

“DRAFT”
A Streamlined Process
To Acquire Temporary Right of Way
For Reconstruction Projects

When only temporary right of way is needed to construct a highway project, such as ADA or culvert replacement projects where we are reconstructing within the existing permanent right of way, the following procedures may be used to streamline the acquisition process:

- 1.) Order title opinions for the entire highway corridor (project termini) well before construction limits are known.
 - Title opinions are reasonably inexpensive and extra titles prevent re-ordering delays.
 - Opinions provide proof of fee and easement ownership.
- 2.) Based on available construction data, authorize a Temporary Commissioner’s Order over the length of the project based on a consistent width from centerline.
 - Commissioner’s Orders are required by statute over the area where transportation funds are spent to acquire right of way or construct and maintain highway facilities.
 - Temporary orders expire after completion of the project and can be larger than required for temporary construction.
 - Prepare an authorization map for one order, large enough to cover the largest temporary taking on the project.
 - To simplify order preparation, the temporary order should be a consistent width without exceptions for properties that are not affected. (construction limits can change).
 - Consider a graphic order rather than a narrative order.
- 3.) District appraisal staff prepares a book of comparable sales to establish the unit value of the bare land in the corridor.
 - Comp books should be prepared by a licensed staff appraiser.
 - Comp book will be used to establish just compensation for the temporary taking.
- 4.) District mapping technician spots the fee ownership, easements and market data on the right of way map.
 - Obtains charge identification numbers for the project.
 - Sets up the project in REALMS.
 - Determines a parcel identification number for the affected properties.
 - Ensures that the numbering system can be expanded as new parcels are identified.
 - Determines what properties will require a temporary taking and how much must be taken.
 - Prepares parcel sketches of the affected parcels.
- 5.) District right of way supervisor assigns an employee knowledgeable with the acquisition process and real estate values to contact the property owner to explain the project and our need to obtain temporary right of way.

- Inspects the subject property and reviews the proposed taking with the property owner.
- Revises the taking if necessary to minimize damages.
- Discuss the size of the taking, sales data from the comparable sales book and suggested compensation for the temporary taking.
- Explain that just compensation will be based on an appraisal waiver or minimum damage assessment not an appraisal. Re: 49 CFR 24.102(c)(2)
- Obtain verbal acceptance of the taking, the appraisal waiver and compensation.

6.) Establish and offer just compensation to the property owner.

- Define the temporary taking using the parcel sketch or portion of the right of way map and attach the sketch to the temporary acquisition document.
- Prepare the appraisal waiver (MDA) based on comp data, landowner input and visual property impacts.
- District certifies the MDA value in the same manner as direct valuation as submits the package to OLM.
- OLM establishes just compensation, encumbers the fund and returns file to the district with temporary documents.
- Prepare a written offer to the landowner based on our determination of just compensation for the temporary right of way.
- District contacts the landowner for final execution of the documents.
- Parcel file is submitted to OLM for payment.
- Construction plans show only the temporary right of way acquired.

The process above is based on the fact that administrative costs for an acquisition should not be a high proportion of, or exceed, the value of the actual real estate to be acquired. It is based on the appraisal waiver provisions of the CFR that streamline the appraisal and negotiation process. These provisions allow for an appraisal waiver for minor uncomplicated valuations under \$10,000. The person performing the waiver valuation must have sufficient understanding of the local real estate market to make the waiver valuation but he does not have to be a licensed appraiser. This process is further streamlined by allowing the same person who prepares the valuation to negotiate the acquisition.

Since the construction documents to be obtained are for temporary takings and nominal value, the takings can be described by a sketch rather than a legal description or plat. The temporary commissioner's order also does not have to be precisely defined. A general uncomplicated order will be sufficient for these temporary acquisitions and will minimize the effects of parcel additions and design changes.

Since the waiver valuation is not an appraisal, it cannot be used as the negotiating tool prior to initiating an eminent domain action. State law requires that the acquiring authority obtain an appraisal, submit a copy to the property owner and negotiate in good faith with the owner, prior to initiating a condemnation action. If condemnation is contemplated on a parcel, the parcel should be dropped or the streamlined process cannot be used. However, we do feel this method will be a valuable tool to efficiently acquire temporary right of way for just compensation quickly and with minor administrative expense.