

Eminent Domain:
PRE-CONDEMNATION OFFERS
TO PURCHASE PROPERTY
REPORT
(HB 3371)

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From
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<p>Eminent Domain Work Group Pre-Condensation Offers to Purchase Property Report</p>

I. Statement of the Current Problems in the Law

ORS 35.346 provides two different deadlines for pre-filing settlement offers. ORS 35.346(1) states that the condemner must give the property owner an offer to purchase the property at least twenty days before a condemnation action can be filed. However, only a couple of paragraphs down in the statute, ORS 35.346(4) provides that the owner shall have at least forty days to accept or reject the offer before condemnation proceedings may commence. Currently, no consensus exists among condemners over the correct interpretation of the statute, which results in an inconsistent and confusing application of how many days a condemner must give a property owner to accept or reject a pre-condemnation offer to purchase the property.

ORS 35.348¹ allows road authorities to bypass the usual time deadline for consideration of pre-condemnation offers when an emergency exists that poses a threat to persons or property. This provision grants road authorities the right to file a condemnation action immediately after proposing an offer to the property owner so that the road authority can take immediate possession of the property to ensure public safety. This limited, but important power, allows the road authorities to respond to emergency situations. However, these same situations may arise for all condemning bodies that require immediate possession to avoid a threat to persons or property.

II. History of the Project

In 2001, the Oregon Law Commission authorized the creation of an Eminent Domain Work Group to address ambiguities in eminent domain statutory provisions and to look at several law reform areas. Chaired by Commissioner Gregory R. Mowe, the Work Group met nine times between October 2001 and August 2002. Meetings were held at Willamette University College of Law and the Oregon State Bar Offices. The Work Group included several attorneys in private practice (representing condemners and/or condemnees), state attorneys, city attorneys, an appraiser, a federal judge, and a representative from the State Court Administrator’s office.² In addition, David Heynderickx, Senior Deputy Legislative Counsel, provided the Group with drafting services.

¹ ORS 35.348 provides as follows:

“Notwithstanding the time limits in ORS 35.346(4), in cases where a road authority, as defined in ORS 801.445, determines that an emergency exists that requires immediate maintenance, repair, construction or other road work related to the emergency, the authority may assume rejection by the landowner of a compensation offer made under ORS 35.346.”

² **Members**

Greg Mowe	Stoel Rives LLP
Al Depenbrock	Trial Division of DOJ
Cynthia Fraser	Oregon Department of Transportation
John Junkin	Bullivant Houser Bailey PC
Edward Leavy	US Circuit Court Judge
Henry Lorenzen	Corey Byler Rew Lorenzen
Robert Maloney	Lane Powell Spears Lubersky LLP
Linda Meng	Portland City Attorney’s Office
Spencer Powell	MAI
David Ross	Salem City Attorney’s Office
Donald Stark	Bullivant Houser Bailey PC
Joe Willis	Schwabe Williamson & Wyatt PC

Interested Participants

Susan Grabe	Oregon State Bar
Jill Gelineau	Schwabe Williamson & Wyatt PC
Wendy Johnson	Oregon Law Commission
David Kenagy	Oregon Law Commission
Bridget Musgrave	Willamette University
Bradd Swank	Office of State Court Administrator

The Work Group focused its attention both on a technical review and clean-up of the existing eminent domain procedural chapter as well as several substantive reform areas. The Group put together seven Sub-Work Groups to look at seven different eminent domain law reform areas. One Sub-Work Group, known as the Mechanics of Offer and Acceptance Sub-Work Group, considered changes to the current practice of settlement offers and the ability of condemners to amend their assessment of the property's value to a lower number after the initial offer. The Sub-Work Group consisted of the following members: John Junkin, Don Stark, Al Depenbrock and Joe Willis. After much discussion, the group agreed to make only technical changes to the initial offers statutory provision.³

III. The Objectives of the Proposal

The main objective of amending ORS 35.346 was to make the deadline for the pre-filing initial offer to be 40 days in both Section (1) and Section (4). The proposed change corrects the uncertainty of whether the offer must be made in 20, 40 or 60 days. (See Section 1 of the bill.)

The Work Group also sought to extend the "emergency provision" of ORS 35.348 to all condemners. The Work Group agreed that the provision should apply to all condemners, and not only road authorities, in the event of an emergency that threatens persons or property. (See Section 3 of the bill.)

IV. The Proposal: See HB 3371 (2003)⁴

V. Conclusion

This bill is the product of thoughtful deliberation and consideration by representatives of both condemners and condemnees. This bill makes the deadlines for initial offers that are required prior to filing an action for condemnation consistent throughout the statutes. The bill also extends the existing right given to road authorities to immediate possession, found in ORS 35.348, to all condemners in the case of certain emergencies. Policy choices have been made in the bill that attempt to strike a balance between the needs of condemnees and condemners.

³ The Eminent Domain Work Group decided to postpone legislation in the remaining five Sub-Work Group areas for this session. Those Sub-Work Groups were as follows: Pleadings Requirements; Appraisal Exchange and Discovery; Pre-trial Deposits/Immediate Possession/Withdrawal of Deposits; Amending Down/Entitlement to Attorney Fees; and Contaminated Property.

⁴ The Eminent Domain Work Group's bill was originally HB 2273 (2003) and there was one accompanying explanatory report from the Work Group. During the 2003 Legislative Session, the bill was divided into HB 3370, 3371 and 3372 and three respective accompanying reports.