

ORANGE COUNTY TRANSPORTATION AUTHORITY IMPROVEMENT
ACQUISITION – INCENTIVE PAYMENT PROGRAM

The Orange County Transportation Authority (OCTA) Acquisition – Incentive Payment Program (Payment Program) encourages the expeditious acquisition of needed real property and is consistent with the intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). The Federal Highway Administration (FHWA), Office of Real Estate Services, has determined that the FHWA may participate in right-of-way (ROW) acquisition incentive payments made under the FHWA-approved plan or program. Acquisition incentive payments are payments that are over and above the just compensation offer provided by the Uniform Act.

The authority for the FHWA to participate in incentive payments is found in 23 Code of Federal Regulations (CFR) 710.203(b)(2)(ii), which allows federal participation in relocation assistance and payments provided under the law of the State that may exceed the requirements of 49 CFR Part 24. The FHWA has the general authority to participate in the costs of construction that includes costs of ROW acquisition (see 23 U.S. Code §101(a)(4)). The use of incentive programs for ROW acquisition is analogous to the use of incentive/disincentive provisions for early completion in contracts for construction of federal aid projects (see 23 CFR 635.127(d)).

On June 12, 2014, the California Department of Transportation (Caltrans) adopted a Payment Program.

Based on the authority granted by the OCTA Board of Directors and the concurrence of FHWA and Caltrans, OCTA shall implement the Payment Program as follows:

Written offers to owners for the purchase of their property shall be based on the fair market value of the property (just compensation). The Payment Program payment (Payment) amounts will be based on the appraised value. The use of the Payment does not preclude the use of administrative and legal settlements, and each administrative and legal settlement will require independent support.

The procedures on the Payment shall incorporate the same level of safeguard against coercive negotiation practices as do standard OCTA Real Estate Policies and Procedures and Caltrans ROW Procedures. Per federal regulation, OCTA is required to allow at least 30 days for property owners to consider an offer prior to initiating the condemnation process (see 49 CFR 24.102(f) and Appendix A). Parcels acquired using acquisition incentive offers will be subject to the same quality control and quality assurance processes that are used for OCTA ROW activities.

The Payment will be offered for both permanent and temporary acquisitions.

For all offers, the Payment for a permanent or temporary acquisition will be based on a lump sum payment of 20 percent of the appraised value of all parcels under the same ownership with a minimum payment of \$1,000, and a maximum payment of \$100,000.

The Payment amount will be calculated on the final appraised value and will then be rounded separately from the final appraised value based on the rounding rules found in Section 7.02.11 of the Caltrans ROW Manual.

The Payment is a standing offer for 60 days. The 60 days starts with the Initiation of Negotiations (ION) as day one. The 60 days includes weekends and holidays. For mailed offers, it starts on the date the offer was received by certified mail.

If the 60th day falls on a weekend or holiday and the OCTA acquisition agent working with the grantor will not be available to conduct business with the grantor, the agent may end the incentive period on the first working day after the 60-day period is complete. Personal leave of the OCTA acquisition agent working with the grantor will not be cause to extend the incentive period. An alternate OCTA acquisition agent should be identified to address the issue.

The Payment offer will end at the execution of the ROW contract or at 5:00 p.m. on the 60th day if a ROW contract has not been signed by grantor. The 60 days will restart with a new offer based on an approved appraisal revision if one is deemed necessary by OCTA. An appraisal revision may result in a change in the Payment amount.

The Payment is a standing offer for 60 days regardless of OCTA initiating eminent domain proceedings. Additionally, this time period will be sufficient to allow the property owner the opportunity to obtain their own appraisal where OCTA pays the reasonable cost of the appraisal up to \$5,000, as provided by California Code of Civil Procedure Section 1263.025.

The following clause will be used in ROW contracts pertaining to the Payment Program:

“In addition to the Fair Market Value, it is agreed by and between the parties hereto that the amount in clause XX above includes the sum of \$_____ as an incentive to the grantor for the timely signing of this Right of Way Contract. This incentive payment offer expires sixty (60) days from the Initiation of Negotiations (DATE).”

The Payment Program will be applied to all parcels in the Project, including public agencies, regardless of type, size, appraisal, amount, or ownership.

When implementing the Payment Program on the State Highway System, OCTA must obtain Caltrans' concurrence in writing to utilize the 20 percent incentive payment.

OCTA Payment Program

Acquisition Type	Incentive Amount	Minimum Payment	Maximum Payment
Temporary or Permanent	20% of Appraisal	\$1,000	\$100,000

Example 1 (Minimum Payment)

Appraised Value	\$4,500
Calculated at 20%	\$900
Minimum Payment	\$1,000
Incentive Payment for Acquisition	\$1,000
Total Amount of Just Compensation	\$5,500

Example 2 (20% Payment)

Appraised Value	\$50,000
Calculated at 20%	\$10,000
Incentive Payment for Acquisition	\$10,000
Total Amount of Just Compensation	\$60,000

Example 3 (Maximum Payment)

Appraised Value	\$1,000,000
Calculated at 20%	\$ 200,000
Maximum Payment	\$ 100,000
Incentive Payment for Acquisition	\$ 100,000
Total Amount of Just Compensation	\$1,100,000