Lease |
| RES-417 | Single Family Residential Lease |
| RES-418 | Ground Lease |
| RES-419 | Trail Lease |
| RES-420 | Standard Airspace Lease |
| RES-421 | Wireless Communication Site Lease (Covers Attachments to WSDOT Structures) |
| RES-422 | Wireless Communication Site Lease (Excludes Attachments to WSDOT Structures) |
| RES-423 | Wireless Communication Lease – Approval of Sublease to (Subtenant) |
| RES-424 | Airspace Lease for Communication Facilities (Ground Rental Only) |
| RES-425 | Airspace Lease for Access to Communication Facility |
| RES-426 | Assignment Assumption of Lease |
| RES-427 | Notice to Vacate |
| RES-428 | Cooperative Agreement |
| RES-430 | Memorandum of Lease |
| RES-431 | Memorandum of Lease – Appurtenant |
| RES-432 | Wireless Lease for Utility Pole Attachment |
| RES-433 | Event Lease |
| RES-434 | Lease Amendment |
| RES-435 | Personal Property Sale and Removal Agreement |
| RES-436 | Real Estate Services Application/Single Family Residential Supplement |
| RES-437 | PM Lease Review Checklist |
| RES-438 | Monitoring Well Agreement |
| RES-439 | Right of Entry |
| RES-440 | Tiedown Lease |
| RES-441A | Airspace Lease Short Form & Provisions |
| RES-443 | Surplus Appraisal Review Assignment Sheet |
| RES-444 | Unimproved Residential Real Property Disclosure Statement |
| RES-445 | Disposal Appraisal Assignment Sheet |
| RES-446 | Disposal Appraisal Concurrence |

## 13-6 Relocation Assistance Forms (Chapter 12)

***WSDOT Real Estate Services Forms***

| | |
|---|---|
| RES-501 | General Notice of Relocation Rights (Non-Residential) |
| RES-502 | General Notice of Relocation Rights (Landlord) |
| RES-503 | General Notice of Relocation Rights (Personal Property) |
| RES-504 | General Notice of Relocation Rights (Residential) |
| RES-505 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Non-Residential) |
| RES-506 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Non-Residential Fixed Payment) |
| RES-507 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Residential Owner) |
| RES-507a | Notice of Revised Price Differential (Residential Owner) |
| RES-507b | Notice of Eligibility – Non DSS (Residential Owner) |
| RES-507c | Notice of Eligibility w/Carve Out Language (Residential Owner) |
| RES-508 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Residential Tenant) |
| RES-508a | Notice of Eligibility – Non DSS (Residential Tenant) |
| RES-509 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Landlord) |
| RES-510 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Personal Property) |
| RES-511a | Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Own Mobile Home, Rent Site) |
| RES-511b | Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Own Mobile Home, Own Site) |
| RES-511c | Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Rent Mobile Home, Rent Site) |
| RES-512 | Notice of Intent to Acquire |
| RES-513 | Mortgage Interest Differential Payment (MIDP) |
| RES-514 | Incidental Purchase Expense Work Sheet |
| RES-515 | Documentation of Living Expenses |
| RES-516 | Price Differential Entitlement Instructions |
| RES-516a | Down Payment Assistance Entitlement Instructions |
| RES-517 | Vacate Inspection |
| RES-518 | Agreement for Provisional Replacement Housing Payment |
| RES-519 | Fixed Payment (In-Lieu) Work Sheet – Non-Residential |
| RES-520 | Request for Moving Bid cover letter |
| RES-521 | Request for Proposal and Moving Specification format |
| RES-522 | Replacement Site Search Log |

| | |
|---|---|
| RES-523 | Application for Reestablishment Expenses – Non-Residential |
| RES-525 | (DSS) Replacement Dwelling Inspection Report |
| RES-526 | Loss of Tangibles/Substitute Personal Property Bid Form |
| RES-527 | Loss of Tangibles Computation |
| RES-528 | Substitute Personal Property Computation |
| RES-529 | Residential Checklist |
| RES-530 | Non-Residential Checklist |
| RES-531 | Personal Property Checklist |
| RES-532 | Residential Occupancy Survey |
| RES-533 | Non-Residential Occupancy Survey |
| RES-533a | Non-Residential (Landlord) Occupancy Survey |
| RES-534 | Personal Property Only Occupancy Survey |
| RES-535 | Pre Move Inventory – Non-Residential |
| RES-536 | Final Claim Letter – Non-Residential |
| RES-536a | Final Claim Letter – Residential |
| RES-537 | Relocation Assistance Voucher |
| RES-538 | Application for Fixed Payment |
| RES-539 | Monthly Income Verification |
| RES-540 | Move Expense Agreement – Residential |
| RES-540a | Move Expense Agreement – Non-Residential |
| RES-541 | Housing Comparison Work Sheet |
| RES-542 | Price Differential Report |
| RES-542a | Price Differential Report Instructions |
| RES-543 | Rent Supplement Report |
| RES-544 | Notice of Relocation Noneligibility |
| RES-545 | Non-Residential Obsolete Printed Items |
| RES-546 | Mobile Home Move Cost – Personal Property |
| RES-547 | Lawfully Present in the United States Certification |
| RES-548 | Transfer of Ownership Non-Residential |
| RES-549 | Claim Determination Letter |

## 13-7 Local Agency Forms & Brochures (Chapters 15 & 17)

***LPA Brochures***

Transportation Property Needs LPA Generic

NonResidential Relocation LPA Generic

Personal Property Only Relocation LPA Generic

Residential Relocation LPA Generic

***LPA Agreement Forms (for WSDOT use)***

| | |
|---|---|
| 224-075 EF | Government Agreement for Aid |
| 224-076 EF | Government Agreement for Aid (For Highway, Road, and Street Purposes Only) |
| 224-102 EF | Project Review Reimbursable Agreement ("J" Agreement) |

***LPA General Forms***

| | |
|---|---|
| LPA-001 | Right of Way Procedures |
| LPA-002 | ROW Phase Questionnaire |
| LPA-003 | Waiver of Appraisal Procedure |

***LPA Appraisal Forms***

| | |
|---|---|
| LPA-205 | Certificate of Appraisal |
| LPA-210 | Market Data Sheet |
| LPA-214b | Certificate of Value |
| LPA-215 | PFE Parcel Worksheet |
| LPA-215b | True Cost Estimate Parcel Worksheet |
| LPA-216 | Administrative Offer Summary (AOS) |

***LAC Forms (for WSDOT use)***

| | |
|---|---|
| LPA-011 | Project Review Worksheet |
| LPA-012 | Parcel Review Worksheet |
| LPA-013 | Residential Relocation Review Worksheet |
| LPA-014 | Non-Residential Relocation Review Worksheet |
| LPA-015 | Personal Property Only (PPO) Review Worksheet |
| LPA-016 | Certification Review Oversight Report |
| LPA-017 | Certification Review Transmittal Letter (Cert 1 and 2) |
| LPA-018 | Certification Review Transmittal Letter (Cert 3) |
| LPA-019 | Sample Size Determination Form |

***LPA Acquisition Forms***

| | |
|---|---|
| LPA-300 | Recording Cover Sheet |
| LPA-301 | Diary |
| LPA-302 | Warranty Deed |
| LPA-303 | Special Warranty Deed |
| LPA-305 | Warranty Deed (Access Rights Only) |
| LPA-306 | Quitclaim Deed |
| LPA-307 | Quitclaim Deed (Access Rights Only) |
| LPA-308 | Partial Release of Mortgage |
| LPA-309 | Partial Release of Mortgage (Access Rights Only) |
| LPA-310 | Request for Partial Reconveyance |
| LPA-311 | Partial Reconveyance |
| LPA-312 | Partial Release of Lease |

| | |
|---|---|
| LPA-313 | Release of Lease |
| LPA-316 | Partial Release of Judgment |
| LPA-317 | Possession and Use Agreement |
| LPA-321 | Real Property Voucher (Excel) |
| LPA-323 | Consent to Change of Grade |
| LPA-324 | Easement |
| LPA-325 | Temporary Easement |
| LPA-326 | Permit |
| LPA-330 | Bill of Sale |
| LPA-333 | Request to Accept Mortgage (deed of trust) Encumbrance |
| LPA-333a | Letter to Owner-Agree to Pay Mortgage (deed of trust) Encumbrance |
| LPA-350 | Offer Letter |
| LPA-351 | Revised Offer Letter |
| LPA-355 | Quitclaim Deed (Release Easement) |
| LPA-356 | Quitclaim Deed (Access Use for Easement) |
| LPA-362 | Agency Payment Letter |
| LPA-365 | Individual Notary |
| LPA-366 | Corporate Notary |
| LPA-367 | Attorney in Fact Notary |
| LPA-368 | Self and Attorney in Fact Notary |
| LPA-369 | Guardian, Executor, Administrator Notary |
| LPA-370 | Mayor City Commissioners Notary |
| LPA-371 | County Commissioners Notary |
| LPA-372 | School District Notary |
| LPA-373 | Signature by Mark Notary |
| LPA-374 | Partnership Notary |
| LPA-375 | Trustee Notary |
| LPA 376 | Limited Liability Company Notary |
| LPA-377 | Director RES Notary |
| LPA-382 | Relocation Eligibility Report |

***LPA Certification Forms***

| | |
|---|---|
| LPA-383 | No Right of Way Certificate |
| LPA-384 | Certificate 1, No Relocation |
| LPA-385 | Certificate 1, Residential Relocation |
| LPA-386 | Certificate 1, Non-Residential Relocation |
| LPA-387 | Certificate 1, Combination of Relocation Types |
| LPA-388 | Certificate 2, No Relocation |
| LPA-389 | Certificate 2, Residential Relocation |
| LPA-390 | Certificate 2, Non-Residential Relocation |

| | |
|---|---|
| LPA-391 | Certificate 2, Combination of Relocation Types |
| LPA-392 | Certificate 3, No Relocation |
| LPA-393 | Certificate 3, Residential Relocation |
| LPA-394 | Certificate 3, Non-Residential Relocation |
| LPA-395 | Certificate 3, Combination of Relocation Types |
| LPA-396 | Certificate 3, Design Build Phased – Under Construction |
| LPA-397 | Certification Worksheet |
| LPA-398 | Certification Worksheet – Design Build |
| LPA-399 | WSDOT Local Agency Certification Concurrence Letter (WSDOT Use Only) |

***LPA Property Management Forms***

| | |
|---|---|
| LPA-407 | Disposal Approval Request |

***LPA Relocation Forms***

| | |
|---|---|
| LPA-501 | General Notice of Relocation Rights (Non-Residential) |
| LPA-502 | General Notice of Relocation Rights (Landlord) |
| LPA-503 | General Notice of Relocation Rights (Personal Property) |
| LPA-504 | General Notice of Relocation Rights (Residential) |
| LPA-505 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Non-Residential) |
| LPA-505a | Notice of Eligibility, Entitlements, and 90-Day Assurance (Non-Residential Fixed Payment) |
| LPA-507 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Residential Owner) |
| LPA-507a | Notice of Revised Price Differential (Residential Owner) |
| LPA-507b | Notice of Eligibility – Non DSS (Residential Owner) |
| LPA-507c | Notice of Eligibility w/Carve Out Language (Residential Owner) |
| LPA-508 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Residential Tenant) |
| LPA-508a | Notice of Eligibility – Non DSS (Residential Tenant) |
| LPA-509 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Landlord) |
| LPA-510 | Notice of Eligibility, Entitlements, and 90-Day Assurance (Personal Property) |
| LPA-511a | Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Own Mobile Home, Rent Site) |
| LPA-511b | Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Own Mobile Home, Own Site) |
| LPA-511c | Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Rent Mobile Home, Rent Site) |
| LPA-512 | Notice of Intent to Acquire |
| LPA-513 | Mortgage Interest Differential Payment (MIDP) |

| | |
|---|---|
| LPA-514 | Incidental Purchase Expense Work Sheet |
| LPA-515 | Documentation of Living Expenses |
| LPA-516 | Price Differential Entitlement Instructions |
| LPA-516a | Down Payment Assistance Entitlement Instructions |
| LPA-517 | Vacate Inspection |
| LPA-518 | Agreement for Provisional Replacement Housing Payment |
| LPA-519 | Fixed Payment (In-Lieu) Work Sheet – Non-Residential |
| LPA-520 | Request for Moving Bid Cover Letter |
| LPA-521 | Request for Proposal and Moving Specification Format |
| LPA-522 | Replacement Site Search Log |
| LPA-523 | Application for Reestablishment Expenses – Non-Residential |
| LPA-524 | Eligibility Report |
| LPA-525 | (DSS) Replacement Dwelling Inspection Report |
| LPA-526 | Loss of Tangibles/Substitute Personal Property Bid Form |
| LPA-527 | Loss of Tangibles Computation |
| LPA-528 | Substitute Personal Property Computation |
| LPA-529 | Residential Checklist |
| LPA-530 | Non-Residential Checklist |
| LPA-531 | Personal Property Checklist |
| LPA-532 | Residential Occupancy Survey |
| LPA-533 | Non-Residential Occupancy Survey |
| LPA-533a | Non-Residential (Landlord) Occupancy Survey |
| LPA-534 | Personal Property Only Occupancy Survey |
| LPA-535 | Pre Move Inventory – Non-Residential |
| LPA-536 | Final Claim Letter – Non-Residential |
| LPA-536a | Final Claim Letter – Residential |
| LPA-537 | Relocation Assistance Voucher |
| LPA-538 | Application for Fixed Payment – Non-Residential |
| LPA-539 | Monthly Income Verification |
| LPA-540 | Move Expense Agreement – Residential |
| LPA-540a | Move Expense Agreement – Non-Residential |
| LPA-541 | Housing Comparison Work Sheet |
| LPA-542 | Price Differential Report |
| LPA-543 | Rent Supplement Report |
| LPA-544 | Notice of Relocation Non-eligibility |
| LPA-545 | Non-Residential Obsolete Printed Items |
| LPA-546 | Mobile Home Move Cost – Personal Property |
| LPA-547 | Lawfully Present in the United States Certification |
| LPA-548 | Transfer of Ownership – Non-Residential |
| LPA-549 | Claim Determination Letter |

# Chapter 14 Design Build

Design-build is a method of project delivery in which the Washington State Department of Transportation (WSDOT) executes a single contract with one entity (the Design-Builder) for design and construction services to provide a finished product.

## Rules

### *Federal*

23 CFR 635.309(p)

23 CFR 710.313 Design-build projects

(a) In the case of a design-build project, right of way must be acquired and cleared in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the WSDOT's right of way procedures. The WSDOT shall submit a right of way certification in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization. If the right of way services are included in the Request for Proposal document, the WSDOT shall ensure that right of way is available prior to the start of physical construction on individual properties.

(b) The decision to advance a right of way segment to the construction stage shall not impair the safety or in anyway be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project right of way.

(c) Certain right of way acquisition and clearance services may be incorporated into the design-build contract if allowed under State law.

**However, WSDOT's existing policy is to retain right of way acquisition and clearance services. Therefore, parts (c) and (d) are not applicable.**

(e) If the WSDOT elects to perform all right of way services relating to the design-build contract, the provisions in 23 CFR 710.311 will apply. WSDOT will notify potential offerors of the status of all right of way issues in the request for proposal document.

### *State*

Project Delivery Memorandum dated June 3, 2009, from J.C. Lenzi, Chief Engineer regarding – Use of Consultants for Right of Way Activities attached hereto and made a part herof. See Section 1-11.1 of this manual for oversight responsibilities in compliance with the aforementioned Memorandum.

Secretary's Executive Order Number E 1059.00 dated July 10, 2009, regarding Organization Conflicts of Interests.

Chapter 110 of the *Design Manual* (M 22-01).

### References

RCW 39.10.300 *Design-build procedure – Uses*

RCW 39.10.320 *Design-build procedure – Project management and contracting requirements*

RCW 39.10.330 *Design-build contract award process*

### Procedures

Acquisition by WSDOT:

The appraisal, acquisition, property management, and relocation processes outlined in this manual shall be followed.

If consultants will be used for right of way activities, WSDOT shall provide oversight for those activities per the Project Delivery Memorandum dated June 3, 2009, from J.C. Lenzi, Chief Engineer regarding – Use of Consultants for Right of Way Activities.

WSDOT shall submit the Design Build Certification (see attached form) in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization prior to the Notice to Proceed with physical construction that will include the following:

1. The FHWA's project authorization for final design and physical construction will not be issued until the following conditions have been met:

    a. All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).

    b. All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

    c. The NEPA review process has been concluded (see 23 CFR 636.109).

    d. The Request for Proposals document has been approved.

    e. A statement is received from WSDOT that either all right of way, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of right of way, utility, and railroad work.

WSDOT shall ensure that right of way is certified and available prior to the Notice to Proceed with physical construction on individual properties. WSDOT RESM (or their designee) will compare the plan sheets or project requirements (such as mitigation sites and/or sundry sites) with the parcels to make sure they match. If multiple sections/phases will be certified, this assurance will need to be done with each section/phase

Right of Way will not be certified until the certification documentation listed above is provided.

2. During a[n air quality] conformity lapse, a design-build project (including right of way acquisition activities) may continue if, prior to the conformity lapse, the NEPA process was completed and the project has not changed significantly in design scope, the FHWA authorized the design-build project and the project met transportation conformity requirements (40 CFR parts 51 and 93).

3. Changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements (40 CFR parts 51 and 93) in air quality nonattainment and maintenance areas, and provide appropriate approval notification to the design-builder for such changes.

**Washington State Department of Transportation**

Memorandum

Date: June 3, 2009

To: Keith Metcalf, Eastern Region Administrator
Kevin Dayton, Olympic Region Administrator, MS 47440
D. Sarles, North Central Region Administrator (Acting)
Don Whitehouse, South Central Region Administrator
Don Wagner, Southwest Region Administrator, S-15
Lorena Eng, Northwest Region Administrator, NB82-101
Ron Paananen, Teresa Greco, John White, Alaska Way Viaduct Project Office
Julie Meredith and Mike Cotton, SR520 Project Office
Kim Henry and Denise Cieri, I-405 Project Office

From: ~~J. C.~~ JCL Lenzi, Chief Engineer
(360) 705-7032

Subject: Project Delivery Memo - Use of Consultants for Right-of-Way Activities

**Background**

On March 25, 2009 the Federal Highway Administration (FHWA) informed WSDOT that we must develop and implement improved procedures to ensure adequate oversight of consultant services for real estate activities. The regulatory framework for state oversight responsibilities is required by 49 CFR 24.205(c) on projects where right of way activities are being performed by consultants. FHWA has reminded WSDOT that inadequate consultant oversight could jeopardize federal funding of projects.

The intent of this memorandum is to provide direction regarding selection and oversight of consultants who are hired to perform right of way activities.

Types of Contracts Affected
- A & E Agreements including General Engineering Contracts (GEC)
- Personal Services Contracts

Types of Activities Affected
- Consultant Selection and Oversight
- Scope of Work Development

DOT Form 700-008 EF
Revised 5/99

June 3, 2009
Page 2

**Action Requested**

Effective July 1, 2009 Real Estate Services activities (RES) will be contracted separately from A & E activities. This applies to all new task orders and/or contracts.

Amendments to current task orders and supplements to master agreements, for RES activities, will not be approved. In addition, adding new RES sub-consultants to current agreements will not be approved.

Oversight must be provided by RES right-of-way staff, not general project office staff. RES needs to communicate necessary information to the consultant staff prior to the commencement of the project so there are no delays in project delivery. RES could fulfill this requirement by requiring the consultants to attend a pre-project right-of-way meeting and/or attending our right-of-way training sessions.

**Regional Approval**
Before entering into any contract for right-of-way activities, approval must be received from the Regional Real Estate Services Manager or the appropriate HQ Real Estate Services Section Manager.

**Project Managers**
Comply with requirements set forth in this document and in the Consultant Services Procedures Manual (M 27-5).

**Region Real Estate Services**
Region RES must be involved in the development of the scope of work for right-of-way activities to ensure there is sufficient clarity of roles, expectations, and responsibilities.

It is the responsibility of the Region RES Manager or the appropriate HQ RES Section Manager to review the qualifications of the consultant or the consultant firm and their staff to determine if their qualifications meet the standards required for the specific task.

Region RES is responsible to provide oversight, direction and administration of all right-of-way consultant personnel in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Oversight must be accomplished by a WSDOT RES employee that has the knowledge, skills and abilities to complete the task.

**HQ Consultant Services Office**
The Consultant Services Office will procure and administer A & E and Personal Service agreements that are consistent with federal and state regulations. Final authority and enforcement of the contracting procedures rests with the Consultant Services Office.

Update Consultant Services Procedures Manual (M 27-50) as necessary to comply with this memorandum.

June 3, 2009
Page 3

**HQ Real Estate Services Office**
Update the Right of Way Manual (M 26-01) as necessary to comply with this memorandum.

**HQ Design Office**
Update the Design Manual (M22-01) and Plans Preparation Manual (M22-31) as necessary to comply with this memorandum.

**Highway and Local Programs Office**
Update the LAG Manual (M36-63) as necessary to comply with this memorandum.

cc: Dave Dye
Steve Reinmuth
Bill Ford
Craig Stone
Kathleen Davis
Tim Smith, WSF
Pasco Bakotich
Nancy Boyd
Mike Palazzo
Region Project Development Engineers
Region Real Estate Services Managers
Marilyn Bowman
Jim Salter

## Design Build Certification

Project Title: _____

This Project conforms with statewide and metropolitan transportation planning requirements (23 CFR part 450).

_____ _____
Headquarters Planning Manager Date

All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

☐ Applicable
☐ Not Applicable

_____ _____
Region Environmental Program Manager Date

This Project NEPA review process has been concluded. (See 23 CFR 636.109).

_____ _____
Region Environmental Program Manager Date

_____
Environmental Approval Date

The Project Request for Proposals document has been approved.

_____ _____
Project Engineer Date

_____
FHWA Approval Date

All utility, and railroad work has been completed, or all necessary arrangements will be made for the completion of utility, and/or railroad work.

_____ _____
Region Utilities Engineer Date

During a[n air quality] conformity lapse, a design-build project (including right of way acquisition activities) may continue if, prior to the conformity lapse, the NEPA process was completed and the project has not changed significantly in design scope, the FHWA authorized the design-build project and the project met transportation conformity requirements (40 CFR parts 51 and 93).

☐ Applicable
☐ Not Applicable

_____ _____
Region Environmental Program Manager Date

Changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements (40 CFR parts 51 and 93) in air quality nonattainment and maintenance areas, and provide appropriate approval notification to the design-builder for such changes.

☐ Applicable
☐ Not Applicable

_____ _____
Headquarters Planning Manager Date

☐ Headquarters Right of Way Certification Attached

_____ _____
Region Real Estate Services Manager Date

15-1 Acronyms
15-2 Purpose
15-3 Authority
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15-20 Quality Assurance/Quality Control (QA/QC) Reviews for ROW
15-21 Records Retention
15-22 LAG Chapter 25

## 15-1 Acronyms

| | |
|---|---|
| ALPE | Assistant Local Programs Engineer |
| AOS | Administrative Offer Summary |
| CA | Certification Acceptance |
| CFR | Code of Federal Regulations |
| DCE | Documented Categorical Exclusion |
| ECS | Environmental Classification Summary |
| FHWA | Federal Highway Administration |
| FONSI | Finding of No Significant Impact |
| GC | Governmental Agreement for Aid |
| HQ | Headquarters (usually WSDOT RES Headquarters) |
| LAC | Local Agency Coordinator |
| LACR | Local Agency & Consultant Reviewer |
| LAG | Local Agency Guidelines |
| LAPM | Local Agency Program Manager (Headquarters) |
| LP | Local Programs (Headquarters) |
| LPE | Local Programs Engineer (Region) |
| LPA | Local Public Agency |
| PFE | Project Funding Estimate |
| QA | Quality Assurance |
| QC | Quality Control |

| | |
|---|---|
| RES | Real Estate Services |
| RESM | Real Estate Services Manager |
| RCW | Revised Code of Washington |
| ROD | Record of Decision |
| ROW | Right of Way |
| URA | Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended |
| WAC | Washington Administrative Code |
| WSDOT | Washington State Department of Transportation |

## 15-2 Purpose

This chapter explains the requirements and conditions to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. This chapter is to be used by WSDOT and local agencies for guidance and oversight of right of way projects that will require certification by the Federal Highway Administration (FHWA).

## 15-3 Authority

23 CFR 1.11

23 CFR 635.105

49 CFR Part 24

WAC 468-100

RCW 8.26

## 15-4 References

*Construction Manual* M 41-01

*Environmental Procedures Manual* M 31-11

*Local Agency Guidelines* M 36-63

LP Web Page

Local Project Search

STIP

## 15-5 Policy

The acquisition of private property for public use is governed by a host of state and federal rules and regulations. On federal aid projects, the WSDOT ROW Program has overall responsibility for the acquisition, management, and disposal of real property. Through the Stewardship Agreement between WSDOT and FHWA, WSDOT is responsible for ensuring that all aspects of LPA projects are carried out in compliance with federal statutes, regulations, and policies. WSDOT Local Programs (LP) is the lead office for ensuring this compliance. Partially funded by the LP Office, the Headquarters RES LAPM is the lead in ensuring LPAs are acquiring ROW in accordance with the URA and 49 CFR Part 24.

LACs are WSDOT's primary oversight agents. They provide technical assistance and ensure compliance with federal statutes, regulations, and policies for the LPA ROW Program. LACs look for opportunities to attend project tours with LPAs on all projects with federal funding when or if they are available.

## 15-6 Training

Instructor-led and/or web-based training will be available. This training is required for WSDOT RES Supervisors, Region RESMs, LACs, and any staff involved in oversight of federally funded LPA projects. Training is recommended for project engineers, project development engineers, and project managers. Training will be made available to both consultants and local agencies.

### *Real Estate Training Spreadsheet (Under Construction)*

### *Local Agency Training*

The LAC provides/facilitates annual structured training open to all LPAs and consultants that address the requirements for a federal aid project. If requested or the LAC determines the need, the LAC provides one-on-one or group project-specific training to LPAs on the URA and the ROW process on federal aid projects and/or any projects wishing to preserve federal aid eligibility. This training should be tailored for the project according to the LPA's approved procedures and the ROW acquisitions needed for the project. For instance, if the LPA is using consultants, the training should be for the LPA management approval activities (e.g., agency approval of just compensation, agency approval of administrative settlements, going to condemnation).

## 15-7 Forms/Resources

**Spot Check or Certification Review Package**

| | |
|---|---|
| Project Review Worksheet | LPA-011 |
| Parcel Review Worksheet | LPA-012 |
| Residential Relocation Review Worksheet | LPA-013 |
| Non-Residential Relocation Review Worksheet | LPA-014 |
| Personal Property Only (PPO) Review Worksheet | LPA-015 |
| Certification Review Oversight Report | LPA-016 |
| Certification Review Transmittal Letter (Cert 1 or 2) | LPA-017 |
| Certification Review Transmittal Letter (Cert 3) | LPA-018 |
| Sample Size Determination Form | LPA-019 |
| Certificate Letters – Chapter 17 | |
| Certificate Worksheets – Chapter 17 | |
| RES-300 Diary | |
| List of Probing Questions | |
| Local Agency Active Project Status Report | |
| FHWA Annual Statistical Report | |

## 15-8 Definitions

**Active Project** – A project where offers have been made to property owners for the acquisition of real property interests.

**Obligation of Federal Funding** – The obligation of federal funding is the approval (authorization) by FHWA to participate in a share or portion of federally eligible expenditures on an agreed-upon scope of work (also known as a project). This commitment occurs when a project phase or additional funding for a phase is approved and the project agreement is authorized by FHWA. The dollar amount of federal funds approved on the project agreement is known as the obligation of federal funds. Only after the agency receives written authorization from LP are costs incurred eligible for reimbursement.

## 15-9 Oversight Roles/Responsibilities/Expectations

### *Region RES Local Agency Coordinator*

#### Role

Each region office has a Local Agency Coordinator (LAC) who acts as the liaison between the LPA and WSDOT and is the RES point of contact for ROW acquisition issues. The LAC is a permanent WSDOT employee recognized to have broad experience in all areas of ROW work, with expertise in acquisition and in at least one of four other areas – land title, appraisal, relocation, or property management.

This position provides guidance and technical support to LPAs and identifies ROW issues early in the process. The LACs provide specific training regularly and as they determine necessary. The LACs involve the RESM, LAPM, and the LPE in any contentious issues or if the LPA indicates they do not agree with the LAC's guidance.

#### LAC Responsibilities/Expectations/Key Functions

- Provide/facilitate training to LPAs.
- Assist LPAs with getting ROW procedures approved or revised.
- Assist LPAs with documenting eligibility to receive ROW funding authorization.
- Coordinate with the LPE/ALPE.
- Proactively reach out to LPAs to have a pre-ROW acquisition contact for federal aid projects.
- Answer LPA questions, provide assistance, and ask probing questions of LPA to gain understanding of the project.
- Provide input regarding suggested process improvements to LAPM.
- Perform spot check reviews prior to receiving the request for ROW certification from the LPA to ensure there are no surprises at certification.
- Perform ROW acquisition certification reviews utilizing the appropriate review worksheet, List of Probing Questions, and either the Sample Size Determination Form (LPA-019) or supply the methodology used to determine the selected sample size.

- Prepare a certification review package using the templates provided.
- Obtain RES signatures for ROW Certification and submit to LAPM for processing.
- Participate in QA and QA/QC reviews.
- Track and report Region LAC activities using the Local Agency Active Project Status Report.
- Coordinate with LPAs regarding the FHWA Annual Statistical Report, and obtain data from the LPAs and transmit to the LAPM.

### *Region Real Estate Services Manager (RESM)*

#### Role

This position ensures that all property rights acquired by the LPA followed applicable statutes, regulations, and policies. The RESM supports the LAC decisions if the LPA is not in agreement with the LAC's guidance.

#### Responsibilities/Expectations

- Support LAC as circumstances warrant.
- Make LPA oversight a region priority.
- Sign certification.
- Coordinate with the LPE/ALPE.

### *Region Local Programs Engineer/Assistant Engineer*

#### Role

Responsible for delivery of the LPA program in the regions, this position coordinates with the LAC as soon as a federal aid eligible project is identified with the acquisition of property rights.

#### Responsibilities/Expectations

- Notify LAC of projects with ROW as soon as possible even if only local funds are used in the ROW phase. This will improve the coordination between Local Programs and RES.
- Keep open communication with the LAC regarding project progression and priorities and provide immediate communication of at-risk issues as they arise.
- Provide relevant project information to LAC on federal aid projects when unusual conditions or concerns arise.
- Transmit updates, comments, and questions to the LP as necessary.
- Awareness that ROW issues could be more than just a ROW phase – e.g., if there are encroachments that need to be cured.
- Maintain project file documenting eligibility of the LPA to receive ROW Funding Authorization, including the LAC review of Right of Way Plan, Project Funding Estimate or True Cost Estimate, and the approved Relocation Plan (if required).
- Support LAC.
- Identify communication protocol between LACs, LPAs, and LPEs.

### *LPA/Consultant Reviewer – Headquarters*

#### Role

This position coordinates LPA activities with the LAC and oversees general LPA training activities on federal aid projects statewide. The position processes certifications for federally funded local agency projects, manages and oversees the approved consultant procedures, Government Agreements (GC), and task assignments for WSDOT providing real estate services to LPAs. This position also provides technical guidance and assistance to LACs, LPAs, and consultants as requested relating to acquisition and relocation assistance activities. In addition, the reviewer provides assistance to the LAC to review relocation files during the project certification review.

#### Responsibilities/Expectations

**Program Management**

- Review, prepare and process WSDOT Certification Concurrence Letter for project certification requests for federally funded local agency projects for LAPM's signature.
- Coordinate annual assessment of training needs with the LAPM.
- Coordinate and deliver ROW training to local agencies.
- Coordinate with appropriate staff to maintain and update training courses and core curriculum list by discipline.
- Track and manage Approved ROW Procedures for LPAs statewide.
- Maintain a list of approved consultants/LPA staff.
- Track GC Agreements and task assignments statewide.
- Conduct QA/QC reviews for one to two projects per year statewide and report findings. Additional reviews performed at the discretion of HQ RES. (See Section 15.20)
- Maintain and update ShareDot site.
- Maintain statewide website of LPA Information, Clarification & Guidance, and Announcements.

**Project Reviews**

- Review and approve relocation plans.
- Support LAC/LPA/Consultant as circumstances warrant.
- Participate in regular reviews (spot checks/certification reviews).
- Coordinate LAC assistance between regions on larger or more complex projects.
- Coordinate assistance during the temporary absence of an LAC.

## *Local Agency Program Manager (LAPM) – Headquarters*

### Role

This position manages the LPA ROW Program and has ultimate responsibility for ensuring that ROW acquisition for LPA projects is carried out in compliance with federal laws and regulations. The LAPM certifies local agency projects under certificate 1 & 2s and coordinates with FHWA for their approval of all certificate 3s & qualified certificates, provides oversight, guidance, direction, and training to the LACs when dealing with federal aid transportation improvement projects. Also provides support and training to the LACs and assists in providing training to LPAs and consultants.

### Responsibilities/Expectations

- Sign WSDOT Concurrence Letters to certify federally funded local agency projects under certificate 1 & 2s and coordinate with FHWA for their approval of all certificate 3s & qualified certificates.
- Support LACs as necessary, answering questions and clarifying policy issues.
- Involve FHWA and LP as necessary regarding compliance issues, interpretations, clarifications, etc.
- Develop/update policies as warranted in response to regulatory changes or new FHWA policy.
- Consult with LP in the development of policies and procedures.
- Coordinate with LP on all issues that affect LPA projects and contacts LP on any issues that may jeopardize certification on a project or that require FHWA participation in issues resolution.
- Assist in providing training to LPAs and consultants.
- Develop, provide, and track training for LACs.
- Prepare an annual assessment of LPA training needs.
- Facilitate regular meetings with LACs to discuss current issues.
- Track and report LPA program activities, i.e., certifications, reviews, local agency variance from approved procedures, oversight issues, best practices, shared experiences. Report annually to FHWA on LPA program activities.
- Provide articles for the LTAP newsletter as needed.

## *Local Programs (LP)*

### Role

This department is responsible for overseeing delivery of the LPA program and providing policy guidance and direction to Region LPEs. Coordinates with the LAPM, LPEs, and FHWA on issues related to LPA ROW acquisition.

### Responsibilities/Expectations

- Consult with the LAPM in the development of policies and procedures that impact ROW and proposed change to the LAG relevant to ROW.
- Coordinate with LAPM on all issues that affect LPA projects and any issues that may jeopardize certification on a project or that require FHWA participation in issues resolution.
- Notify LAPM of non-ordinary ROW issues on projects that require additional assistance from HQ RES.
- Transmit questions to the LAPM and Director of Real Estate Services as necessary.
- Notify the LAPM of potential changes in oversight processes and methods that may impact ROW activities.
- Support LAPM, LPEs, and LACs as circumstances warrant.
- Submit project authorizations to FHWA for final approval.
- Schedule and track LPA training through the LTAP center.

### *FHWA ROW Program Manager*

### Role

This position provides oversight, guidance, and direction to the WSDOT RES Program on federal aid highway transportation projects.

### Responsibilities/Expectations

- Interpret the URA and regulations.
- Clarify policy issues.
- Provide guidance and feedback on compliance issues.
- Track program trends.
- Perform regular process reviews.
- Assist in providing training to WSDOT, LPAs, and consultants.
- Approve ROW Certificate #3, as well as Qualified Certificate #1 and #2s submitted by LPAs through WSDOT.
- Work with WSDOT to create programmatic approvals to streamline process.

## 15-10 Communication/Coordination

Communication is essential to allow WSDOT to fully perform their oversight responsibilities. It also provides a mechanism for LPAs to initiate contact if they have any questions. The following are some specific communication tools.

### *Answer LPA Questions, Provide Technical Assistance, and Ask Probing Questions*

The LAC responds to requests from LPAs to provide technical assistance, advice, and answer questions. The LAC explains and clarifies the URA and its implementing regulations in the 49 CFR Part 24, RCW 8.26, WAC 468-100, LAG Chapter 25, and this manual. The LAC is expected to assist the LPA to

identify and correct issues during the acquisition process, and to contact RES HQ as needed. The LAC keeps open communication with the LPE/ALPE and with the LAPM. The LAC will involve the RESM, LPE/ALPE, and LAPM in any potentially contentious decisions or if the LPA indicates they do not agree with the LAC's guidance. The LAC will coordinate with the LPE/ALPE on project related issues.

### Documentation of Contact With the LPA

Each LAC shall maintain written documentation of important issues, contacts, and developments which could be a diary or emails. For example, if the LAC finds problems, then there should be a diary entry or sufficient emails to tell the story. It is important to document the file to remember key events and keeping a diary is considered a best practice. Diary entries for normal contacts are sometimes useful, but the intent of having the LAC keep diary entries is to be able to have a written record of what was communicated with the LPA in case there are later questions about whether the LPA has complied with LAC requests. If the LAC determines a written record is necessary, it should:

1. Be retained in a project file and should summarize important contacts and developments (tell the story).
2. Include copies of important emails in the project file.

### How Do the Region Local Programs Engineers Find Out About LPA Projects?

- The LPE may be contacted by the LPA about a project the LPA may want to make eligible for future federal funding or want instructions now that their project is on the STIP.
- The LPE's office may receive a courtesy copy of a funding assignment letter sent to the LPA by LP.
- The LPA submits a funding package via DOT Form 140-101 EF.
- The LPA submits a ROW plan for review.

### How Do the LACs Find Out About LPA Projects?

- The LPE provides information about the project. Sometimes WSDOT won't yet know if there is a ROW phase.
- The LPA contacts the LAC directly.
- The consultant for the LPA contacts the LAC directly.

### Once the LAC Finds Out About the Federally Funded Project From Local Programs or the LPA, What is the LAC's Next Step?

- If notification comes from the LPA, then the LAC will contact Local Programs to inquire if the project is federally funded. If the LPA is just trying to preserve eligibility for federal funding at a later date, they need to contact Local Programs to request a compliance review and provide charge numbers.
- Ask probing questions from the review worksheet.
- Obtain a copy of the ROW plan from the LPA if it has not been submitted already.

- Contact via phone call or email (keep Local Programs informed).
  - Experienced agency with a good history – phone call may be sufficient.
  - Inexperienced agency with an experienced consultant – phone call may be sufficient with both LPA and consultant.
- Decide if and when meetings are necessary (depends on the agency, the consultant involved or the complexity of the project).
  - Things to consider when determining when a project is complex include: number of acquisitions, relocations (mixed use and/or non-residential), partial acquisitions that may impact the use of the remainder, project controversy, etc.
  - Complex projects may require several meetings throughout the project (monthly status meetings, quarterly, etc.).
  - Non-complex projects may require an initial meeting with follow up by phone.
- Attend a project tour if available.
  - Physically viewing a project is a great way to prompt conversation and view the parcels being acquired.
- Maintain communications with LPA and LPE throughout their ROW phase.
- Update approved procedures if necessary.

### *Outreach to Local Agencies From Local Programs and LACs*

- LP will communicate the importance of the pre-ROW acquisition contact to the LPAs.
- Through training and communication WSDOT will advise LPAs to identify projects with ROW phases or projects where they would like to preserve federal eligibility early during the project prospectus stage. WSDOT will provide guidance to the LPA if a ROW phase is necessary post-prospectus.
- Region Local Programs will continue to communicate and coordinate LPA ROW activities.
- LACs will initiate contact with LPAs if they hear of a federal aid project with a ROW phase.
- County-wide or region-wide LPA meetings.
- Annual, quarterly, or semi-annual LPA meetings.
- LTAP web page postings.
- Write articles for LTAP newsletter.
- Emails to LPAs.
- Training – NHI, IRWA, and WSDOT staff.
- Conferences – AASHTO, IRWA, APWA, and outside networking sources.
- LAC will assist LPA with getting ROW procedures approved or revised.

## *Pre-ROW Acquisition Contact*

### Proactively Reach Out to LPAs to Have a Pre-ROW Acquisition Contact for Federal Aid Projects

The LAC should contact the LPA as soon as they learn or are notified of an LPA project, even if the LAC learns or is notified after acquisitions have started. The intent of this early contact with the LPA is for the LAC to gain an understanding of the proposed project and the ROW needs. It is the time to decide on the frequency of spot checks and an opportunity to discuss any possible risks. This contact can be an in-person meeting, an email, a phone call, a GoTo Meeting, or other forum deemed sufficient by the LAC.

The purpose of the pre-ROW Acquisition Contact with the LPA is to gain understanding of the proposed federally funded LPA project and ROW needs. The pre-ROW acquisition contact with the LPA is highly encouraged but it is not a requirement, and the lack of a pre-ROW contact will not affect certification of the LPA project in the event early contact does not take place. The LAC should, however, proactively reach out to LPAs to initiate this early contact.

There are a variety of ways an LAC can learn about a project. The two most common ways are the LPA contacts the LAC or the LPE contacts the LAC. Regular communication between the LPE/ALPE and the LAC will foster improved project awareness. Ideally, contact by the LPA will occur by the time project design is 30 percent complete. It is at this stage that the LAC can begin to assess ROW needs with some certainty. The Local Agency Active Project Status Report can also be a useful communication tool.

### Project Specific Knowledge

Development of a Project Funding Estimate or True Cost Estimate can disclose many of the effects of the projects, but nothing compares to an actual physical inspection accompanied by engineering staff having in-depth knowledge of the project design. The number of parcels, complexity, or degree of project effect should govern the LAC's need to meet with the LPA in person or by phone.

An LPA that either includes sufficient funding in the state line of their Local Agency Agreement or, lacking identified project funding, makes a request to set up a reimbursable J-agreement to fund involvement of the LAC in a project real estate scoping effort, would be demonstrating a progressive understanding of how to take advantage of the expertise available to them. It would also serve as a training opportunity for their staff.

### Probing Questions to Ask the LPA

- Ask the LPA if they have had any contact with Local Programs (most of the time they haven't made contact with Local Programs if there is no federal funds available to apply for, etc.)?
- Is the Agency on ROW Procedures? Are they complete and current?
- Is there a Local Agency Agreement (work order)? OR Is a "J" Agreement or equivalent needed?

- Are there federal funds involved in the right of way phase or in other phases only?
- Will there be a right of way phase, and how will it be funded?
- Status of right of way plan?
- Status of True Cost Estimate or Project Funding Estimate?
- Status of environment clearance? NEPA?
- Is Relocation anticipated? Is there personal property or people in the acquisition area?
- Are there encroachments in the existing right of way?
- Are there any anticipated hardships? For example, health issues among potential displaced persons that may require early acquisition.
- Have you prepared a relocation plan? If so, has it been submitted to WSDOT for approval?
- Does the LPA have a Relocation Appeal Procedure in place?
- How did you acquire the existing right of way?
- Is there early acquisition? If so, did you follow your Approved ROW Procedures? Was the URA process followed?
- Will you be acquiring access rights?
- If an AOS is proposed to be used to determine value, is the value problem uncomplicated and anticipated to be less than $25,000, including cost-to-cure items?

### *Communication Protocols*

#### LAC-Region Local Programs Staff

Share project-specific information as it becomes available, such as when an LPA contacts the LAC with early acquisition questions or when the LPE receives an LP letter notifying the LPA that they are receiving project funding.

#### LAC-LAPM Communication

Regularly occurring LAC meetings.

LAC Diaries – Description of types of activities to include in diary, summary of activities, direction provided, and observations.

#### LAPM-LPA Communication

Coordinate and/or write articles for LTAP newsletter.

## 15-11 LPA-Approved ROW Procedures

LP is the approving authority for each Agency's Approved ROW Procedures (see LAG Manual Chapter 25.2 & LPA Forms LPA001-001 & LPA-003). The Standards and Procedures Engineer is the approving authority. The process to get procedures approved is as follows:

1. LPAs are required to update their procedures for one or more of the following reasons:
   a. Staff turnover.
   b. Approved procedures are more than three years old. If so, the procedures are examined to determine if they require updating.
      (1) ***Note:*** If the LPA does not have a federal aid project in the foreseeable future, the procedures do not need to be updated even if they are beyond the three-year time period.
      (2) ***Caution:*** If a LPA is thinking of doing early acquisition for an unfunded project, the LPA needs to have updated procedures.
   c. A change is requested regarding who can perform specified activities.
   d. Revisions to the Local Agency Program, such as statutory, regulatory, or policy changes.
2. LPAs contact LACs for input and LPAs draft new procedures.
3. LPAs submit unsigned, draft procedures either to the LPE or the LAC as per the LPE's communication protocol.
4. LACs review draft procedures and provide feedback to LPA or comment to the LAPM as appropriate.
5. LAPM reviews draft procedures and provides feedback to the Standards and Procedures Engineer.
6. Standards and Procedures Engineer edits procedures to include any additional WSDOT requirements.
7. Standards and Procedures Engineer signs acceptance approval letter and sends to LPA with a copy to the LAC, LPE, and the LPA Consultant Reviewer.
8. If the LAC feels the LPA is not performing, the LAC can require a change to procedures during a project. The LAC will discuss this with the RESM, LPE, and LAPM before deciding to proceed with modifying procedures. Any changes to procedures will be approved through the normal approval process.

LPAs are required to complete and submit the FHWA Annual Statistical Report to WSDOT as stated in their Approved ROW Procedures. The report should contain those parcels that were acquired or relocated within the reporting period.

It is important for LPAs to know that they should be aware their project could be selected for a spot check review.

### *LACs Assist LPAs With Getting ROW Procedures Approved or Revised*

Procedures should match the expertise level of the LPA staff and processes (how they do business) the LPA employs to accomplish their projects' ROW phases. The LAC should request any updates to approved LPA procedures at the same time the LAC requests information from the LPA for the Annual FHWA Statistical Report. All future revised procedures will include language that all federal aid projects are subject to oversight reviews at any time during the acquisition process as required by WSDOT's oversight program. If at any time during a project the LAC feels the LPA is not performing as required, the LAC may require a change to the LPA's Approved ROW Procedures. The LAC will discuss this with the RESM, LPE/ALP, and LAPM prior to taking such action. Any changes to procedures will be subject to the normal approval process. Notice to the LPA that they need to fill out the FHWA Annual Statistical Report will be one of the stipulations within their procedures.

## 15-12 Funding

See LAG Section 25.4 for specifics on right of way funding authorization and the notification process.

### *LACs Assist LPAs With Documenting Eligibility to Receive ROW Funding Authorization*

Review and provide comments to the LPA and the LPE/ALPE on the LPA's approved Right of Way Plans, Project Funding Estimates, or True Cost Estimates. The LAC also coordinates the review of any Relocation Plan with the LPA/Consultant Reviewer or WSDOT State Relocation Reviewer.

### *Charge Codes*

The following are different ways in which a charge code can be created:

#### Local Agency Agreement

The purpose of the Local Agency Agreement is to obligate federal funding. A work order is established to which labor charges may be applied up to the dollar amount provided in the STATE line. With LPAs, LPEs, and RESMs prior approval, may provide or coordinate Region RES staff in providing direct de minimus assistance with right of way work to the LPA.

See LAG Chapter 21, The Project Prospectus.

#### Governmental Agreement for Aid and Task Assignment

The purpose of the Governmental Agreement for Aid (DOT Form 224-076 EF) is to provide general terms and conditions under which WSDOT RES will provide real estate services for an LPA's project under a Task Assignment. The GC is reviewed and approved by the LAPM and is valid for an initial five-year period. The GC may be renewed for an additional three years. The LPA will submit a written request to the LAPM for review and approval.

**Task Assignment** – A Task Assignment is a supplement to the GC that is project specific. It includes a description of the proposed project, the work that the LPA is requesting WSDOT RES to perform, an estimated costs of the work, and a date by which all work is to be completed. If additional costs or time is required, an amendment to the Task Assignment may be requested by the LPA. A work order is established to which labor and overhead costs may be charged, and may be tied to the work order pertaining to the Local Agency Agreement for the project. If there is no Local Agency Agreement, then a reimbursable J Agreement is required.

### Reimbursable "J" Agreement

A reimbursable "J" agreement is for an identified purpose and is normally used when there is no other funding agreement in place. It is coordinated by the LPE and sent to the LPA for execution. The preparation of "J" agreements varies from region to region.

### *LAC Position Funding*

Time spent providing LPAs with technical assistance, training, and document review and processing is charged to a either a work order established by LP or to the LPA's Local Agency Agreement project work order or to an established reimbursable agreement. If there is no available work order, the LAC will work with their Region Local Programs Office to provide a funding source for the LAC and HQ LPA/Consultant Reviewer's efforts.

### *LAPM Position Funding*

Approximately 75 percent of the LAPM overhead funding is provided by LP to provide oversight of the LPA ROW Program. The LAPM will not charge projects for general oversight activities, but may charge if technical assistance is provided.

### *LPA/Consultant Reviewer – Headquarters Position Funding*

Time spent providing LPAs with technical assistance and training is charged to a either a work order established by LP, or to the LPA's Local Agency Agreement project work order or to an established reimbursable agreement. If there is no available work order, work with the LAC to provide a funding source for their efforts. This is typically accomplished through a request to the LPE's office.

## 15-13 Early Acquisition

Section 6-3
LAG 25.42 through 25.46

Early acquisition, sometimes also referred to as advanced acquisition, is when property is acquired for a project before a NEPA decision (DCE (aka ECS), FONSI, ROD) has been made. Early acquisition can be done using either Local Agency funding or Federal funding.

For Local Agency funding, follow one of the two processes below:

- 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
- Federally Funded Early Acquisition

When early acquisition occurs, FHWA must concur that the acquisition did not influence the selection of the project's alternative or the LPA's decision to fund the project. The process that has been established to get this concurrence is for the LPA to complete Appendix N and attach it to the ECS. It is not the LAC's responsibility to ensure that Appendix N is sufficiently filled out. If the LAC becomes aware that the LPA is pursuing early acquisition, they should advise the LPA regarding the need to follow the early acquisition process identified in the WSDOT ECS Guidebook and form template available online at the LP Environmental Services web page.

The LPA may request advisory and review services by the LAC for their early acquisition parcels, which should be funded by a reimbursable agreement. Such activity shall be conducted as per the LAG and this manual.

If an LPA acquires a property or property interests under Early Acquisition procedures and later wishes to incorporate the property into a federally funded project, the LPA will need to maintain records for that parcel so it can be included in the ROW Certification review. Without documentation showing the parcel was acquired in accordance with the URA, the parcel cannot be certified, which can jeopardize federal participation on the project.

### *Compliance Reviews*

Compliance reviews are essentially the same review as a certification review for projects that have ROW acquisition but do not currently have federal funds designated/assigned to the project. An LPA can request a compliance review after the acquisition is complete to ensure that their acquisition activities have been done in compliance with the URA, and the project is eligible for federal funding.

### *Records Retention*

The LPA is required to keep their files on the early acquisition parcels for three years after construction is authorized.

## 15-14 PFE/Relocation Plans/Right of Way Plans

When a preferred project design alternative has been selected, an LPA will need to obtain a PFE with a complete data package and parcel worksheets if the LPA intends to either:

- Use the appraisal waiver process, or
- Seek ROW funding authorization.

An LPA seeking to secure, or to maintain eligibility of their project to receive, federal funds needs to always have an approved Right of Way or Property Acquisition Plan, as well as a Relocation Plan if persons, businesses, non-profit

or farms, or personal property only, is/are occupying future right of way (see Completing the Project/File Review in Section 15-17). The LAC can themselves or with assistance from other WSDOT staff experts, review preliminary and final versions of such estimates and plans, and provide advice to the LPA.

## 15-15 Regulatory Issues

A Local Agency Certification Compliance Results & Level of Involvement (Guide) was developed by WSDOT/FHWA. It provides a description of potential regulatory issues the LAC may encounter through normal communication with an LPA, and as a result of a spot check or certification review. This Guide summarizes who has the authority to make a decision on how to deal with a potential problem. WSDOT and FHWA has approved this Guide. The Guide is available on the RES and LPA/ROW Resources webpages. If anyone proposes to deal with an identified issue differently than as presented in the spreadsheet, you will immediately need to contact the LAPM.

## 15-16 Spot Check Review

Spot check reviews are a proactive measure intended to lessen the risk that LPAs engage in improper practices that result in irreversible problems or compliance issues that could delay or stop ROW certification or risk federal funding on current and/or future federal aid projects. Such risks are reduced by elevating the LPA's awareness of the LAC's project monitoring and by providing an early opportunity for the LAC to help the LPA identify problems before they become compliance issues. WSDOT's acquisition file review process is intended to ensure that the LPA has in fact completed the ROW acquisition process in compliance with federal regulations before we make our certification to FHWA.

The LAC will perform spot check reviews on selected federal aid or federal aid eligible projects. The number of spot check reviews is dependent upon the scope of the project, complexity of acquisitions, the LPA's level of experience, and the LPA's past performance. Spot check reviews are not required on all projects, unless required by the LPA's Approved ROW Procedures (as specified in the cover letter by Local Programs). The LAC should, at a minimum, perform spot check reviews on at least a 25 percent of the annual active LPA projects in their region. However, the LAC is required to perform spot check reviews on active projects of those agencies having past performance problems, required by ROW Procedures, or if the agency lacks sufficient experience acquiring ROW under the URA.

The LAC will compute the minimum number of LPA project reviews based on the number of annual active projects in their region for that particular year. For example, if the LAC has 20 active projects then a minimum number of five projects must have spot check reviews based on the 25 percent requirement (number of annual projects x 25 percent = number of projects to spot check).

If a spot check review on a project is determined to be necessary by the LAC, it is anticipated that there will be a minimum number of files reviewed for smaller, less complex projects and a larger percentage of files reviewed for larger and/or

complex projects or acquisitions. The LAC will utilize the sample template to compute the number of files to be reviewed or they will supply their methodology on how they selected their sample size to review.

The LAC is expected to identify and assist the LPA in correcting issues during the acquisition process, and to involve the RESM, ALPE/LPE, and the LAPM on regulatory issues. The LAC provides timely follow up with LPAs on results of spot check reviews. If compliance issues exist that are questionable or irreversible, the LAC will involve the RESM, LPE/ALPE, LP, and the LAPM.

Possible elements and associated risks that need to be considered in developing the frequency of spot check reviews may include:

1. Legal nature of the property ownerships.
   - Individual, corporation, joint ownership, condominium, cooperatives, not-for profits, public entities, public official ownerships – potential conflicts of interest, etc.
2. Physical nature and location of the property.
   - Waterfront, tidelands, geo-tech hazards, active resource extraction, urban, rural, etc.
3. Occupancy of the property.
   - Owner, tenant, residential, business, non-profit, farm, long-term, short-term, etc.
   - Relocation assistance.
   - Functional replacement of public facilities.
4. Effects of the project design on real estate.
   - Partial acquisition, total acquisition, easements, grade separation, access rights, light, view and air, etc.
5. Complexity of appraisal issues.
   - Tenant owned improvements, multiple remainders, unique improvements, special benefits, timber, minerals, crops, etc.
6. Property management.
   - Are there encroachments to be cleared?
   - Environmental issues/commitments.
7. Experience level of staff/LPA or consultant(s) with real estate acquisition under the URA.
8. Staff/LPA or consultant(s) past record of issues with URA compliance.

### *Completing the Spot Check Review*

The major difference between a spot check review and a certification review is that the project is not complete, so the LAC should focus on the actions taken by the LPA up to the point of spot check review for compliance with the URA. The benefit of performing a spot check review, is regulatory compliance issues can be caught early enough in the process that corrective actions may be resolved at the LAC level (LAPM approval is still required for the Oversight Report (LPA-016) prior to providing to the LPA). Another benefit is the prevention of regulatory compliance issues during the certification review.

## 15-17 Certification Review

Prior to certifying to FHWA that an LPA has acquired the rights necessary to construct its project, WSDOT requires that the LPA certify to WSDOT that the right of way acquisition work has been completed in compliance with the federal regulations. It is important to be certain the LPA has complied with the federal regulations because FHWA holds WSDOT accountable for compliance, not the LPA. If FHWA determines that a project is not eligible for federal aid because of a ROW compliance issue, they will seek reimbursement of the funding from WSDOT, not the LPA. It would then be up to WSDOT to seek reimbursement from the LPA.

Approximately one month prior to advertising its project for construction, the LPA submits its Right of Way Certificate #1, #2, or #3 with Certificate Worksheet to the Region Local Programs Office. The Right of Way Certificate should show the current status of right of way acquisitions on the project, not a projection of what the agency hopes it will be at some point in the future. The typical process is the Local Programs Office forwards the certificate to the Region LAC for action. Whenever an agency desires to obtain a Certificate #3, it should be discussed with the LAC, Local Programs, and LAPM as soon as it is known or determined that such a certificate will be requested.

After receiving the certificate request, the LAC:

1. Checks with Local Programs to make certain the appropriate labor charge codes are in place.
2. Checks to make sure agency has current approved right of way procedures.
3. Ascertains the size and complexity of the job to determine whether additional help or specific experts to assist in the review are necessary.
4. Contacts the agency to schedule the review of project right of way acquisition files. LAC should consider including LACR if QA/QC Review is needed (See Section 15-20).

### *Completing the Project/File Review*

Project acquisition files are reviewed for compliance with the agency's Approved ROW Procedures, LAG Chapter 25, and 49 CFR Part 24. This review should be done utilizing the Project Review Worksheet (LPA-011), the Parcel Review Worksheet (LPA-012), and the Relocation Review Worksheets (LPA-013, LPA-014 & LPA-015) as appropriate (see LAG appendices) as a guide. The LAC will use either the sample size determination form to help determine the scope of the certification review or will write a methodology section in the certification report that describes the reasoning for determining the selected sample size. If the LAC feels a larger sample size is necessary, they may increase the sample size at their discretion. If they feel the sample size is too large, they can contact the LAPM about using a smaller sample. If a smaller sample size is used, the LAC will document the reasoning and obtain LAPM concurrence.

Specific areas to be reviewed.

1. **Right of Way Plan** (LAG Subsection 25.41)
   a. A R/W Plan indicating the property required to build and maintain the transportation project is required. A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.

      The Agency's approved* R/W plan shall contain essential data needed for appraisal and negotiation activities as listed in LAG Subsection 25.41.

   b. A best practice is to identify enough of the property around the acquisition to know if there are any issues (e.g. wells, septic systems, reserve drain field areas, irrigation systems, etc).
2. **Appraisal Waiver** (LAG Subsection 25.52)
   a. Did the agency follow its established procedures for the Waiver Process?
   b. If the LPA is using the updated Appraisal Waiver Procedure, is the total estimate of just compensation greater than $10,000 but less than $25,000? If yes, did the offer letter state that an administrative offer was being made and an appraisal was not completed, and an appraisal would be prepared if requested by the property owner? If under old procedure, was appraisal offered for all AOS's?
   c. Does the Administrative Offer Summary address all rights that are required to construct, operate, and maintain the proposed improvements?
   d. Are the areas and rights evaluated consistent with the right of way plan/PS&E?
   e. Is there adequate "value finding evidence" to support the compensation estimate?
   f. Has the estimate been rounded to a reasonable amount?

**Appraisal** (LAG Subsection 25.51)

a. Is the appraiser qualified per LAG requirements?

b. Did he/she appraise the same property rights as are shown on the right of way plan/PS&E?

c. Was the property owner offered the opportunity to accompany the appraiser on the inspection of their property?

d. Does the appraisal appear to be complete and comply, overall, with all Chapter 4 requirements?

**Appraisal Review** (LAG Section 25.6)

a. Did either an agency staff member who has been approved by WSDOT, a WSDOT staff reviewer, or an appraiser from the WSDOT Approved Reviewer list review the appraisal?

b. Does the review appear to be complete and in compliance with Chapter 5?

c. Is it based on the most recent right of way plan/PS&E?

d. Has the reviewer provided a breakdown of compensation?

e. Is the Determination of Value rounded to a reasonable amount?

f. Is there sufficient analysis by the reviewer?

g. Has reviewer determined whether there is an uneconomic remainder?

3. **Set Just Compensation** (LAG Section 25.7)

a. Has the agency's appropriate authority established just compensation at not less than the approved appraisal/AOS? This can be accomplished either on a separate document or by signing a concurrence statement at the end of the appraisal review or Administrative Offer Summary as shown in LAG Appendix 25.176.

4. **Offer Letter** (LAG Subsection 25.93)

a. Has the agency made a written offer in the amount of the established just compensation?

b. Is the offer consistent with the right of way plan and the area to be acquired (i.e., are revised offers made for any changes made to the right of way plan)?

c. If federal aid is used in the right of way phase, is the date of offer subsequent to environmental and ROW phase approval?

d. Is the date of offer subsequent to approval of just compensation?

e. Does the letter include a breakdown of the just compensation, basic condemnation information, and information on the $750 statutory evaluation allowance?

f. If the offer is an administrative offer, has agency taken care not to infer that an appraisal was completed?

g. Did the agent provide the owner with *Property Needs and You* booklet or other document explaining their rights?

h. If not, is there sufficient documentation in the diary showing that the owner's rights were adequately explained?

i. Were optional clauses added if appropriate (relocation, early acquisition, etc.)

5. **Administrative Settlement** (LAG Section 25.11)

   a. If the agency has settled at an amount greater than the approved just compensation, is the settlement approved in compliance with agency procedures?

   b. Is it based on the correct amount and properly justified?

6. **Donated Property** (LAG Section 25.10 and LAG Appendix 25.177)

   a. If all or a portion of the required right of way has been donated, is there a donation statement for the amount donated?

   b. Has the appraisal also been waived?

7. **Title Report** (LAG Section 25.8)

   a. Does the agency have reasonably current evidence of title? This is a matter of judgment, but in an active market updates may be required if the report is more than six months old. The preferred evidence of title is a preliminary commitment for title insurance from a title insurance company, with supplements as required. At a minimum, a last deed of record is necessary, but such minimal evidence should be accepted only on low value or minimal property rights acquisitions (e.g., permit).

8. **Title Clearing** (LAG Section 25.8)

   a. The title to acquired parcels should be cleared so that the agency has its interest in the parcel subject only to encumbrances that are deemed to be reasonable. The agency should assess the risk of each encumbrance and determine whether or not it needs to be cleared. Low value transactions can be given more latitude than high value (see Chapter 8 for specific examples).

   b. Has the agency provided documentation of the title clearing so the reviewer can determine the encumbrances are acceptable?

9. **Acquisition Document(s)** (LAG Section 25.9 and Chapter 6)

   a. Has the agency acquired the property rights (deed, easement, lease, permit, access rights, etc.) necessary to construct, operate, and maintain the proposed improvements?

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   b. Is the term of any non-permanent right that was acquired long enough to support the proposed improvements (a minimum of 20 years; however, it will depend on the level of federal investment and could be significantly more than 20 years)? Is there a termination clause in acquired non-permanent rights?

c. Is any cancellation clause that may be included acceptable? Specific requirements:

(1) Has the deed (or other acquisition instrument) been properly recorded?

(2) Does the legal description match the right of way plan? Was the same convention used for writing the legal as for drawing the plan (e.g., metes and bounds, stations, and offsets)? Can the reviewer follow the legal on the plan?

(3) Is grantor the same as shown on latest title supplement? Has the correct person signed for grantor? Does the signatory have authority to sign? Is there documentation (corporate resolution, etc.)?

(4) Is the conveyance document properly notarized? Did the notary use the correct acknowledgement for the type of ownership and signatories?

10. **Proof of Payment**

a. Copy of payment check is preferable. Use judgment for other sources of payment verification, such as a voucher.

b. Is there a bill for payment of, or other evidence of services provided and payment for reimbursement of the $750 Statutory Evaluation Allowance?

11. **Negotiator Disclaimer** (LAG Section 25.9)

a. Has the individual involved with the negotiation provided a signed disclaimer with language?

(1) The written agreement embodies all considerations agreed to by the negotiator and the property owner.

(2) The negotiator understands that the acquired property is for use in connection with a federal aid transportation project.

(3) The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future.

(4) The agreement has been reached without any type of coercion.

12. **Diary** (LAG Section 25.15)

a. A diary of right of way activities must be provided for each acquisition file. Brief notes or a collection of letters and emails does not constitute a diary. The diary needs to be a complete history of the acquisition. See LAG Section 25.15 or the FHWA's Acquisition Guide for LPAs for more details. All persons who participate in negotiations with a property owner to acquire real property interests will maintain a diary.

b. Has every negotiator signed their diary?

13. **Relocation** (LAG Section 25.12)
    a. Is there is relocation on the project?
        (1) Yes, is there an approved relocation plan?
            (a) Yes, was it completed per approved procedures (e.g., staff, consultant, WSDOT)? As part of the right of way review, a relocation expert from Region or Headquarters should review all relocation files for compliance with the Uniform Relocation Act.
            (b) If no, start communication with the LPA or their consultant to develop a relocation plan.
        (2) Does the Agency have a Relocation Appeal Procedure in place, and do they include the process in their relocation notices?
14. **Other**
    a. Is there any evidence in the file that might imply the owner has been coerced (e.g., rapid condemnation, inappropriate reference to condemnation, lack of adequate time to consider the offer, denial (implicit or explicit) of any rights provided under the Uniform Act, etc.)?
    b. Are files organized in a way that documents can be readily found and an auditor or other reviewer can independently (without aid of the acquisition agent) determine that the property was acquired in compliance with the federal rules?

## 15-18 Results of Review (Spot/Certification)

The LAC is expected to provide review worksheets (LPA-011 to LPA-016), the Sample Size Determination Form (LPA 019) or a methodology write up, and other relevant project-specific details for each spot check or certification review. Upon completion of the review the LAC will prepare a Certification Review Transmittal Letter (LPA-017 or LPA-018) and a Certification Review Oversight Report (LPA-016) if corrective actions have been identified. If corrective actions are identified, concurrence by the LAPM is required before sending the report to the LPA. A copy of the Certification Review Oversight Report and Certification Review Transmittal Letter will also be sent to the LPE and LAPM. This report will summarize what was reviewed, any issues and a steps taken by the LAC to define an acceptable remedial action, and the steps taken by the LPA to perform any remedial actions. If there are no corrective actions the Certification Review Oversight Report is not necessary as the information will be captured on the LAC Status Report.

### *Review Package*

The following items should be included in the spot check or certification package that is sent to HQ RES:

- LPA-011 Project Review Worksheet
- LPA-012 Parcel Review Worksheet
- LPA-013 Residential Relocation Worksheet (if needed)

- LPA-014 Non-Residential Relocation Review Worksheet (if needed)
- LPA-015 Personal Property Only (PPO) Review Worksheet (if needed)
- LPA-016 Certification Review Oversight Report (only needed if corrective actions are identified)
- LPA-017 or LPA-018 Certification Review Transmittal Letter
- LPA-019 Sample Size Determination Form
- Copy of R/W Plan or equivalent (large enough and with sufficient resolution to read)

### Certification Package

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The following items will be sent to HQ RES from LP:

- Appropriate certificate with signatures.
- Certificate worksheet.

### ROW Certificate Signature

The LAC and the RESM sign the LPA certificate and forwards it to the LAPM for processing. Refer to Chapter 17 for certificate letter templates.

### Post Review Tasks and Responsibilities

After the review is complete, LAG Section 25.13 requires that the LAC send a Certification Review Transmittal Letter (LPA-017 or LPA-018) to the agency. The original copy of the letter is sent to the agency official who requested the right of way certification. Additional copies are sent to the person at the LPA who is responsible for the right of way activities, the LAPM, the appropriate Region LPE, and the Region RESM.

Certification issues will be identified in the Certification Review Oversight Report and the LAC should contact HQ RES as necessary. The LAC provides timely follow up with LPAs and includes the consultant if appropriate on results of the certification review. If compliance issues exist that are questionable or irreversible, the LAC will involve the RESM, LPE/ALPE, LP, and the LAPM. The LAC will send the completed certification report to the LAPM and LPE.

1. If the coordinator determines that project right of way is ready for certification, the close out letter will detail the findings of the review and discuss any deficiencies found. Concurrently with issuing the close out letter, the LAC and Region RESM will sign the LPA's Right of Way Certificate and send it to the Region Local Programs Office for inclusion in the certification package to be transmitted to the HQ LP Office.
2. If the coordinator determines that project right of way cannot be certified, the LPE should be informed as soon as possible and given the opportunity for input into subsequent action. In cases of egregious violations of the federal rules, consequences can be as severe as loss of federal aid, loss of Certification Acceptance Status, or loss of authority to independently acquire right of way. None of these actions will be taken without the Region LPE and LAPM involvement.

Most problems are far less significant and may simply be corrected prior to signing the Right of Way Certificate. In these cases, a letter should be sent to the LPA, with distribution as discussed above, that details the deficiencies encountered and the corrective actions required before certification can be approved. The LAC will work with the agency to help the LPA comply with the federal regulations and provide any necessary training. If corrections are relatively significant and/or numerous, it may be necessary to schedule another review with the agency. However, in less serious situations and with concurrence of the LAPM, the project can often be allowed to go to construction advertisement with some simple follow up such as a faxed or scanned document, or an agency assurance that they will complete the requested corrections as soon as possible. When the corrective actions are complete to the satisfaction of the LAC, the certification will be signed and processed as discussed above. A close out letter should then be sent to the agency confirming that the certification is complete.

All projects must ultimately have a Right of Way Certificate #1 or Certificate #2. In cases where an agency has been allowed to advertise construction with a Certificate #3, the agency is still responsible for completing remaining relocation work and/or acquiring the remaining rights necessary to construct the project in a timely manner. In the case of a conditional Certificate #3, it is particularly important to work with the agency and monitor progress on completing the conditional elements. Be certain that timelines are included for completion of conditional elements. These can often be the barriers to allowing bid opening or contract award. When the right of way work is complete, the coordinator will review the new information to determine if a Certificate #1 or #2 can be issued. If a clear certificate can be issued, it will be processed as discussed above.

Each time a Right of Way Certificate is issued, the information should be entered on the worksheet used to complete the FHWA's year-end Statistical Report.

## 15-19 Reporting and Tracking

The LAC will track and report the following Region LAC activities to the LAPM on a monthly basis using the Local Agency Active Projects Status Report. The LAC will collect annual LPA ROW statistics on all federally funded projects each fiscal year (October 1st – September 30th) and forward those reports to the LAPM by October 15th so the stats can be included in the FHWA Annual ROW Statistical Report. The LAC will also forward a copy of the Certification Package to the LAPM for retention in the official LPA file that will be retained in HQ RES prior to the LAMP forwarding the request for certification to FHWA.

### *Program Trends*

The LAPM will take the information from the certification package, the spreadsheet, and the statistical report to analyze and report program trends that can be used to identify training needs. This information will be provided annually to FHWA.

### *ShareDot*

The LAC, LAPM, and Local Agency Consultant Reviewer will utilize ShareDot to obtain and share information internally within WSDOT.

## 15-20 Quality Assurance/Quality Control (QA/QC) Reviews for ROW

The August 2011 FHWA Final Report on the *Evaluation of WSDOT's Oversight of the Local Public Agency ROW Program* identified recommendations to improve WSDOT's oversight of the LPA ROW Program and to prevent future regulatory compliance issues. Pursuant to the *Federal-Aid Highway Program Stewardship and Oversight Agreement* between WSDOT and FHWA, one of the methods of oversight is QA/QC reviews of the LPA ROW program. Process reviews are an integral and essential part of the stewardship process and is required by 23 CFR 710.201(b) & (h).

A QA/QC Review will be completed on one to two projects annually, on a statewide basis. The selected region LAC will include the LACR when scheduling a spot check and/or ROW Certification review for the selected LPA project. QA is a way of preventing mistakes and avoiding problems in order to certify ROW for federally funded transportation projects. QA refers to the ROW procedural activities implemented by the LPA to ensure that state and federal regulations for acquiring ROW are met. QC is the process of reviewing the quality of all factors involved in ROW acquisition by the LPA such as controls, processes, performance and records, knowledge, skills, experience, qualifications and oversight, The purpose of the QA/QC review is to determine if there are any common non-compliance issues, and provide best practice guidance to both LACs and LPAs on how to avoid such issues in the future. Additional reviews can be done at the discretion of the LAPM.

Upon completion of the QA/QC Reviews, the LPA Consultant Reviewer will prepare a report of findings.

The following checklists can be used to evaluate WSDOT's compliance with LPA oversight requirements:

- LPA-020 Project QA/QC Review
- LPA-021 Parcel QA/QC Review
- LPA-022 Relocation QA/QC Review

### *PMR – Project Management Review*

LP performs a project management review for LPAs to maintain CA status.

## 15-21 Records Retention

The acquiring agency shall maintain adequate records of its acquisition and property management activities. Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with 23 CFR 710.201(f) and 49 CFR Part 24. These records shall be retained at least three years after construction is authorized.

If an LPA acquires a property or property interests under Early Acquisition procedures and later wishes to incorporate the property into a federally funded project, the LPA will need to maintain records for that parcel so they do not jeopardize federal participation on the project.

## 15-22 LAG Chapter 25

Any interested party (LACs, LPAs, Local Program's staff, etc.) may suggest improvements or changes to LAG Chapter 25 which may be taken under consideration. The LAPM will be WSDOT's primary Real Estate Service's point of contact and will evaluate whether the requested changes are feasible and consistent with federal statutes, regulations, and policies with assistance from FHWA. The LAPM will work with LP and FHWA to facilitate changes and updates to the chapter.

17-1 Acronyms
17-2 Purpose
17-3 Authority
17-4 References
17-5 Training
17-6 Forms
17-7 Definitions
17-8 General
17-9 Policy
17-10 Procedures

## 17-1 Acronyms

**DSS** – decent, safe, and sanitary

**LAC** – Local Agency Coordinator

**LAG Manual** – *Local Agency Guidelines* M 36-63

**LAPM** – Local Agency Program Manager

**LP** – Local Programs

**LPA** – Local Public Agency

**NEPA** – National Environmental Policy Act

**PPO** – personal property only

**PS&E** – Plans, Specifications, and Estimates

**QA** – quality assurance

**QC** – quality control

**RESM** – Region Real Estate Services Manager

**R/W** – right of way

**TCE** – temporary construction easement

**Uniform Act** – Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended

## 17-2 Purpose

This chapter explains the requirements and conditions to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. This chapter is to be used by the Washington State Department of Transportation (WSDOT) and local agencies for preparation of right of way project certifications.

## 17-3 Authority

23 Code of Federal Regulations 635.309(b), (c), (g), (h), (l), (p), 710.311, and 710.313

23 Code of Federal Regulations 1.23, 636, 710.201(e), 710.601, 710.501, and 771.113(d)(4)

49 Code of Federal Regulations 24.601, 602, and 603

WAC 468-100-601, 602, 603

## 17-4 References

*Local Agency Guidelines* M 36-63
*Environmental Procedures Manual* M 31-11
*Construction Manual* M 41-01

## 17-5 Training

Instructor-led web-based training is available. This training is required for WSDOT RES Supervisors, RESMs, LACs, and any staff involved in certification of projects. This training is recommended for project engineers, project development engineers, and project managers. This training will be made available to consultants and local agencies.

## 17-6 Forms

### *WSDOT RES Forms*

RES-383 No Right of Way Certificate
RES-384 Certificate 1, No Relocation
RES-385 Certificate 1, Residential Relocation
RES-386 Certificate 1, Non-Residential Relocation
RES-387 Certificate 1, Combination of Relocation Types
RES-388 Certificate 2, No Relocation
RES-389 Certificate 2, Residential Relocation
RES-390 Certificate 2, Non-Residential Relocation
RES-391 Certificate 2, Combination of Relocation Types
RES-392 Certificate 3, No Relocation
RES-393 Certificate 3, Residential Relocation
RES-394 Certificate 3, Non-Residential Relocation
RES-395 Certificate 3, Combination of Relocation Types
Under Construction Certificate 3, Design Build Phased
RES-397 Certification Worksheet – State
RES-398 Certification Worksheet – Design Build
RES-399 WSDOT Certification Concurrence Letter

### *Local Agency LPA Forms*

| | |
|---|---|
| No Right of Way Certificate | LPA-383 |
| Certificate 1, No Relocation | LPA-384 |
| Certificate 1, Residential Relocation | LPA-385 |
| Certificate 1, Non-Residential Relocation | LPA-386 |
| Certificate 1, Combination of Relocation Types | LPA-387 |
| Certificate 2, No Relocation | LPA-388 |
| Certificate 2, Residential Relocation | LPA-389 |
| Certificate 2, Non-Residential Relocation | LPA-390 |
| Certificate 2, Combination of Relocation Types | LPA-391 |
| Certificate 3, No Relocation | LPA-392 |
| Certificate 3, Residential Relocation | LPA-393 |
| Certificate 3, Non-Residential Relocation | LPA-394 |
| Certificate 3, Combination of Relocation Types | LPA-395 |
| Certificate 3, Design Build Phased | Under Construction |
| Certification Worksheet | LPA-397 |
| Certification Worksheet – Design Build | LPA-398 |
| LPA Certification Concurrence Letter | LPA-399 |

## 17-7 Definitions

**Certificate** – R/W certificate document whereby WSDOT or WSDOT's concurrence with the local agency certificate ensures relocation has been addressed and possession has been obtained of all property rights needed to construct, operate, and maintain a project.

**Combination of Relocation Types** – This is when there is more than one type of relocation on a project. Specifically, this is when there is some combination of residential and non-residential relocation, including PPO. This type of relocation is project-wide, not parcel specific.

**Existing R/W** – This is land that is already incorporated into the roadway facility or land previously certified under a previous federal aid project. Permits, easements, temporary construction easements (TCE), and slope easements are generally considered R/W acquisition.

**No Right of Way Acquisition** – This is where the proposed project can be built entirely within the existing roadway facility (the facility may be something other than roadway for transportation enhancement projects).

**Non-Residential Relocation** – Relocation/displacement of businesses, farms, and nonprofit organizations. PPO relocations are usually treated as non-residential relocations because they do not require DSS assurances.

**Residential Relocation** – Relocation/displacement of individuals and families from a dwelling.

**Sufficient Property Rights** – Per 23 CFR 1.23 and 710.201(e), the real property interest acquired for federal aid projects by the acquiring agency must be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public. For instance, if there is a highway embankment, the acquiring agency must acquire permanent property rights for the slope area, since the slope area is integral to the structural integrity of the roadbed.

The acquiring agency must acquire any property needed for mitigation and any staging areas required by the NEPA document in the certification. This also means R/W shown as needed on the PS&E, not just the R/W plan, needs to be certified.

For property that is not permanently needed for the project, but is necessary for construction of the project, temporary construction easements, leases, license agreements, permits, and/or rights of entry may be appropriate. See Chapter 6 for appropriate use of these instruments.

WSDOT normally acquires fee simple title for R/W and limited access. This policy should be considered by local agencies. There are instances where something less than full fee acquisition is sufficient, such as when the property is owned by the federal or state government, railroads, and Indian Nations or if it is only needed to construct the project (e.g., temporary construction easements or driveway reconnect permits).

**Right of Entry** – A personal right that gives the agency the right to perform certain tasks or work defined within the document. If a right of entry is proposed for construction activities, it should only be used in emergency situations (slides, floods, culverts) or when the property is owned by another state or local agency and additional time is needed to get through their process.

**Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended** – This is the federal statute that sets forth the requirements for acquisitions for federal projects.

## 17-8 General

You have completed the acquisition process for all the parcels needed for the project. This chapter outlines the steps necessary to prepare the certificate. By signing this certificate, you are ensuring that you have followed all of the procedures outlined in previous chapters and/or Chapter 25 of the *Local Agency Guidelines* M 36-63.

Advertisement for projects is the point at which the acquiring agency commits the R/W to the terms of a construction contract. Bids submitted by contractors are based on the acquiring agency's delivery of a clear R/W by the start of construction. If a contractor does not have access to a property because sufficient property rights are not acquired or certain properties remain occupied, damages for delay of work may result and the project may not be completed on schedule.

Federal and state law assures property owners and displaced occupants (residents and owners) of specific rights and protections and the delivery

of certain entitlements before possession is taken of the property. The most important of these are:

- Owners must be paid the amount established as just compensation, or the amount deposited in court for their benefit, before the agency takes possession of the property.
- Residential displaced persons must be offered comparable replacement housing that is within their financial means and available for occupancy no less than 90 days before being required to move.

## 17-9 Policy

The final step in the project development process is to certify the project as clear for construction. The R/W certification is a written statement that summarizes the status of all R/W related matters for a project, and it declares that the acquiring agency has complied with the requirements of statutes and regulations. The certification provides the following information and assurances:

1. Sufficient property rights to construct, operate, and maintain the facility as shown on the PS&E has been acquired. This includes parcels needed for construction purposes only such as a TCEs or permits. If limited access rights need to be acquired, the transaction must be completed prior to certification.
2. The R/W is clear of encroachments and includes the entire R/W, not just the area of the traveled way or project improvements. Any encroachment that will be allowed to remain in the right of way must be there legally, i.e. airspace lease.
3. R/W has been acquired in accordance with the Uniform Act requirements and/or Federal Land Transfer processes.
4. Relocation assistance has been completed in accordance with the Uniform Act and meets the requirements of Chapter 12.
5. Parcel-specific information is provided in the Certification Worksheet
6. Properties acquired in advance of NEPA Clearance (including donations) are identified by parcel number. (This information can take the form of an address or a county tax ID if parcel numbers are not assigned.)

Section 6-3 Early Acquisition

There are two types of certifications which state that sufficient rights have been acquired and the project is ready to be advertised and constructed.

- **Certificate 1 – All R/W Acquired** – All rights have been acquired. All occupants have vacated the R/W and the agency has the right to remove any remaining improvements (except those that are to remain in the R/W under an airspace lease).

23 CFR 635.309(c)(1)

- **Certificate 2 – Right to Occupy All R/W** – Trial or appeal of some parcels may be pending and some parcels may have right of entry or possession and use only. All occupants have vacated the R/W and the agency has the right to remove any remaining improvements (except those that are to remain in the R/W under an airspace lease).

23 CFR 635.309(c)(2)

In very unusual circumstances and with prior written approval of FHWA, a third type of certification states that some R/W remains to be acquired.

23 CFR 635.309(c)(3)

- **Certificate 3 – All R/W Not Acquired** – Acquisition of a few remaining parcels is not complete. All occupants of residences have had replacement housing made available to them in accordance with 49 CFR 24.204. It is recommended to defer/move the ad date in these situations. This type of certification may be used if the agency can adequately explain why certification should take place before acquisition is complete and why it is in the public's interest.

  There are essentially two types of Certificate #3s. The first is where an agreement has been reached on all parcels and documents are being processed for payment. The extra time between Ad and Bid Opening is used to process and pay the outstanding parcels or clear the final relocation. The second is where parcels will be excepted out and the contract awarded with parcels left to acquire and clear.

**First Type of Certificate #3**
**Agreement Reached & Use of time between Ad and Bid Opening**

- A Certificate can be used if agreements have been reached on all parcels and there is a reasonable expectation that payment and relocation will be completed prior to bid opening.
- The Certification shall list the outstanding parcels along with the issues remaining and an estimated clear date.
- The certification will indicate both the Ad date and anticipated bid opening date.
- A statement is be included in the certification that under no circumstances are bids to be opened prior to submittal of a Certification #1 or #2 to HQ RES and FHWA.
- If updated certification has not been submitted at least one week prior to scheduled bid opening HQ RES will notify the region in writing that a Right of Way certification has not yet been timely received by HQ RES. HQ RES will reinforce that bids cannot be opened until certification is received, reviewed, and sent to FHWA.

  ***Note:*** It is the expectation here that the Region RES Manager is responsible for compliance and assuring that the necessary region staff are informed of the requirements and, in fact, bids are not opened prior to recertification. HQ RES will insure this process is followed.

Under the second type of Certificate #3, the agency ensures that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the R/W are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

23 CFR 635.309(c)(3)

All un-acquired parcels are identified and a realistic date given for completion of acquisition and relocation. An explanation is provided of why the properties are not acquired, how they will be acquired, and when they will be acquired by the given date is also required. Appropriate notification is provided in the project construction bid documents identifying all locations where acquisition is not complete.

**Second Type of Certificate #3**
**Parcels excepted out of the certification**

- Within the certification document, clearly indicate why it is imperative this project go to Ad and Award prior to having all of the parcels acquired.

  ***Note:*** Reasons could be that we have work that needs to be completed within an environmental window that would be missed otherwise or possibly the scheduling of work does not require the remaining parcels until a much later date or even construction season.
- All parcels that are excepted out are to be listed within the certification letter along with current status, issues remaining, and estimated clear date.
- If work is to be restricted to a specific area, only those parcels necessary for the work are to be certified and work limits identified by stationing are to be imposed. No construction activity will be allowed outside of the defined area. Typically no work will be allowed within existing right of way outside of the restricted construction area. If existing right of way is needed, an explanation of this need along with an explanation of why this would not be coercive would not cause disproportionate injury or unnecessary inconvenience to nearby parcels.
- A right of way plan shall be submitted with the certification indicating parcels being certified, parcels being excepted out and the restricted limits of construction.
- A designated monitor who is regularly on site shall be tasked with the responsibility for maintaining a daily log of activities in the vicinity of the uncertified parcels to assure that no undue coercion or encroachment occurs. A weekly report of these activities is to be submitted to the Region RES Manager and the HQ Acquisition Program Manager. The HQ Acquisition Program Manager will report to FHWA as necessary.
- Prior to Ad, the Region RES Manager will schedule a meeting or conference call between Region engineering and construction staff, Program Management, HQ RES staff and FHWA in order to review the certification requirements and clarify expectations.
- If the certification is approved by FHWA with the condition that an upgraded certification will be provided by a specific date, it is understood that this is the date the upgraded certification is expected at FHWA. Please allow for sufficient time for this to occur. If it appears that an upgraded certification will not be possible by the expected date, the Region RES Manager will notify HQ RES as early as possible in order to involve FHWA and provide for contingency plans.

Submission of the second type of a Certificate #3 may not be approved. If the Region is proposing to submit this type of Certificate #3, a meeting with RES HQ, FHWA, and the Region is recommended to discuss the proposal.

The acquiring agency must comply with all conditions in FHWA's written approval. Certificate 3s are followed by a Certificate 1 or 2 when possession of all parcels is obtained.

**Additional Certification Information**

- A R/W certificate is prepared for all projects where federal funds are used in any phase (PE, R/W, CN) if there is R/W acquisition.
- For projects where the final project definition indicates that no R/W needs to be acquired, no certificate is required. If project scope changes occur after submittal of the final project definition and additional R/W is required, a certificate is submitted following standard procedures.
- If the final project definition indicates that R/W is required but ultimately design does not require additional property or property rights that need to be acquired, a No Right of Way Certificate shall be prepared.

**Design Bid Build Certifications**

After R/W acquisition has been completed and no later than one month before the federal aid project is to be advertised for contract, the R/W certificate must be submitted to Program Management.

**Design Build Certifications**

The R/W Certificate should include all the parcels necessary to complete the improvements included in the construction contract limits. The contract limits may be less than the limits in the NEPA document. For example, if the NEPA document covers a five mile corridor, and the construction contract covers one mile, the R/W Certificate should cover the parcels within the one mile construction limits.

If all of the R/W needed for the project can be certified when the notice to proceed with construction is issued, the regular Certification Worksheet should be used to show the parcel-specific information.

If construction activities are segmented on a design build project and it is expected that the R/W certificate will be updated at least once to cover additional segment(s), the acquiring agency needs to initiate a meeting with RES HQ and FHWA to propose the construction segments and obtain their formal approval to the proposal. The segments need to be buildable sections, and each segment must have an approved certificate #3 (except for the last segment) prior to WSDOT allowing construction to start on that segment.

These construction phases/segments need to be buildable segments (e.g., a bridge, an intersection) where construction of that segment can be completed without needing additional R/W. If phases/segments are used, the construction activities on that phase/segment cannot interfere with the rights of property owners or tenants on the future phases/segments properties/parcels that have not yet been certified.

The decision to advance a R/W segment to the construction stage shall not impair the safety of a roadway that remains open to traffic, including any sidewalk areas. In addition, the decision to advance a segment shall not be coercive in any way with respect to the un-acquired or occupied properties on the same or adjacent segments of the project R/W.

With the decision to advance a R/W segment, the acquiring agency must designate an official to be the responsible party for monitoring the contractor to ensure that remaining property owners who have not yet sold their property and/or moved are protected from unnecessary inconvenience and disproportionate injury or any action coercive in nature. This party should be named in the R/W certificate.

On design-build projects, no clearing, grading, excavating, or development of any kind may occur prior to completing the environmental review process and receiving notice to proceed with construction. If a parcel for a future segment is certified for limited activities, such as vehicle parking, the certification needs to specifically include language stating that the contractor does not have the right to perform any construction activities until written approval is given by the acquiring agency. In these circumstances, there is a possibility that not all environmental clearances for that specific parcel have been granted, so it is important that the acquiring agency monitors the contractor's activities to ensure that they are only using the property for the approved interim use.

## 17-10 Procedures

The certification process is the same for both state-funded and federal-funded projects with the exceptions of the steps outlined in the respective sections.

**Design-Build** – Section reserved. Procedures to be developed.

## WSDOT Process

WSDOT Certification Flowchart – FHWA Funded

WSDOT Certification Flowchart – State Funded

### *Design Bid Build*

#### Region Review

1. Verify:
   a. All property and/or property rights have been acquired, including limited access rights, if necessary, as shown on the approved and revised R/W plans.
   b. All rights necessary to construct, operate, and maintain the facility have been acquired as shown on the PS&E.
   c. All occupants have vacated, and all eligible persons and occupants of the R/W within the project have been relocated to decent, safe, and sanitary housing or have been offered decent, safe, and sanitary housing.
   d. All environmental commitments requiring R/W are included in the R/W plan and PS&E.

e. Property acquired needing utility agreements are in process or complete on project specific properties.

f. All construction memorandums dealing with property rights have been forwarded to the Project Engineer Office.

2. Run IRIS "Parcel Dates Updated" report.

   a. Verify all entries are completed.

      i. Region certification clear dates are filled in.

      ii. Payment available/escrow disbursed entry is filled in (currently located in HQ Clear Dates).

3. Prepare the appropriate certificate (1, 2, or 3) and Certification Worksheet.

   a. If federal aid is involved, verify the federal aid number is correct.

      i. Address certificate to FHWA Division Administrator.

   b. If state funds only.

      i. Address certificate to Secretary of Transportation.

4. Send original and email certificate to the HQ RES Acquisition and Title Program Manager.

### HQ Review

1. Receive certificate (1, 2, or 3) from region.

2. Run IRIS "Parcel Dates Updated" report and print to ensure all dates are entered.

3. For federal aid or interstate projects:

   a. Review:

      i. R/W plans to verify that all property and/or property rights have been acquired.

      ii. Verify that the HQ Acquisition and Title Section compliance requirements have been met.

      iii. Review the PS&E if requested by the region, and verify that all R/W concerns from PS&E review have been addressed.

      iv. Contact region if any areas need clarification or if IRIS items are incomplete.

   b. Prepare WSDOT Certification Concurrence Letter.

      i. Verify federal aid number and project description.

c. Send the following to FHWA:

i. WSDOT Certification Concurrence Letter.

ii. Original certificate.

iii. Certificate 1 and 2 to "FHWA Area Engineer."

iv. Certificate 3 to FHWA ROW Program Manager.

d. Email items identified in c above to Region RES Manager and Capital Program Development Budget Development and Finance Office.

e. Complete HQ certification in spreadsheet and IRIS.

f. File copy of WSDOT Certification Concurrence Letter and original region certificate.

4. For all other projects:

a. For projects selected for review:

i. Review:

(1) R/W plans to verify that all property and/or property rights have been acquired.

(2) HQ Acquisition and Title Section compliance requirements have been met.

(3) PS&E and verify that all R/W concerns from PS&E review have been addressed.

ii. Contact region if any areas need clarification or if IRIS items are incomplete.

iii. Contact Region RES Manager to discuss deficiencies.

iv. Enter certification in log.

v. File region certificate.

b. For projects not selected for review:

i. Enter certification in log.

ii. File region certificate.

5. In the case of a Certificate 3, the project must be re-certified to either a 1 or a 2 when possession of the parcels is obtained.

Certificates (1, 2, or 3) are submitted to FHWA based on the following criteria:

1. Federal aid projects where federal funds are in any project phase (PE, R/W, CN).

2. Interstate pursuant to the Federal Aid Highway Program Stewardship and Oversight Agreement dated February, 19, 2008.
   a. WSDOT submits R/W certificate to FHWA.
   b. Supplements to the Stewardship Agreement that are project specific such as SR 520 and Alaska Way Viaduct. ***Note:*** These supplements were to the 2001 Washington Federal Aid Stewardship Agreement.

If 1 or 2 above are not applicable then the certificate is addressed to the Secretary of Transportation.

FHWA does not formally approve Certificates 1 and 2. The actual certification date for federal aid projects is the date on the WSDOT Certification Concurrence Letter sent to FHWA. For Certificate 3s, FHWA will issue an approval letter and that is the certification date.

***Note:*** For Certificate 3 only, when FHWA approval letter is received, forward to Region RES Manager and Capital Program Development Budget Development and Finance Office.

Local Agency Certification Flowchart

## Local Agency Process

### Region Review

1. Verify with region Local Programs:
   a. All rights necessary to construct, operate, and maintain the facility as shown on the Right of Way Plans or equivalent are consistent with the PS&E. The review takes place during design approval.

LAG Chapter 43

   b. If early acquisition occurred on the project, confirm proper documentation was received (Appendix N in the ECS Guidebook).
2. When the local agency determines that all acquisition activities are complete, the local agency will:
   a. Prepare their certificate (on local agency letterhead) using the appropriate form and parcel-specific Certification Worksheet.
   b. Submit certificate, Certification Worksheet, and RW Plan or equivalent to the Local Programs Engineer.
3. The Local Programs Engineer then forwards the certification request to the RESM who in turn forwards the certification to the LAC for the review.
4. The LAC will review the local agency's acquisition files for the project and determine if the R/W was acquired in compliance with the Uniform Act and 49 CFR Part 24.
5. The LAC will complete the following review worksheets (a more detailed process can be found in Chapter 15):
   - Project Review Worksheet
   - Parcel Review Worksheet

If relocation, then the following:

- Relocation Project Overview Worksheet
- Residential Relocation Review Worksheet
- Non-Residential Relocation Review Worksheet
- Personal Property Only Review Worksheet

6. The LAC will prepare the following reports, as provided for at Section 15-7 based on the following situations:

   a. A Certification Review Oversight Report, if there are any parcels that had deficiencies that required corrective action.

   b. If no issues exist, a Certification Review Oversight Report is not necessary as the information will be captured on the LAC Status Report.

7. a. If the LAC determines that the project is ready for certification, the LAC will:

      i. Sign the certificate and submit it to the RESM for their signature.

      ii. Prepare a Certification Review Transmittal Letter to the local agency indicating WSDOT will proceed with processing the certification request for their project.

      iii. After the RESM has signed the certificate, the LAC, submits the signed certificate with reports and copy of the transmittal letter electronically to LAPM and provides a courtesy copy, without reports, to Region Local Programs contact, HQ LP Program Management contact, and Local Agency contact.

      iv. Provides original transmittal letter and copies of any other relevant information to the LPA.

   OR

   b. If, after distribution of reports and a summary statement by the LAC to, and in consultation with the RESM, LAPM, and the Local Programs Engineer, the LAC determines that the project cannot be certified, the LAC will notify the LAPM and prepare a letter for signature by HQ LP.

      i. The letter will be provided to the agency and the Local Programs Engineer detailing the deficiencies encountered and will include a discussion/statement of whether the acquiring agency's approved procedures need to be amended, and identifies the areas of weakness. If the areas of weakness are compliance issues, this letter will also notify the acquiring agency that if any current project(s) has similar compliance issues, and possibly future project(s) they might be jeopardizing project's eligibility for federal funds.

         (1) If corrective action(s) is possible, the letter will outline the corrective action(s) required to qualify for certification.

(2) If corrective action(s) is not possible, WSDOT will coordinate with FHWA to determine next steps. After the agency has performed the corrective action(s), the LAC will review the steps taken and, if appropriate, recommend certification of the project.

ii. If certification is recommended, then steps i. through iv. above are followed.

### HQ Review

1. Having received the signed certification from the LAC, the LAPM will:
2. Review Certification Review Package.
3. Verify federal aid number on the STIP.
4. Review submitted R/W plans or equivalent to verify that all property and/or property rights have been acquired.
5. Review Certification Review Package submitted from LAC.
6. Contact LAC if any areas need clarification.
7. LAPM will prepare WSDOT's Local Agency Certification Concurrence Letter.
8. Send the following to FHWA:
   a. WSDOT's Local Agency Certification Concurrence Letter.
   b. Original certificate.
      i. Certificate 1 and 2 to "FHWA Area Engineer."
      ii. Certificate 3 to FHWA ROW Program Manager.
9. Complete HQ certification in tracking spreadsheet.
10. Send electronic copy of completed certification to HQ LP Program Management contact, and a courtesy copy to the Region Local Programs contact, LAC, and RESM.
10. File copy of HQ WSDOT Concurrence Letter and certificate.

Certificates (1, 2, or 3) are submitted to FHWA based on the following criteria:

1. Federal aid projects where federal funds are in any project phase (PE, R/W, CN).
2. In the case of a Certificate 3, the project must be re-certified to either a 1 or a 2 when possession of the parcels is obtained.

FHWA does not formally approve Certificates 1 and 2. The actual certification date for federal aid projects is the date on the WSDOT Concurrence Letter sent to FHWA. For Certificate 3s, FHWA will issue an approval letter and that is the certification date.

### How to Fill Out the Certification Worksheet

The relocation part of the Certification Worksheet should be filled out with "x"s in the "None" column, and with numbers in the Residential and Non-Residential columns, unless the column header indicates that a date should be entered. If you feel it is appropriate to put something other than an "x" or a number to indicate something specific about a particular parcel, make sure that the marking you choose is listed in a legend at the bottom of the worksheet, or that you add an entry in the legend. Parcels should be entered in the worksheet according to their geographic order of location on the R/W plan/PS&E.

Figures 2 through 5

Figure 1

Plan Sheet

Certification Worksheet – State

Certification Worksheet – Local Agency

Certification Worksheet Design Build – State

Certification Worksheet Design Build – Local Agency

For design build projects with multiple R/W phases/segments encompassed under one contract, the worksheet should be organized by phase/segment and then according to their positions on the plan. The certification worksheet will need to be updated with each Certificate 3 submission. The worksheet should highlight the parcels in yellow that are being cleared with this submission. Any parcels cleared in a previous certificate need to be updated to green.

### How to Choose the Correct Certification Form

The tables in the figures are intended to help you determine which certification template to choose. The "x"s in the columns indicates the type of relocation within an individual parcel. The yellow highlight indicates the overall certificate type to select based on looking at all the parcels, with the exception of the "combination." Remember, a project's R/W certificate covers all the parcels necessary to construct, operate, and maintain the facility. A project will not have different R/W certificates due to different types of relocation by parcel.

Figures 2 through 5

### What should be done if project planning or scoping documents originally indicated R/W was needed, but the final design of the project does not require R/W?

The acquiring agency should provide a No Right of Way Certificate that will be included in the project agreement that states, "Design refinements eliminated the need for R/W."

- For WSDOT projects, this No Right of Way Certificate should be completed by the Region Real Estate Services Manager and sent to Program Management.
- For Local Agency projects, this statement should be made by the appropriate staff at the agency, and sent to the Region Local Programs Engineer.
- HQ RES will send a courtesy copy of the No Right of Way Certificate to:
  - For WSDOT federally-funded projects to FHWA with a copy to the region.
  - For Local Agency projects to FHWA with a copy to the LAC and the Region Local Programs Office.