

C. DETERMINE LAND OWNERSHIP

01. TITLE SEARCH, FORMS AND PROCEDURES

After the alignment(s) of the project has been established, the first step in the right of way design process is that of title determination. This should be done as early in the process as possible. Title search consists of a search through county records to determine the correct title ownership and the description of all properties which will be affected by the proposed highway. This can be accomplished by either requesting copies of the information over the phone, accessing information through the county website, or by a visit to the courthouse. This section also maintains county plat books to aid in ownership determination and location. A copy of all information gathered will be provided to the Land Surveyor responsible for the project and a report of liens will be ordered from an Abstractor for each parcel.

On major projects, an ownership map on plan "A" sheets is to be prepared showing property ownership along the proposed project. A typical land section should be included on this plan along with the proposed alignment centerline, existing streets, borrow locations and parcel numbers with property ownership names. The ownership map should be at a scale that allows the entire ownership of most of the properties to be shown. For smaller projects such as bridge projects, ownership sheets would provide little added benefit and are therefore not necessary.

02. TITLE SEARCH SOURCES AND COUNTY RECORDS

- a. County Auditor - The Auditor's office is responsible for maintaining the current ownership throughout the county and is a common contact of this section. Often this office is the source for book and page numbers for all recorded deeds that will be required when requesting copies from the Recorders office. Also this office is a good starting point to determine the possible existence and location of drainage districts.
- b. County Recorder - The actual deeds for the various types of land transactions are available in the Recorder's Office. There are deeds of several types: warranty deeds, easements, contracts of sale, leases, mortgages, etc. The original plats and descriptions of surveys for subdivisions of land are also located within this office.
- c. Clerk of Court - Any properties that are settlements of estates have been noted as being transferred by Change of Title (COT). This information is filed in the office of the Clerk of Court. Information to be acquired in this office includes a copy of the will (if available), results of the probate proceedings and final disposition of the property.
- d. County Assessor - The Assessor's office is responsible for tax assessment and as such taxable acreage is shown for each tract. This acreage must be recorded on the form by forty-acre tracts or fractions thereof. The taxable acreage is especially important to the right of way process, as it is used for calculating area remaining after the right of way acquisition.
- e. Right of Way File Room – A search of previously acquired contracts/agreements along the proposed project is to be performed. Each contract or agreement is to be examined for reservations or other pertinent information (such as owner participation in the cost of a stock pass). One copy of the contract/agreement is to be placed in the original file and one copy in the field file. If a reservation or participation is detected, the supervisor is to be notified so that necessary action can be taken.

03. ASSIGNMENT OF PARCEL NUMBERS

Each ownership from which property or property rights are to be acquired for the project shall have a numerical parcel number assigned to it. These numbers should be in approximate sequence from beginning of the project to the end of the project.

Once parcel numbers have been assigned, they shall not be changed. If two parcels are combined, then one parcel number can be deleted. However, the deleted parcel number shall not be used on another parcel. Do not try to renumber parcels due to design changes. It may be necessary to add additional parcels after the original parcel numbers have been established. The new parcel number should be numbered the same as other parcels nearby with a letter added to the parcel number (i.e., 6A, 6B, 6C).

Any parcel involving an operating railroad's real estate interests will be numbered in accordance with the project parcels and the letter "R" added to the parcel number (i.e., 346R). This applies to operating railroads only. On railroad right of way that has been abandoned, the "R" designation will be eliminated and the land will be treated in the same manner as any other privately owned property.

Any parcel involving real estate interests of a utility company will have the letter "U" added to the parcel number (i.e., 347U).

Mitigation parcels are to have the letter "M" added to the parcel number (i.e., 29M).

Drainage district parcels are to be denoted with the letter "D" (i.e., 15D).

04. REPORTS OF LIEN ORDERS

As soon as ownership through title information is determined, a request for reports of lien is to be prepared and mailed to the abstractor. This should be done approximately 18 months prior to the D5 event.

A report of liens should be ordered on all parcels that require the acquisition of a permanent right such as fee simple title, permanent easement, access control, ponding easements, flowage easements and also for parcels that have borrow areas, haul roads, detours and temporary easement parcels that involve considerable amounts of damage. Parcels that have temporary easement only with small amounts of damage do not require a report of liens but will require a copy of the deed for the area.

When ordering reports of lien from the abstractor you must provide as accurate a description as possible of the total ownership of the subject property. This will help the abstractor to provide as complete a report as possible on the entire contiguous ownership. On large orders, the abstractor will be contacted prior to submittal of the order claims in an effort to establish a workable timeframe.

The abstractor shall furnish one copy of the report consisting of **all** the attachments. Upon receipt of the report, one copy will be forwarded immediately to the District Land Surveyor and a copy will be placed in the Agent's field file. The original report is to be included in the White File that will be transmitted to the Central Files for internal use.

When ordering information on railroads we will request a copy of the original deed so as to determine the type of ownership. The following statement will be included on the Order Claim: **Please provide this office with a copy of the deed by which the original railroad acquired title to the real estate.**

When a railroad is encountered, the Fiscal and Title section will be consulted in order to verify the official name of the railroad.

As development continues and the D5 event approaches, the supervisor should be consulted with regard to recertification of the reports of lien.

05. EXISTING RIGHT OF WAY

Existing right of way is to be provided via C.A.D.D. file from the District Land Surveyor. In the case of a consultant design the existing right of way may be the responsibility of the consultant. This information is to be made available in completed form on or prior to the T1 date.

06. PLAN PREPARATION USING TITLE SEARCH INFORMATION

All information provided by this section for plans is placed in the ROW C.A.D.D. file under the directory for a specific project. The existing right of way, section lines, and property lines abutting the highway will be referenced into this ROW file from the District Office file. The names of all title holders and contract purchasers and the proposed right of way will be placed in this file which is referenced to the sheet files. No live information is placed in the sheet files by this section.

All text (names, station flags, notes etc.) should be placed at the same angle as the corresponding plan sheet and be the specified height and weight. Information that should be placed in the ROW file by this section is as follows: property lines (in conjunction with District information), names of property owners, proposed right of way including temporary easements, station flags with pertinent notes, subdivisions and lot lines, and major easements (i.e., gas lines, ingress/egress easements). This information placed in the file should be located in such a manner as to avoid interference with other text that will be shown on the plan sheet.

07. RAILROAD RIGHT OF WAY

Before any decision is made to acquire either an operating or non-operating railroad right of way, the following guidelines should be followed as to how to treat the title search:

- a. ***If the railroad is an active operating railroad and there is no reason to expect it to be abandoned in the near future*** – then no Report of Liens will be necessary. All that will be required will be a copy of the conveyance document where the original railroad acquired the land. This document can be acquired from the county courthouse.
- b. ***If the railroad is not an active operating railroad and there is no reason to believe that it will become active in the near future*** – then a Report of Liens will be required with a request that the original conveyance document of the original railroad be included with the report. Note that some railroads are rail banked and if a need for a railroad occurs again, the railroad company has the right to reestablish the railroad.

The title search is to determine what title the railroad company holds to the real estate. The search may involve ordering a report of liens and asking for a copy of the conveyance that first transferred the real estate to a railroad (*see* Section C04 Reports of Lien Orders). The conveyance must be reviewed to determine whether the railroad has fee title or if they only have an easement right to the real estate. If, after reviewing the conveyance, it is not clear what interest rights the railroad holds, it should be brought to the attention of the design supervisor. The design supervisor or the supervisor's designee will confer with a representative of the Fiscal and Title Section to resolve the title issue. If it is

determined that the railroad holds fee title to the right of way, a parcel is established for the acquisition of the necessary real estate from the railroad. If it is an operating railroad, the parcel file is submitted to the Office of Rail Transportation. If the railroad only holds an easement to the right of way and the railroad is abandoned, the land would then revert to the adjacent landowners. The reversion would be half of the corridor. If any of the abandoned railroad right of way is to be acquired, it will be acquired from the adjacent owners. This will normally be accomplished by acquiring underlying fee from each of the owners at the time of the project. An excellent guide for determining ownership of abandoned railroad right of way is included in this manual as Appendix C.

08. ADVERTISING CONTROL (SIGNS)

Advertising Management (Office of Traffic & Safety) will inform us by letter if it is necessary to acquire a sign or signs. Upon notification, the Design Section will set up a parcel file and transmit to the Appraisal Section the appropriate sign parcels. The designer shall make every attempt to avoid the acquisition of significant and expensive signs when the new right of way is laid out. This may include asking the Project Engineer to modify the highway design to avoid the sign.

Parcel numbers in the 1000 series are reserved for advertising signs. Add 1000 to the parcel number for the real estate tract that the sign is on. If there is more than one sign on a particular tract, then simply add 1000 for each sign (i.e., 1034, 2034, 3034).

09. DRAINAGE DISTRICTS

Affected drainage districts will need to be addressed. Information provided in the summary sheet (no Plot Plan is needed) is: name of drainage district, station location of the structure – both existing and proposed, what is to be done with the existing and/or proposed structure, who is the controlling authority for the drainage district. When a drainage district has an existing easement that will be altered by the D.O.T., the easement will be adjusted and/or replaced at the previous width. See instructions in Appendix B.

10. MITIGATION PARCELS

These parcels are treated virtually the same as all other parcels on the project; however, the determination of how to acquire the property is provided by the Office of Location and Environment (OLE). The OLE will provide this and other information including a Management Plan (sometimes referred to as a “Long Term Management Plan”) and any contact notes. A copy of the information is to be placed in both the Original File and Field File. A separate plat is required for all land used for mitigation. The original plat (acreages and “owner acquired from” filled out in pencil) is to be sent to the Property Management Section with copies to each file, Plans and Estimating Coordinator and Wetlands Section of the OLE. This section will verify with OLE as to whether or not access will be required.

11. QUITCLAIM AREAS

A Quitclaim deed according to “The Dictionary of Real Estate Appraisal” is: *A form of conveyance in which any interest the grantor possesses in the property described in the deed is conveyed to the grantee without warranty of title.* Essentially the grantor transfers whatever interest they possess to the grantee and this may be fee simple title or nothing at all.

Quitclaim Deeds are sought when ownership is undeterminable, in dispute or when an area in use by one property owner is within the legally described boundaries of another property. Proposed Quitclaim deeds generally originate from one of two sources – the Design Section or the Surveyor.

When a Quitclaim is necessary the area should be outlined with a dashed line, noted on the plans and hatched on the plot plan. There is also a line on the summary sheet for the area that will need to be filled in.

D. ESTABLISH PROPOSED RIGHT OF WAY

01. CROSS SECTION REVIEW

Cross sections are provided electronically from the Office of Design in sheeted format. Also provided in the microstation file is a “construction need line” that should reflect and match the cross sections. When reviewing the construction needs, all cross sections are to be reviewed. There may be needs that should be covered by temporary easement. The construction need line is an aid in laying out the proposed right of way line, but the cross sections establish the official need.

02. ESTABLISH THE RIGHT OF WAY LINE

The location of the right of way line is dictated, to a large degree, by the need line. The right of way line must be sufficient enough to allow the construction and maintenance of the highway. The following are rules and guidelines that are used to establish the right of way line:

- a. Rural - A standard distance of 25 feet from the construction need line is used, in most cases, to guide the establishment of the mainline right of way in rural areas. This allows the property owner to place fence away from the backslope and provides room for utilities, plantings, maintenance, etc. Exceptions to the use of the 25 foot buffer would be small projects, such as bridge projects, and other minor projects. In areas of high damage, the additive distance shall be adjusted to allow a minimal amount of area to construct and maintain the roadway.
- b. Urban - The urban layout is established differently than the rural layout. Inside corporate limits, the roadway right of way is acquired by fee simple title in the name of the state and, on side roads, in the name of the city. On small projects (1 or 2 parcels) where the existing right of way is by permanent easement, the proposed acquisition may also be by permanent easement. Generally, proposed right of way in urban areas will be located 12 feet behind the back edge of the highway curb. This places the right of way 2 feet behind the sidewalk in most cases; however, existing right of way circumstances will need to be considered. In urban areas with curb and gutter and open ditch, use fee simple title 12 feet behind the back edge of the curb and permanent easement beyond the 12 feet for the ditch or fill.

The shaping of slopes beyond the permanent right of way line can normally be accomplished with a temporary easement. Fill areas which run consistently over 3 feet in height or cut areas that are deeper than 3 feet for 50 feet in length should be acquired by permanent easement behind the fee acquisition.

Where retaining walls are to be constructed in order to minimize deep slope cuts, the permanent right of way lines shall be 2 feet in back of the retaining wall, except in cases where the retaining wall is quite high, in these areas judgment should be used to provide adequate right of way. Additional excavation and sloping to construct the wall and “finish” the slopes may be accomplished by a temporary easement.

- c. Right of Way Line – The right of way line should be placed parallel or concentric to the centerline where it is reasonable to do so. Excessive breaks are to be avoided. After laying out a portion of