

OKLAHOMA TURNPIKE AUTHORITY

RIGHT-OF-WAY LAND ACQUISITION AND UTILITY RELOCATION POLICIES

OVERVIEW

The Oklahoma Turnpike Authority (OTA) has a need to acquire rights-of-way necessary for the construction, maintenance, and operations of its turnpike projects and to accommodate the projected construction bid letting schedules in support of such existing and new expansion projects. Consequently, these policies shall govern OTA's land acquisitions. In specific circumstances, as determined by OTA, where application of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act is required, OTA shall follow the rules and regulations established in 49 CFR § 24 *et seq.*

The location, removal and relocation of public or private utility facilities that are to be erected, constructed or located in place upon, across or under a turnpike project shall be under the control and supervision of the OTA in accordance with 69 O.S. §1722(A).

POLICY OBJECTIVE

Land Acquisition: To establish procedures to ensure that owners of real property to be acquired for OTA turnpike projects receive just compensation, are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation, and to promote public confidence in OTA's land acquisition process. The OTA's procedures shall comply with all applicable covenants set forth in any of the OTA's trust agreements and contracts between OTA and trustee as well as applicable state and federal law.

Utility Relocation: To establish procedures to address the need for, timing of and the payment of costs and expenses associated with the removal and relocation of utility facilities necessitated by an OTA turnpike project, and ensure that no such relocation shall result in a taking of the owner's property rights without just compensation. The OTA's procedures shall comply with all applicable covenants set forth in any of the OTA's trust agreements and contracts between OTA and trustee as well as applicable state and federal law.

I. DEED / EASEMENT LEGAL DESCRIPTION VERIFICATION

Each separate instrument of conveyance shall be independently verified and reviewed for accuracy and completeness prior to the initiation of negotiations, including all access control language.

II. QUALITY OF TITLE

OTA shall secure a clear, marketable title to every property to be acquired for permanent holding. All permanent new right-of-way shall be acquired in fee simple, and title shall be taken in the name of the OTA by Warranty Deed, provided that such title shall be limited to the surface rights only and shall not include oil and other mineral rights, and all interests shall be satisfied, including mortgages, liens, and surface leases. Groundwater rights may be severed from surface rights upon the written request of the owner of the land as provided for in 69 O.S. §1707. Marketable title shall be evidenced by either an Attorney's Title Opinion that title is free from all material liens, encumbrances, and defects of title or paid up Owner's Title Insurance Policy issued by a title insurer licensed in the State of Oklahoma.

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III. APPRAISAL

Except for simple, non-complex acquisitions with an estimated value of *Ten Thousand Dollars (\$10,000.00) or less*, a documented appraised report shall be made on all parcels prior to the initiation of negotiations to acquire real property. A State of Oklahoma Licensed Certified General Appraisers shall be employed to perform appraisals in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). On a case by case basis, the OTA Executive Director, OTA Deputy Director, or a designee appointed by either of them may waive the need for an appraisal on properties with an estimated value greater than *Ten Thousand Dollars (\$10,000.00) and less than Twenty-five Thousand Dollars (\$25,000)*, provided the property owner is offered the option of having the property appraised and consents to the waiver. At any time deemed necessary, a second appraisal may be requested only by the OTA's Executive Director or his designee.

IV. APPRAISAL REVIEW

A separate State of Oklahoma Licensed Certified General Appraiser, not employed or associated with the original appraisal secured hereunder, shall review appraisals on all properties which are to be appraised. A qualified review appraiser shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in Uniform Standards of Professional Appraisal Practice (USPAP) and other applicable requirements and support the appraiser's opinion of value. As needed, the review appraiser shall seek necessary corrections or revisions.

V. JUST COMPENSATION

Just Compensation shall be determined in compliance with Oklahoma State Statues and Oklahoma case law. Just Compensation is defined in 69 O.S. §1708 (d) as follows:

The value of the property taken, and in addition, any injury to any part of the property not taken. Any special and direct benefits to the part of the property not taken may be offset only against any injury to the property not taken. If only a part of a tract is taken, just compensation shall be ascertained by determining the difference between the fair market value of the whole tract immediately before the taking and the fair market value of that portion left remaining immediately after the taking.

VI. AUTHORIZATION OF COMPENSATION FOR RIGHT-OF-WAY

The disbursement of funds as Compensation for right-of-way acquisition and with *optional* relocation benefits shall be performed with integrity and sound judgment. OTA consultants having authority to participate in properly determining the amount and legality of such disbursements shall assume responsibility for their decisions. Upon receipt of full and complete documentation, a written offer letter to be utilized in initiating negotiations shall be reviewed and approved as to form by the OTA General Counsel and then approved and signed by the OTA's Executive Director or his designee prior to presentation to the owner.

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VII. NEGOTIATIONS

It is the policy of the OTA that real property acquisitions are best accomplished by negotiated purchase. This method provides certainty to the OTA as well as the owners and avoids the added cost of condemnation litigation and possible increased financial exposure to all parties; it is also more time and cost-effective than condemnation. Sincere attempts to purchase should be made before referring a case to condemnation, and in ordinary cases (time permitting), a minimum of three contacts, by telephone, in-writing, in-person, or a combination thereof with the owner should be made by OTA's agent before negotiations are considered to be at an impasse. All interest in a property should be taken into consideration during negotiations, and, whenever possible, all persons owning a negotiable interest should be made aware of when the offer to buy is made. The offer, made pursuant to Section V above, must be made in writing, embracing the amount approved by OTA.

No threats or coercion shall be used by OTA's agent. No changes in the amount of the offer or the terms of the sale shall be made without prior approval by the OTA's Executive Director, Deputy Director, or Director of Right-of-Way and Utilities. OTA's agent is obligated to give the property owner a full explanation of the construction plans and the effects the acquisition will have upon their property. OTA's agent shall also document that the property owner has been informed of his/her rights and remedies under the law as set forth in OTA's Property Rights Brochure. The agent shall provide a copy of this brochure to the owner at the time an offer is presented.

OTA's agent shall keep a full record of contacts made with property owners, including personal, phone, mail, and email, the date of each contact, and a brief summary of the contact and the nature of the business transacted if any. OTA's agent shall not have any personal interest in or connection with the property or relationship with the owners that may be a conflict of interest or would in any way interfere with his/ her ability to impartially perform duties associated with these right of way acquisition policies.

VIII. ADMINISTRATIVE/LEGAL SETTLEMENTS

Whenever OTA's Agent/Attorney believes there is a reason to increase the amount of the last offer conveyed to an owner, a recommendation shall be made to the OTA's Executive Director, Deputy Director or Director of Right-of-Way and Utilities for an administrative settlement giving a full explanation and justification for the recommended increase. Such increase should be designed to allow successful negotiations and avoid or mitigate condemnation litigation. Such increased offers must be approved by OTA's Executive Director, or his designee and OTA's General Counsel.

IX. ACQUISITION OF PROPERTY THROUGH CONDEMNATION

Condemnation is the last resort, and no case should be presented for court action until negotiations have failed as determined by OTA. When a mutually agreeable settlement cannot be achieved in a timely manner, OTA's agent shall refer the case to OTA's Executive Director or his designee for the initiation of condemnation proceedings through OTA's General Counsel.

At least quarterly, the OTA's General Counsel shall report to the OTA's Board of Directors' Litigation Subcommittee with a status update of all condemnation case filings.

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X. IMPROVEMENT DEMOLITION

Improvement demolition and removal may be included in the utility company's relocation contracts, the prime contractors' clearing, and grubbing activities, or by a separate qualified and bonded demolition removal contractor, whichever is most beneficial to OTA.

XI. LEGAL OPINIONS

When the legality of a proposed action is not clear, or when an interpretation of law or study of precedent is necessary, no irrevocable decisions should be made or actions taken until after a legal opinion by OTA's General Counsel has been rendered. A written request making a clear statement of the question involved is a prerequisite to obtaining such a commitment by the OTA's General Counsel, and no legal opinions shall be rendered until after submission of the question in writing. Requests for legal opinions properly originate at the supervisory level or above and must be first submitted to OTA's Executive Director or his designee.

XII. UNECONOMIC REMNANTS AND OTHER REMAINDERS

If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire that remnant shall be made. For the purposes of this policy, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, but which remaining interest has little or no value or utility to the owner as determined by the Oklahoma Turnpike Authority.

XIII. RELOCATION OF PUBLIC UTILITIES, COMMON CARRIERS, AND PRIVATE CARRIERS

Whenever the OTA plans a turnpike project, including the construction, maintenance or improvement thereof, the OTA shall serve written notice upon any impacted person, firm or corporation owning or maintaining any utility facility that is located in place upon, across or under such turnpike project. The OTA shall work with the utility owner to minimize the impact on the owner's facility and OTA's turnpike project. The OTA shall also provide a reasonable period of time for the owner of an impacted utility to remove and relocate its facility. The OTA shall review all utility relocation plans and cost and expense estimates provided by the utility owner to determine reasonableness and feasibility. The cost and expense of the removal and relocation of all impacted utility facilities shall be in accordance with applicable Oklahoma law.

XIV. AUTHORIZATION OF COMPENSATION FOR UTILITY RELOCATION

The disbursement of funds for utility relocation shall be performed with integrity and sound judgment. OTA consultants having authority to participate in properly determining the amount and legality of such disbursements shall assume responsibility for their decisions. Upon receipt of full and complete documentation, a utility relocation agreement shall be reviewed and approved as to form by the OTA General Counsel and then approved and signed by the OTA's Executive Director or his designee.

At least quarterly, the OTA's Executive Director or his designee shall report to the OTA's Board of Directors summarizing all utility relocation agreements entered pursuant to this Policy.

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XV. PUBLIC NOTICES AND RELEASES TO NEWS MEDIA

All news releases related to Right of Way acquisition must be approved by the OTA Executive Director before release. Anyone giving an interview or statement for use by news media, and acting in the capacity of spokesperson for the Oklahoma Turnpike Authority must be accompanied by a member of Strategic Communications assigned to or designated by the OTA Executive Director, or his designee