

# Chapter 9 Instruments

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## 9-1 General

### 9-1.1 *Introduction*

This chapter specifies the instruments of conveyance used by the department, how they are prepared, and the standard, the special, and/or the variable language used therein. The instruments most commonly used are in electronic format and pre-approved by the Attorney General's Office and Federal Highway Administration. Unless otherwise specified, all instruments are prepared, signed, and acknowledged in such form and manner as to make them eligible for recording with the county auditor. The preparation of conveyance documents is usually done after review of a current preliminary commitment for title insurance (PC) also known as a title report. The Region Title Examiner will assist in understanding any special requirements.

Refer to [Chapter 3](#) for glossary and abbreviations.

Refer to [Chapter 6](#) for types of title or interests to be acquired and appropriate instruments of conveyance.

Refer to [Chapter 8](#) for appropriate instruments for clearing encumbrances.

### 9-1.2 *Rules*

#### 9-1.2.1 Language

- A. Electronic forms located on the Washington State Department of Transportation (WSDOT) intranet site are used and are located at [wwwi.wsdot.wa.gov/design/realestateservices/acquisitionforms.htm](http://wwwi.wsdot.wa.gov/design/realestateservices/acquisitionforms.htm).

Any modifications to the electronic forms require pre-approval by the Acquisition Program Manager prior to execution.

- B. Instruments for which there is no electronic model are customarily prepared by the Region Real Estate Services Manager (RESM) on a case-by-case basis in compliance with the requirements of this chapter and in coordination with the Acquisition Program Manager and may employ a preprinted, standard conveyance, affidavit, or other form provided by or acceptable to the title company issuing the Preliminary Commitment (PC). The RESM may accept a conveyance in the format or form prepared/required by another agency or major corporate body. All non-electronic model forms require pre-approval by the Acquisition Program Manager and the Attorney General's Office prior to execution.

## 9-1.2.2 Composition

### 9-1.2.2.1 Online Forms

- A. All alterations made at the time of signing must be initialed by the grantor.
- B. If sheets are appended, they are prepared in accordance with [Sections 9-1.2.2.2](#) and [9-16](#).

### 9-1.2.2.2 Custom Forms

- A. **Paper** – White bond, 8½" x 11" size. Only one side of each sheet is used (reverse blank).
- B. **Typed** – Acceptable instruments are error-free. All revisions following completion of the form will require that the grantor(s) initial them as being acceptable.
- C. **Margins** – Except for the legal description, first page margins are 1 inch on each side and bottom and 3 inches at the top, thereafter one inch at all margins (see recording standards, [Chapter 65.04 RCW](#)).
- D. **Descriptions** – The legal description is typed, single-spaced, and must meet recording standards.
- E. **Page Numbering** – Each sheet including acknowledgments and exhibits is numbered, centered at the bottom of each sheet, showing both the page number and the total number of pages of the instrument, e.g., "Page 1 of 1 Page," "Page 2 of 4 Pages."
- F. Acquisition documents are prepared so that the grantee is the State of Washington, acting by and through its Department of Transportation.
- G. All custom forms require the approval of an Assistant Attorney General.

## 9-1.2.3 Parcel Identification

The applicable parcel number(s) is (are) inserted on the lower right-hand corner of each sheet of an instrument, e.g., "Parcel No. 1-12345."

## 9-2 Elements (Paragraphs)

Unless otherwise specified and/or illustrated in this chapter, the elements of an instrument include all of the following:

- A. Document Title (see [Section 9-3](#)).
- B. WSDOT Project Number and Federal Aid Project Number (FA No.) (see [Section 9-4](#)).
- C. Recording Requirement Block (see [Section 9-5](#)).
- D. Plan Title (see [Section 9-6](#)).
- E. Party Clause (see [Section 9-7](#)).
- F. Consideration (see [Section 9-8](#)).
- G. Conveyance Clause (see [Section 9-9](#)).

- H. Property Description (see [Section 9-10](#)).
- I. Miscellaneous Clauses (see [Section 9-11](#)).
- J. Delivery Clause (see [Section 9-12](#)).
- K. Instrument Date (see [Section 9-13](#)).
- L. Execution (see [Section 9-14](#)).
- M. Acknowledgment (see [Section 9-15](#)).
- N. Attachments/Corollary Documents (see [Section 9-16](#)).
- O. Acceptance and Approval (see [Section 9-17](#)).

### 9-3 Document Title

- A. The title of the instrument is a clue to the function the instrument performs, e.g., warranty deed, lease, agreement.
- B. The specific function of an easement, permit lease, or option is recited in the granting clause (see [Section 9-9](#)), e.g., Easement for Haul Road, Permit to Install Irrigation Facility, Lease for Borrow Site, Option to Purchase Lands.

### 9-4 WSDOT Project Number and Federal Aid Project Number

The official project number (as defined in Chapter 3) for which real property or property rights are being acquired is inserted on the lower right hand corner of the document immediately below the Federal Aid Project Number with the parcel number directly below.

If federal participation is involved, the Federal Aid Project Number (FA No.) is inserted at the lower right-hand corner of the first page of the document above the parcel number. When a project on a federal aid route does not involve federal participation, the FA route and section are inserted and followed by a blank space enclosed by parenthesis, e.g., RF-037-2. When federal participation is not expected on a sundry site, the FA number is omitted.

### 9-5 Recording Requirement Block

- A. Using the electronic version of the form, complete the top left-hand side of the document. This will include name and address to whom the instrument will be returned, title of instrument to be recorded, reference numbers (auditor file number) of associated document, names of the grantor(s) and grantee(s) including reference (document page number) to where the complete names are located, if applicable, abbreviated legal description of the property and reference (documents page number) to where the complete description can be found, assessor's tax parcel, or account number. See [RCW 65.04.045](#).
- B. The space between the return address and the remainder of the recording requirements is reserved for the county auditor to enter the recording date and other recording information.

## 9-6 Plan Title

The State Route Number and the right of way plan title, typed exactly as shown on the official right of way plan.

## 9-7 Party Clause

### 9-7.1 *General*

The Party Clause identifies the parties who are making the conveyance. They are usually (but not necessarily) identified as “grantors” in deeds, easements, and permits, as “lessors” in leases, etc. The name(s) of the “grantor(s)” are generally shown so as to agree with the name(s) of such person(s) as they acquired title to the property being conveyed.

The Party Clause, e.g.,

“The Grantors, John Doe and Jane Doe, husband and wife . . . .”

also answers or resolves questions of the grantor’s (1) identity, (2) marital status, (3) relationship between persons, and (4) the estate or interest held by the grantors.

### 9-7.2 *Identity – Different Names*

If the grantor’s correct name is questioned in the Preliminary Commitment (PC) or if the Property Acquisition Agent (PAS) finds the PC to be inaccurate as to identity, the party clause is used in the state’s instrument to show the correct name of the grantor.

- A. If the identity as vested in the PC was correct and the identity of alternate similar names is questioned and found to be the same person, the party clause is used to clarify the identity. The correct name appears first, followed by the alternate names as follows:
1. “. . . John Doe, (as shown in the PC or vesting deed) also appearing of record as J. Doe . . .(being the alternate name).”
- B. If the grantor’s current identity is more correctly or accurately established than by the vested name in the PC, the following examples are adapted:
1. “. . . John Olson, who acquired title as John Olsen . . . .”
  2. “. . . John B. Doe, who acquired title as John R. Doe . . . .”
  3. “. . .Mary Doe, who acquired title as Mary Jones . . . .”
- Note:** This form is for a woman who has married since acquiring title.
4. “. . .Charles Martin, who acquired title as Carlos Martino . . . .”
  5. “. . . John Doe Company, which acquired title as John Doe Co., . . . .”
  6. “. . . John Doe, Inc., which acquired title as John Doe and Sons . . . .”

### 9-7.3 Marital Status

- A. Because Washington is a community property state, any deed taken by either spouse of a marital community (except as provided in Section 9-7.3.B) becomes automatically the community property of both, and the interests of spouses (and former spouse(s)) must be acquired or eliminated. Hence, considerable importance is attached to the correctness of a statement regarding marital status in the Party Clause. The vesting in the PC is the starting point, for the title company ensures the state that the named vestee can convey good title, but if the marital status of the vestee is questioned by a comment or encumbrance or has changed since he/she acquired title, an investigation of the marital facts is required. The object is to arrive at a Party Clause which shows the currently correct names as grantors on the state's instrument (see Section 9-7.2) followed, if necessary, by (1) a statement of the currently correct marital status, and (2) if applicable, a statement clarifying the interest held.
- B. A person who acquires land while single, or as a gift or an inheritance even while married, owns the land as his/her separate estate, and the joinder of the spouse is not required, although it is good practice to secure the spouse's signature as a precautionary measure. If there should be any resistance by the spouse to signing, such signing may be waived but only after ascertaining that the couple has not entered into a Community Property Agreement. If a Community Property Agreement has been executed, but not recorded in the county in which the required real property lies, a copy should be obtained and the matter referred to the Region RESM for instructions. If a Community Property Agreement has been recorded in the county in which the required real property lies, it will (usually) be reported in the PC and both signatures will be required.
- C. The following are some of the historical and not often used terms involved in marital status questions and their precise meanings. Whenever possible, the proper term should be used to identify the grantor in our right of way deeds.
1. **Widow/Widower** – A woman/man whose spouse has died.
  2. **Single or Unmarried** – This term includes all persons who are not now married (bachelor, bachelorette, widow, widower, divorced, legally separated).
- D. On a great many of the titles encountered when acquiring right of way, no question of the marital status of the vestee will be raised by the title company in the PC. A simple investigation by the PAS aimed at verifying the marital status shown in the PC will permit the PAS (assuming the fact of verification) to phrase the Party Clause in the exact same language as the vesting. (The facts elicited in the investigation are reported in the Diary of Right of Way Activities – [RES-301](#).)

E. Where the title company does raise a question concerning marital status (often through the use of the word “presumptively”) or where the investigation (9-7.3.D) does not verify the marital status given in the PC, the question may be resolved by considering the following typical situations:

1. If the PC reads “John Jones, presumptively subject to the community interest of his spouse, if married on or after January 16, 1936, date of acquiring title,” this means that the deed to the vestee reads merely “John Jones” and does not disclose whether or not John is married.

The parties should be questioned as to their marriage date, and if it is found that they were married on or after January 16, 1936, this fact should be incorporated in the party clause of the deed. It is not sufficient merely to have the present spouse sign the deed. The following is a good form to use:

“John Jones and Mary Jones, husband and wife on January 16, 1936, and at all times since.”

If questioning discloses that John was single on the above date, the party clause should appear as follows:

“John Jones, a single man on January 16, 1936, and Mary Jones, his wife.”

If it is found that on said date, John was married to someone other than Mary, then the interest of that former spouse must be secured, or a determination made that it has passed properly to John by deed, court order, or otherwise. The existence of a former spouse is the most dangerous possibility of this type of vesting and is the condition against which every precaution should be taken.

2. If the PC reads “John Jones and Mary Jones, presumptively as community property,” this means that the vesting deed ran to John Jones and Mary Jones but failed to identify them as married. (They might be brother and sister, for instance, and each of their interests would be presumptively subject to the community interest of their respective spouse.)

In this case, if it is found that they are married, it is sufficient to take a deed reciting that they are a marital community.

If it is found that they are not married to each other, the PAS makes an investigation to determine the marital status of each person, reporting the facts found in the Diary of Right of Way Activities ( Form RES 301) and refers the matter to the Region RESM (or designee) for instructions.

3. Some title companies also show title as being in “John Jones, husband of Mary Jones, presumptively as community property,” this means that the deed ran to John Jones, without disclosure of his marital status, but the title company knows from its own records that he was the husband of Mary on the date of acquiring title.

In this case, it is sufficient to accept a deed signed by John and Mary, identifying them as a marital community in the party clause.

4. If the PC shows the title to be in Mary Jones, a widow, or Mary Jones, a spinster, and you find in contacting her that she has remarried or married, the following is the proper form for the party clause:

“Mary Schwartz, who acquired title as Mary Jones, a widow, (or an unmarried woman), and Albert Schwartz, her husband.” (Technically the spouse need not join in the deed, since the property is the separate estate of Mary. But see Section 9-7.3.B for the possible effect of a Community Property Agreement and possible homestead).
5. Combinations and/or variations of the above examples should be referred to the Region RESM in coordination with the Acquisition Program Manager for instructions. Also, see [Chapter 8](#) with respect to probate in the event of the death of a vestee.
6. If title was acquired when the party was single and has been single at all times, then the proper recital is . . . , a single person now and at all times since acquiring title.

## 9-7.4 Corporate Names

### 9-7.4.1 Private Corporations (also see Section 9-14.3.1)

The name of the corporation, using the exact words as filed in the office of the Secretary of State in Olympia, is shown in instruments to the state. Any variation is authorized by the Region RESM in coordination with Acquisition Program Manager and explained in the Encumbrance Report on the Right of Way Acquisition Transmittal. (But see Section 9-7.2.B if PC vesting varies from name as recorded in office of Secretary of State.)

### 9-7.4.2 Governmental Agencies (also see Local Public Bodies Section 9-14.3.2)

Acquisition from political subdivisions of the state of Washington (cities, counties, etc.) should be headed as shown in the title report, e.g., “\_\_\_\_\_ County, a political subdivision of the State of Washington,” “City of \_\_\_\_\_, a municipal corporation of the State of Washington.”

## 9-7.5 Estate or Interest

When legally empowered to execute an instrument as a fiduciary, the party clause includes the name and the capacity of the party who executes the instrument for the vested owner. A fiduciary’s name appears exactly as shown in the PC and/or the court appointment. Although an attorney in fact has fiduciary responsibilities, he has no estate or interest in the property to be conveyed; hence, the name of the principal only appears in the party clause. (See Section 9-14.2.3 as to execution by an attorney in fact.)

### 9-7.6 *Trustee (also see Execution Section 9-14.2.3)*

- A. Proof of the trustee's authority in the form of copies of the trust documents and any amendments thereto shall be included in the acquisition file and may need to be provided to the title company. The PAS, obtains a copy of the trust agreement and any amendments. At times owners are reluctant to provide copies of the full trust documents. At a minimum, pertinent portions of the trust and amendments shall be provided i.e. trustee's names and powers.
- B. If a trustee is executing the instrument only as a fiduciary, the following examples are adapted:
  - 1. "... Richard Roe as Trustee for the John Doe Trust, dated ..."
  - 2. "... Richard Roe as Trustee under the will of John Doe, deceased ..."
  - 3. "... The Grand National Bank as Trustee for the John Doe Trust, dated ..."
- C. If a Trustee is executing the instrument for himself as a vested owner and as a fiduciary, the following example is adapted:
  - 1. "... Richard Roe, a single man, as his separate estate (etc., see Section 9-6.3) and as Trustee for the John Doe Trust, dated ..."

### 9-7.7 *Executor/Administrator (also see Executor/Personal Representative Section 9-14.2.3)*

- A. If an executor/administrator (frequently referred to as personal representative (PR)) is executing an instrument only as a fiduciary, the following example is adapted:
  - 1. "... Richard Roe as Executor (Administrator, PR) of the Estate of John Doe, deceased ..."
- B. If an Executor/Administrator is to execute an instrument for himself as a vested owner and as a fiduciary, the following example is adapted:
  - 1. "... Jane Doe, individually and as Executrix (Administrator, PR) of the Estate of John Doe, deceased ..."

### 9-7.8 *Guardian (also see Section 9-14.2.3)*

- A. The contents of this topic is limited. Consult with the Region Title Examiner and the PC for guidance.
- B. A Guardian Ad Litem is appointed by the court and acts as an officer of the court, the following example is adapted:
  - 1. "... Jane Doe as Guardian of the Estate of John Doe, a minor (an incompetent, etc.) ..."



### 9-7.9 **Tenants in Common and Joint Tenants (also see Execution Section 9-7.3)**

If the PC shows title vested in the parties as Tenants in Common (or as Joint Tenants), the following example is adapted:

- A. "... John Doe and Ruth Roe, as Tenants in Common . . . ."
- B. "... John Doe and Jane Doe, husband and wife, as Joint Tenants . . . ."

**Note:** Tenancy by the entirety is not authorized by the laws of Washington State (see [RCW 11.04.071](#)).

### 9-7.10 **Fractional Interest**

A. If the PC shows title held by two or more persons in fractional interests, the sum of such interests is verified by the PAS to equal 100 percent and the parties are joined on the instrument, adapting the following example:

- 1. "... John Doe, Jane Doe, Ruth Roe, and Jim Olsen, as their interests may appear . . . ."

### 9-7.11 **Partnerships**

A. Proof of the partners authority to execute documents shall be included in the acquisition file and may need to be provided to the title company. The PAS obtains a copy of the partnership agreement and amendments, if any.

B. If the PC shows title held in name of a firm which proves to be a partnership:

- 1. If a Limited Partnership and evidence is available that only some of partners are authorized to convey the real property of the firm, the following is adapted:
  - a. "... (FIRM NAME), a Limited Partnership . . . ." (See Section 9-14.4 for execution.)
- 2. If a Limited or General Partnership and no evidence is available as to authority to convey, the following may be adapted after consulting with the Region Title Examiner for guidance:
  - a. "... John Doe and Jane Doe, his wife; Richard Roe and Ruth Roe, his wife, (continuing through all the partners and their spouses), being all the partners of (FIRM NAME), a (Limited) Partnership . . . ."

C. If the PC shows title held by one or more persons who prove to be all or part of a partnership which in fact is doing business under a firm name, the following is adapted:

- 1. "... John Doe and Jane Doe, his wife; Richard Roe and Ruth Roe, his wife; (continuing through all the partners and their spouses), partners doing business as (FIRM NAME) . . . ."

## 9-7.12 *Limited Liability Companies (see Section 9-14.5)*

- A. The name of the Limited Liability Company aka (LLC.) is as it is filed in the office of the Secretary of State in Olympia and as shown in the written agreement. The agreement details the organization of the LLC. including provisions for management. For detailed information, see [Chapter 25.15 RCW](#).
- B. Proof of the members authority to execute documents shall be included in the acquisition file and may need to be provided to the title company. The PAS obtains a copy of the operating agreement and amendments, if any.

## 9-8 Consideration

### 9-8.1 *Lump Sum*

- A. If no money is to be paid, the words “the sum of” and “Dollars” on the electronic forms are stricken. Alternate language used is:
  1. “Dedication, Donation, Special Benefits.” Consult with the Region Title Examiner to determine the correct words based upon the circumstances and what additional information may be required. The phrase “mutual benefits” in and of itself is not used, state the actual benefits.
- B. If money is to be paid for the purchase of property or a real property interest in the lands to be acquired, the following language is used in lieu of reciting the full amount of the just compensation for the parcel:
  1. “. . . Ten and No/100 (\$10.00) Dollars and other valuable considerations . . . .”
 

**Note:** The word “Dollars” is printed on many forms at the end of a line. Hence, the parenthetical numerical amount is written in before the word “Dollars”; it normally should follow the word “Dollars” as in 9-8.1.C. “Other valuable considerations” includes construction items and the like. If actual money paid is less than \$10, the dollar section in the above example should be changed to reflect the specific amount paid.
- C. If money is to be paid in relation to an agreement or for a release of an interest, e.g., damages, judgment, or lease, in a secondary Real Property Voucher, the specific amount of the consideration is shown in words and numerals:
  1. “. . . ONE THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$1,500.00) . . .”

### 9-8.2 *Rate*

If money is to be paid periodically as in a lease, the amounts to be paid and the frequency of payments are included, adapting suitable language based on the following examples:

- A. “. . . Ten and No/100 Dollars (\$10.00) per month . . . .”
- B. “. . . Ten and No/100 Dollars (\$10.00) per month together with Two Cents (\$0.02) per cubic yard of materials removed by the state of Washington and/or its assigns during each such monthly period . . . .”

- C. “. . . On a royalty basis at the rate of \$\_\_\_\_\_ per cubic yard of material removed by the state as measured by a cross section survey of the excavated area at the completion of each contract, said royalties to be paid promptly at the completion of each such contract . . . .”

## 9-9 Instrument Types

### 9-9.1 Deeds

- A. To be effective as a deed there must be words manifesting an intention to pass title. The words of conveyance in the statutory forms are as follows:
- Warranty Deed: conveys and warrants [RCW 64.04.030](#)  
Quitclaim Deed: conveys and quit claims [RCW 64.04.050](#)
- B. The conveyance clause states the exact terms and conditions of the conveyance. The complexity of the language varies with the function of the conveyance.
- C. A deed normally contains a simple statement to “convey and warrant,” (Warranty Deed – [RES-302](#)) or “convey and quitclaim” (Quitclaim Deed – [RES-306](#)).
- D. In an “Access Rights Only” deed ([RES-305](#)), the complete conveyance clause also becomes the access clause.
- E. The conveying language is followed by the name of the grantee (“the State of Washington , Department of Transportation”) and nature of the interest conveyed, e.g., “the following described real property” (in a deed).

### 9-9.2 Easement

The Easement form ([RES-324](#)), contains the basic easement language (convey and grant) into which is inserted the language that describes only the interest which the state acquires, for example: “. . . construction and maintenance of a Channel Change Facility of the Cedar River . . . .” (see [Chapter 6](#)).

### 9-9.3 Right of Entry, Permit, Temporary Easement

These documents are used to obtain the temporary use of a property for a specific purpose. The document needs to clearly state the purpose and the termination date.

**Condemnation.** Temporary easement or permit areas to be acquired by condemnation must be shown on the official right of way plan.

#### 9-9.3.1 Right of Entry

There is not an electronic form for a right of entry. The Region RESM or Region Title Examiner can provide samples and assist with preparation (see [Chapter 6](#)).

### 9-9.3.2 Permit

The Permit form ([RES-326](#)) contains the basic language into which is inserted the specific language describing the reason for the permit and the expiration date of the permit (see [Chapter 6](#)).

### 9-9.3.3 Temporary Easement

The Temporary Easement form ([RES-325](#)) contains basic language describing the reason for the temporary easement and the expiration date of the temporary easement. The PAS must state the purpose and expiration date (see [Chapter 6](#)).

## 9-9.4 Acquisition Lease

- A. A lease obtains specific rights of tenancy. The termination of use of the property and the rights and privileges of the lessee are specified.
- B. The Acquisition Lease form ([RES-329](#)) contains the basic lease language (“grants”), into which is inserted the language that establishes rights and privileges of the lessee and the termination.
  1. See [Section 9-7](#) for rental rate clauses (consideration).
  2. The lessee’s rights and privileges are described, adapting language such as the following:
    - a. “. . . the right, permit, license, and lease to use and occupy (for the purpose of) STOCKPILING OF ROAD MATERIAL including depositing and storing crushed stone and other highway materials as the exclusive property of the state . . . .”
    - b. “. . . the right, permit, license, and lease to use and occupy (for the purpose of) the REMOVAL OF EARTH MATERIALS, including excavation and removal of rock, gravel, sand, or earth, from any portion of said land; storing materials and operating all necessary machinery and equipment thereon . . . .”
  3. Legal description of the land subject to the lease is required.
  4. **Termination** – The agreement shall terminate and all rights of the lessee herein under shall cease and the lessee shall waive any right or claim to reimbursement, compensation, or remunerations of any kind and shall quietly and peaceably deliver possession of the premises to the lessor:
    - a. At the expiration of the term of the Agreement.
    - b. Upon failure to respond to 90-day written notice from the lessor to lessee claiming violation of any of the terms of the agreement.
    - c. Upon 90 days written notice from the lessee to lessor stating lessee’s interest to discontinue occupancy of the premises.

### 9-9.5 *Option*

Option forms RES-327 (quarry or pit) or RES-328 (other lands) is a legal agreement between a future buyer (optionee) and seller (optionor) to contract to buy and sell real estate within a certain amount of time at a certain price with certain terms. However, the optionee has no obligation to follow through and buy it. All options are transmitted to headquarters and approved by the Acquisition Program Manager prior to execution by the parties.

### 9-9.6 *Consent to Change of Grade*

The Consent to Change of Grade form (RES-323) is used only in those cases where the change of grade is to be accomplished entirely within the existing right of way.

## 9-10 **Property Description**

“A legal description, to be adequate, must be capable of being located on the ground with reasonable certainty by a competent surveyor, either with or without the aid of extrinsic evidence.” (21 Wash. 371.)

It is impossible in a short outline to cover all of the fine shadings of meaning which have been placed by our courts on language used in the description of land. When a comparison is being made of the language in a given description to the examples cited herein, care should be taken to see that wording is exactly as it was in the case cited. Composing legal descriptions can present challenges. Consult with Headquarters Acquisition and Title staff for guidance.

### 9-10.1 *Illustrations of Adequate Description*

- A. The following are examples of adequate descriptions.
  - 1. Any section or subdivision of the U.S. Rectangular system of survey.
  - 2. Descriptions by reference to recorded plats, or to private surveys attached to and incorporated by reference.
  - 3. Metes and bounds tied to any point on either of the above, directly or by reference to an earlier deed, which in turn is so tied.
- B. A description fails if for any reason it is vague, indefinite, or so ambiguous as to be impossible to interpret. Sample inadequacies causing the conveyance to be void:
  - 1. “160 acres, more or less, in Section 2 -13 N. -2 E.” (3 Wn. 2d 565).
  - 2. “A house at 2626 West Fairview” (28 Wn. 2d 110).
  - 3. “Approximately 207 feet” (24 Wn. 2d 586).
  - 4. “Description by reference to an unrecorded plat” (21 Wn. 2d 593).
  - 5. “A description failing to name the county, state, or meridian and range” (16 Wash. 34).

- C. The following descriptions have been held to be sufficient; however, their usage is not recommended:
1. “All the real estate in the state of Washington of record in the name of the grantor” (96 Wash. 592).
  2. “All property owned” by a certain company in a specified county. Held good as to all lands held under recorded title and would not pass lands acquired under an unrecorded deed” (28 Wn. 2d 953).
  3. “Tax lot 3, Section 32 -Twp. 12 N., R. 42, as at present designated on the tax rolls of the County Assessor of said County.” Sufficient provided the Assessor’s tax rolls contain an adequate description of the tax lot (38 Wn. 2d 886). In spite of this case, the use of tax lot numbers as legal descriptions should be avoided. It is common practice in all Assessors’ offices to abbreviate and paraphrase the original description in the interest of brevity. In many cases, the abbreviated description covers the same parcel of land as the original, but in many other cases, important controlling or qualifying language is omitted or typographical errors are introduced, any of which could destroy the accuracy of the description.
- D. A court may apply its own wisdom in some cases, notwithstanding B above. If a deed appears adequate on its face, but a dispute arises over the location of the lines on the ground, or if the intent of the parties is obvious when certain facts are stricken or altered, the court will allow oral testimony to determine the true meaning of the description. For example:
1. “As where no block number is recited, but the grantor owns land only in one block in the recited addition, the court has read into the deed the missing block number (24 Wn. 225, 53 Wn. 285). The court has also substituted the word “southwest” for southeast in order to make the description close” (8 Wash. 642).
  2. In a description failing to name the meridian “...Range 42....,” the court supplied the missing term “East Willamette Meridian” as this was the only possible intention since Range 42 West would fall well out in the Pacific Ocean (38 Wash. 886).

## 9-10.2 *Controlling Elements of a Description*

- A. “Natural and artificial permanent objects referred to in the description control over courses and distances. As where a metes and bounds description overruns a highway, and yet the highway is recited as being a boundary of the property, the highway controls (108 Wash. 413, also see 163 Wash. 10). The boundaries of a city lot are controlled by lines as actually run on the ground, as shown by surveyor’s stakes, rather than the lot lines as shown by the plat” (30 Wash. 687, 94 Wash. 395).
- B. “Where there is a variance between field notes and monuments as set out by the U.S. Government surveyors, the monuments prevail” (41 Wash. 583, 70 Wash. 435, 172 Wash. 405).

- C. “Metes and bounds control over the other elements. As in a conveyance by metes and bounds which also recites that the conveyance includes so many acres, the courses, and distances control even though they include a larger area than recited” (38 Wash. 151).
- D. “Reference to an adjoiner will control over recited bearings and distances” (115 Wash. 454, 124 Wash. 179).
- E. “Where there is a conflict in boundaries in two deeds from the same grantor, the title of the grantee in the deed first executed is superior” (57 Wash. 150, 196 Wash. 54).
- F. “In case of a conflict of terms in a description, it will be construed most strongly against the grantor” (57 Wash. 392).
- G. “One may reject a false and impossible part of a description if by so doing a perfect description remains” (57 Wash. 150).
- H. The existence of an adequate legal description is only the preliminary step to establishing the property lines on the ground. The linking factor between the description and the boundary on the land is the monument. Monuments may be any visible, tangible, physical object in existence which marks a point or a line on the earth’s surface. The following are typical adequate monuments:
  - 1. Clearly marked concrete posts (as are used by the federal surveyors to mark section and  $\frac{1}{4}$  corners).
  - 2. The line of ordinary high tide or high water.
  - 3. The thread of a stream.
  - 4. A tree, or a row of trees.
  - 5. An iron pipe.
  - 6. A bench mark (brass disc emplaced by USCGS).
  - 7. A fence.
  - 8. A building.
  - 9. A hedge.
  - 10. A sidewalk.
  - 11. A cliff.

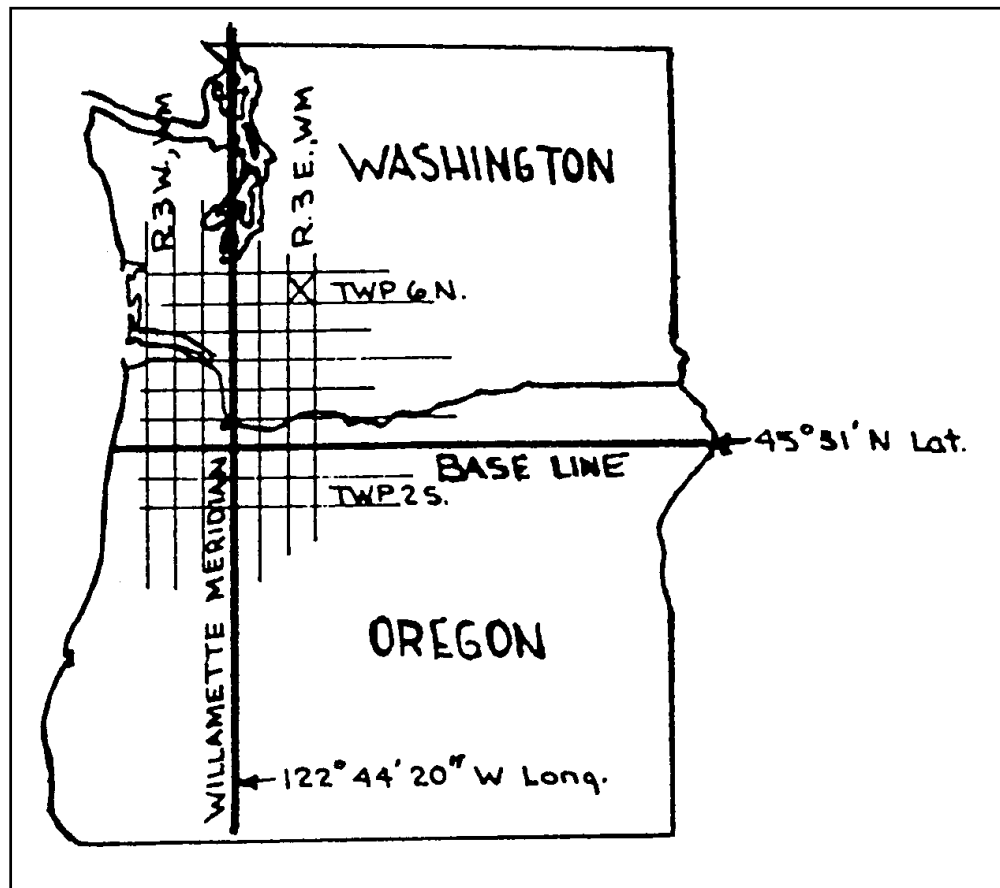
A full discussion of the importance of monuments and the requirements for establishing their genuineness is beyond the scope of this text, but an excellent analysis of the problems involved appears in *Surveys, Subdivision and Platting, and Boundaries, Bureau of Governmental Research and Services, Report No. 137*. Published by University of Washington Press. 1958, Page 67, et seq.

### 9-10.3 Rectangular Survey Descriptions

- A. The rectangular survey system was adopted in 1785. The system has been used in most of the states. For the purposes of the rectangular survey, the states of Washington and Oregon form a region. This region is quartered by a north-south line (the Willamette Meridian) and an east-west line (the Base Line) which intersect in Portland, Oregon (see Exhibit 9-1). The tiers lying north or south of the Base Line are numbered consecutively and are called Townships. The columns lying east or west of the Willamette Meridian are numbered consecutively and are called Ranges. Each Township and Range also bears a compass direction which indicates its direction from the Base Line and from the Willamette Meridian respectively. Thus, the area marked with an "X" on Exhibit 9-1 is described as "Township 6 North, Range 3 East, Willamette Meridian." The Township (T or Twp) always appears first and the Range (R or Rge) second, followed by the Meridian (Willamette Meridian = WM). In the sample given, the information would usually appear in abbreviated form: "T6N, R3E, WM."

The Townships and Ranges are bounded by lines which are drawn parallel with the Base Line and the Willamette Meridian. In order to make up for the curvature of the earth, correction lines are inserted (after some variation in the early days) every 24 miles.

Exhibit 9-1 Townships and Ranges



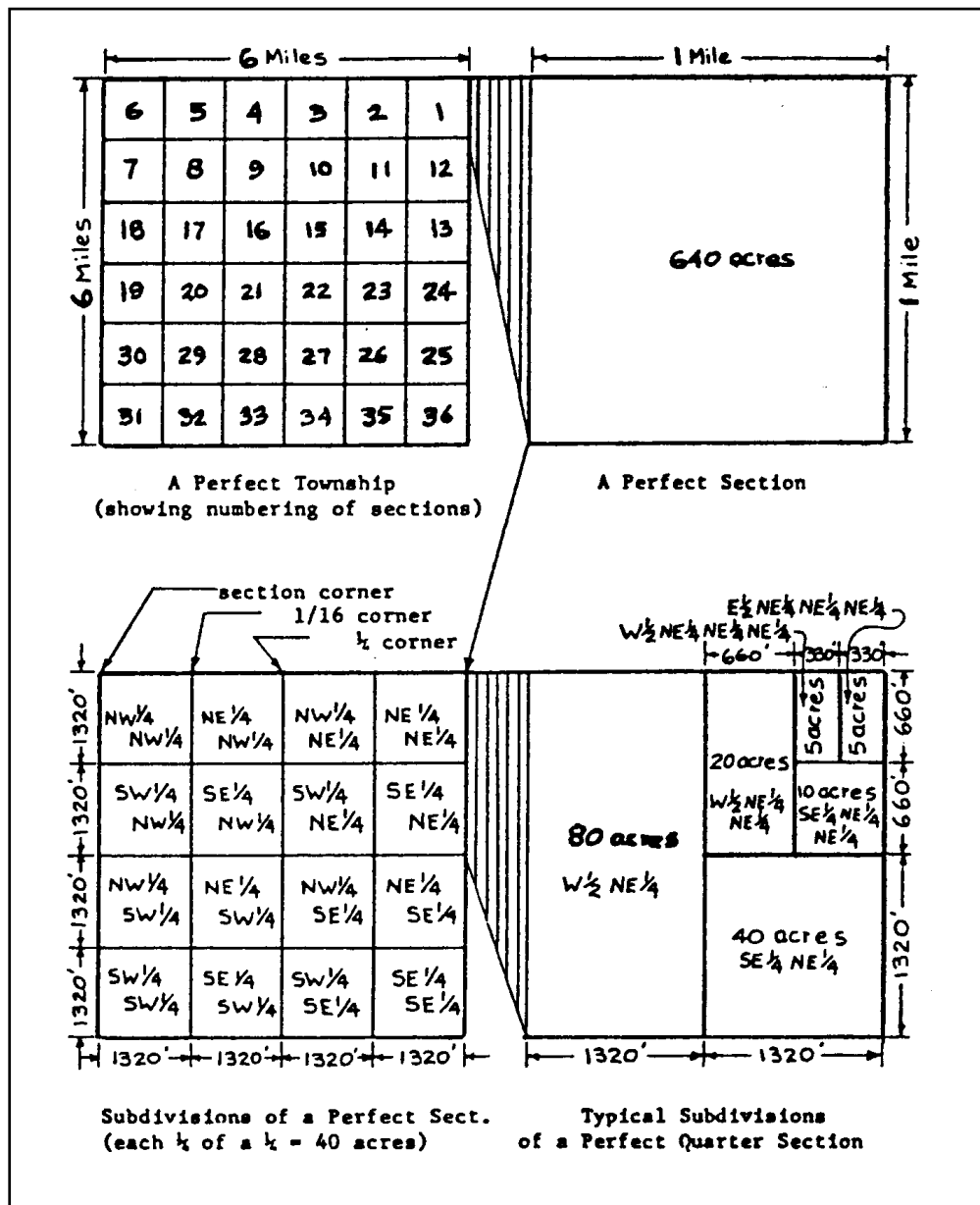


- B. Each Township consists of 36 sections (see Exhibit 9-2), and each section ideally contains 640 acres. In practice, sections rarely are perfect.

The statute requires only the setting of the section corners, but in most instances in this state, the federal surveyors also set the 1/4 corners. The latter are required to be midway between the section corners on the section lines. The center lines are established by drawing straight lines connecting the 1/4 corners.

The method of further subdivision by private survey is to establish mid-points between the section corner and 1/4 corners (these are 1/16 corners). Straight lines connect these mid-points in each 1/4 with the corresponding mid-points on the opposite side.

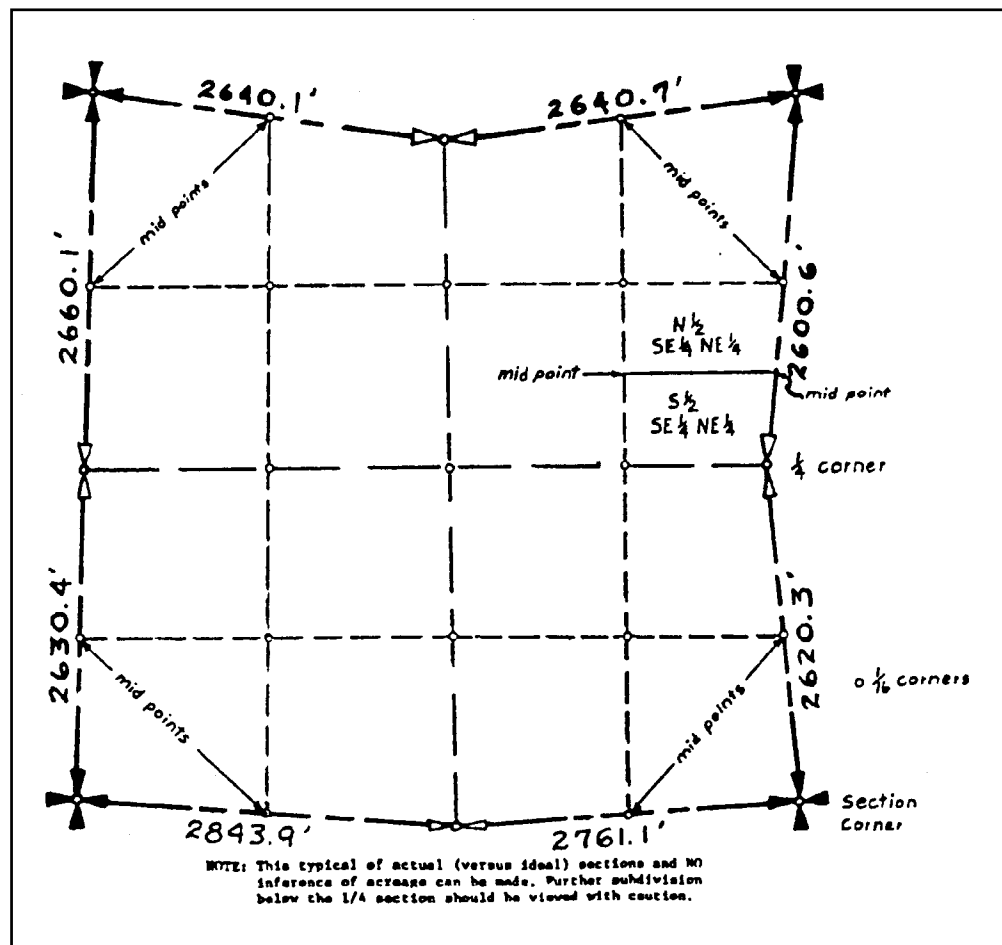
Exhibit 9-2 Land Areas and Dimensions



- C. Once the corners have been placed by the Federal Surveyors and conveyances made, they stand as the true corners. This holds true no matter how small or large an error might have been made in the setting of the corners. Even with errors as great as those shown in Exhibit 9-3, the monuments stand as placed and determine the size of the section and its subdivisions. However, in the absence of the original monuments, or witness marks, the field notes will control (41 Wash. 583). The more rugged the country, the less likely the existence of actual sections that are "perfect" or "ideal."

The conveyance of large tracts of land within such a section is normally accomplished by the subdivision style of description. It is necessary to recite the section, township, range, county, and state, as well as the subdivision of the section, to complete the identification of the property. Further subdivision within such a section is accomplished by measurement. For example, in Exhibit 9-3, the N  $\frac{1}{2}$  and S  $\frac{1}{2}$  of SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  are determined by connecting the mid-points on the East and West Lines of the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ . The resultant areas and direction of the dividing line have no bearing on the problem unless the description specifically says the N  $\frac{1}{2}$  in area of SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ . In the latter case, the same rules apply as in subdividing platted land.

Exhibit 9-3 The Size of a Section is Determined by Its Monuments

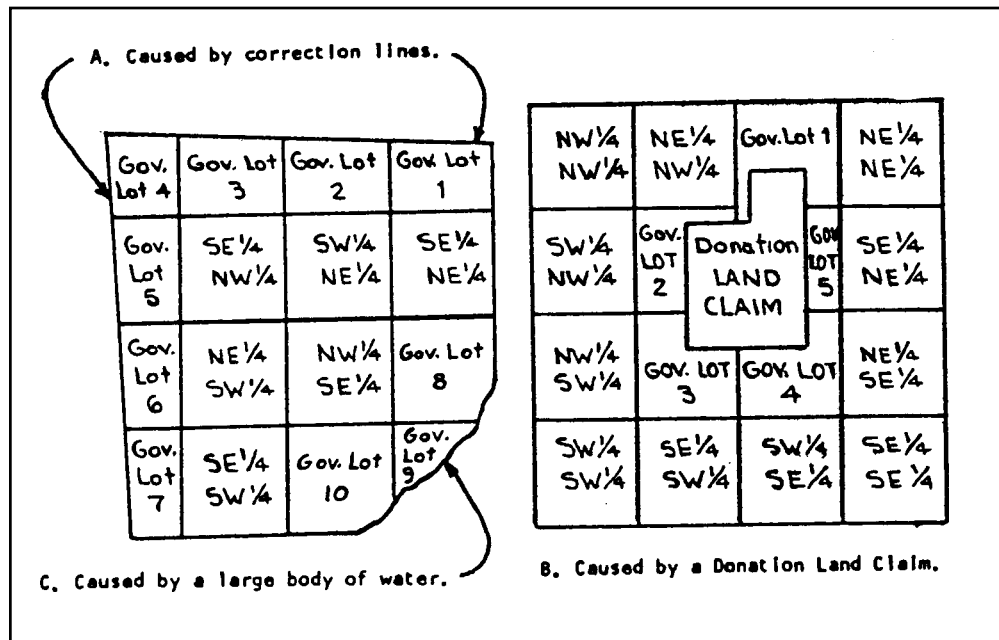


### 9-10.4 Government Lots

Under the U.S. rectangular survey system abnormally-sized subdivisions of a section are called Government Lots and are numbered. Examples of the causes of Government Lots are illustrated in Exhibit 9-4.

- A. When the excesses or shortages in the area of subdivisions are caused by correction lines, the corrections are made by designating the northerly and westerly subdivisions of the section as Government Lots (see A in Exhibit 9-4).
- B. Government Lots are created in those subdivisions which border a grant which preceded the U.S. rectangular survey. For example: Donation Land Grants are excluded from subdivision (see B in Exhibit 9-4). Similarly, when a mining claim is patented, the U.S. Bureau of Land Management draws an amended plat of the section and assigns Government Lot numbers to the remaining portions of subdivisions which border the patented mining claim.
- C. Government Lots are also created where the normal layout of a section is precluded by the existence of a body of water (see C in Exhibit 9-4); e.g., along the shores of Puget Sound, large lakes, or rivers.

Exhibit 9-4 Government Lots and Normal Subdivisions (Example)



## 9-10.5 *Water Boundaries*

One of the areas of greatest confusion exists in the definition of “navigable” bodies of water. The Washington State Supreme Court has held that to be navigable within the meaning of Article VII of the state Constitution, a body of water must be capable of being used to a reasonable extent in the carrying of commerce in the usual manner by water, and be so situated and have such length and capacity as will enable it to accommodate the public generally as a means of transportation. (167 Wash. 385, 195 Wash. 537, 16 Wn. 2d 107).

On attaining statehood (November 11, 1889), the state of Washington asserted its ownership of the beds and shores of all navigable bodies of water in the state, excepting only those previously patented by the Federal Government. The question of the navigability of any particular stream or body of water can be answered only by a decision of the State Supreme Court – in the absence of such a decision, DNR assumes the stream or body of water to be navigable if it has been meandered.

All “navigable” rivers are meandered (how the surveyor was to determine this point is uncertain). Also meandered is any river whose right angle width is three chains (198 Engineer’s) or more, and all lakes of 25 acres or more (see Manual of Surveying Instructions, U.S. Department of Interior, Bureau of Land Management, 1947, U.S. Government Printing Office, Superintendent of Documents).

For additional information on water boundaries, tidelands, shorelands, and the effect on ownership of water boundaries, see *Waterfront Titles in the State of Washington* by George N. Peters, Jr. ©1981-2008 Chicago Title Insurance Company as published on the Washington Land Title Association website at <http://washingtonlandtitle.com/wp-content/uploads/2015/05/Waterfront-Titles-in-WA-Booklet-20151.pdf>.

## 9-10.6 *Metes and Bounds Descriptions*

This method of land description involves locating property by: (a) a reference and tie to a legal monument (or point of public record) and (b) an outline of the courses and lengths of each line of the perimeter of the property.

The point of origin in any metes and bounds description is normally called “the point of beginning.” If the property boundary does not include the monument at which the description begins, and a tie call or calls must be used to get to the first corner of the property being described, the first corner of the description and the end of the tie are identified as “the true point of beginning,” and the same term is again used in the closing call.

### 9-10.6.1 Rules

In a metes and bounds description, the perimeter of a tract of land is described by:

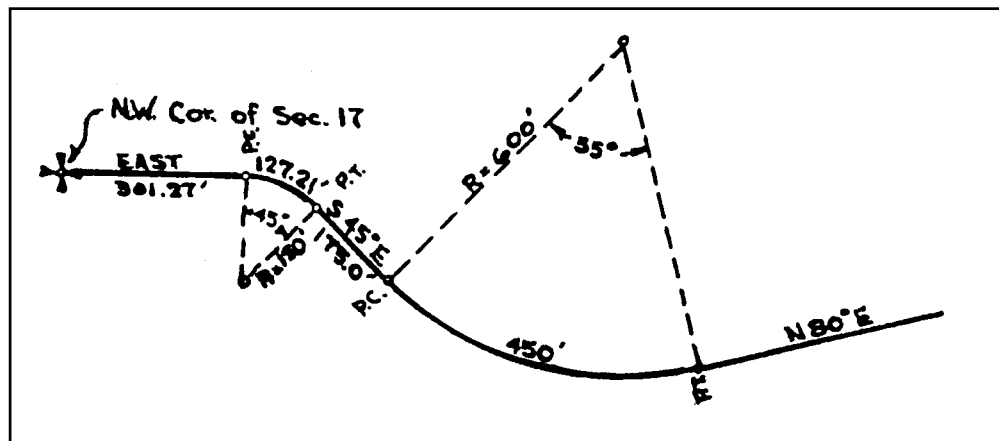
- A. Starting at a definitely known (i.e., monumented) point.
- B. Stating bearings and distances of a line or lines from the monumented point to a point on the boundary of the tract (i.e., the “true point of beginning”).
- C. Stating bearings and distances for each successive boundary line of the tract. The use of “more or less” following the distance will prevent overlaps or gaps but should not be used haphazardly. It is usually used with the last distance call to be sure of closure; it may be used elsewhere only when another element (monument fixes the point without regard to the actual distance).
- D. Returning (closing) at the “true point of beginning.”
- E. When referring to a section corner or to a quarter corner, reference is made only to the section in which lies the point of beginning of the parcel to be described.
- F. The first reference made in a description to a section includes the Township (and its North/South identification number) and Range (and its identification number East or West of the Willamette Meridian). Thereafter, reference is made only to “said section.”
- G. “Commencing” is used when the first call is not the corner of the property described.
- H. A good description makes frequent use of “controls” which will govern over either bearings or distances recited. For instance, it is common practice on the closing course to recite “, more or less, to the (true) point of beginning.” This final call will then automatically be forced to close on the (true) point of beginning in spite of any errors of survey or description language for the final course.
  1. The following are examples of other common controlling language:
    - a. Thence North 89° 59' East 590', more or less, to the west line of Primary State Highway No. 16, Twisp to Winthrop. This call would run to the west line of the highway even if the true distance is actually 600 feet. Similarly, the call does not overrun the highway, even though the true distance is only 550 feet. This is true even without the words, “more or less” appearing in the call.
    - b. Thence North 17° 31' West along the southwesterly right of way line of the N.P.Ry.Co. Regardless of the true bearing of the railway right of way line, this call would follow along the right of way boundary.
    - c. Thence East 120', more or less, to the southeast corner of a tract of land conveyed to Elmer Fudd, by deed recorded in Vol. 799 of Deeds, Page 601, records of said county. This is good practice, particularly when describing property adjacent to a tract which was carved out of a larger parcel at some date prior in time. Such a point in a prior description may even be used as a “point of beginning.” Care should be taken, however, to be certain that the description in the deed referred to is adequate. Such a control will insure against an accidental gap or overlap in the descriptions of the two parcels.

## 9-10.6.2 Description of Curved Lines

Boundary lines running along curves are frequently encountered in descriptions bordering in highways, county roads, and railroads.

A description of the line in [Exhibit 9-5](#) would read: "Beginning at the Northwest corner of Section 17, Township \_\_\_\_\_, Range \_\_\_\_\_ E, WM; thence East along the North line of said section 301.27'; thence along the arc of a curve to the right having a radius of 150.0 feet a distance of 127.21 feet, (or through a central angle of 45°; thence South 45° East 175.0 ft; thence on the arc of a curve to the left having a radius of 600 feet a distance of 450 feet; thence North 80° East . . ."

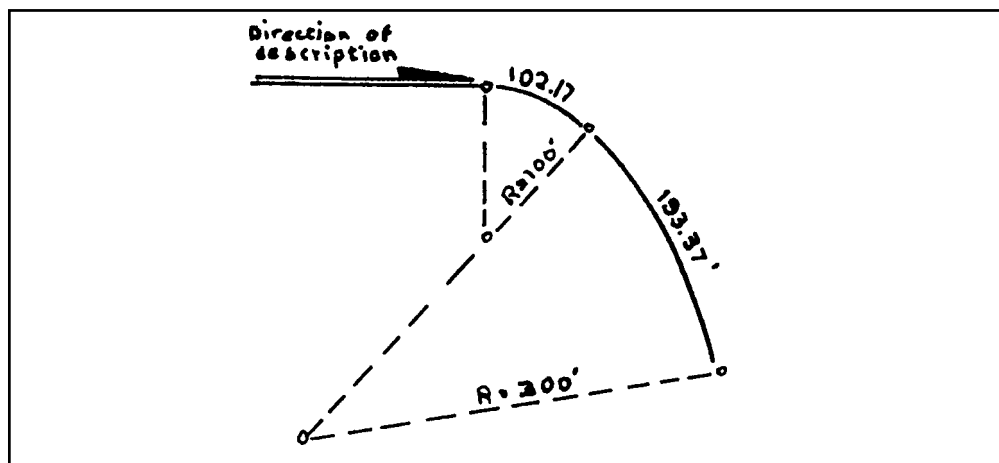
Exhibit 9-5 Typical Curved Line (Example)



A compound curve is one in which the radius of the curve is changed somewhere along the arc without the intervention of a tangent course.

The description of the line [Exhibit 9-6](#) would read: "thence along the arc of a curve to the right having a radius of 100 feet a distance of 102.17 inches; thence along the arc of a curve to the right, having a radius of 300 feet, a distance of 193.37 feet.

Exhibit 9-6 Compound Curve (Example)



## 9-10.7 *Platted Property*

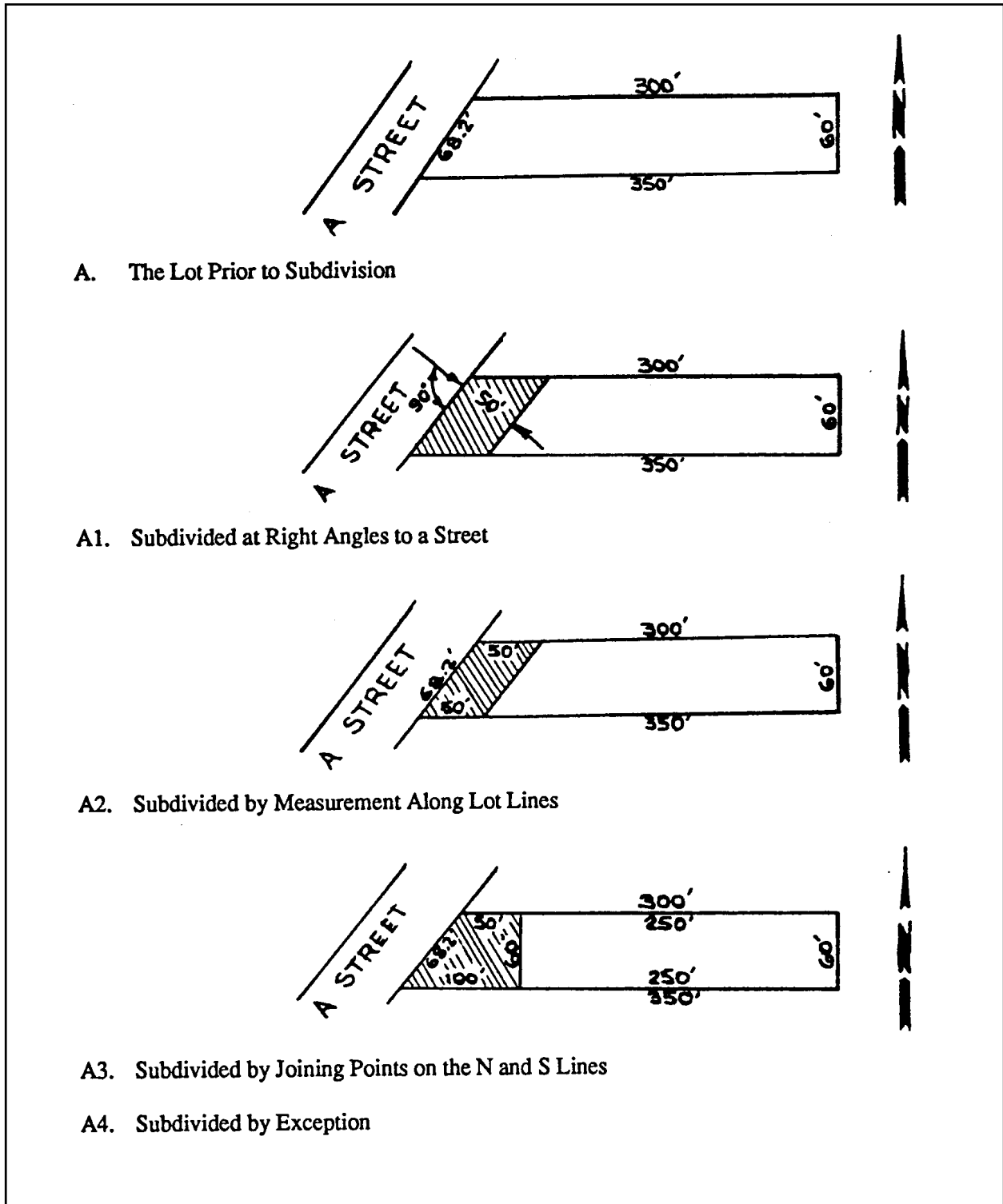
The recording of an official plat with the County Auditor considerably simplifies the legal descriptions of the properties shown on the map. Generally, any lot or block identified on the face of the plat can be accurately described by simply naming the lot, block, name of the addition, and the name of the county and state and reciting the volume and page of plats and the county where the official copy of the particular plat has been recorded. The name of the plat, as well as the volume and page, should be taken only from reliable sources.

Where the conveyance covers all of a given lot or block, little difficulty can arise if care is taken to recite the plat name and recording information accurately. Problems do, however, frequently arise in the description of part of a platted lot.

Where the lot is rectangular and oriented N and S, or E and W, there are few difficulties encountered in describing a fraction of the lot. The east 100 feet, or the east  $\frac{1}{2}$ , or the east 2 acres, of a given lot, are all determinable with certainty. A different and considerably less simple problem exists where the lot is not rectangular or is not oriented N and S, or E and W. Consider the following cases:

- A. How would you measure the west 50 feet of the lot at A in [Exhibit 9-7](#)? Obviously, there are several ways in which the measurement could be made and to eliminate all possibilities of misinterpretation, the description should be reworded so that it can be interpreted in only one way. 1-4 below, illustrate the desirable language to cover various possible intentions of the parties.
1. The westerly 50 feet, when measured at right angles to "A" St. (see A1, [Exhibit 9-7](#)).
  2. The westerly 50 feet, when measured along the north and south lines (see A2, [Exhibit 9-7](#)).
  3. All that part of Lot, Block Addition, lying westerly of a line drawn from a point on the north line of said lot, 50 feet easterly of the northwest corner thereof, southerly to a point on the south line of said lot, 100 feet easterly of the southwest corner thereof (see A3, [Exhibit 9-7](#)).
  4. An easier way to describe the same parcel as in Section 9-9.6A3, would be as follows: All of Lot \_\_\_\_, Block \_\_\_\_,\_\_\_\_\_ Addition, according to the plat thereof recorded in Vol. \_\_\_ of Plats, Page \_\_ records of \_\_\_\_\_ County, Washington, except the east 250 feet thereof (see A4, [Exhibit 9-7](#)).

Exhibit 9-7 Possible Subdivisions of a Platted Lot (Example)



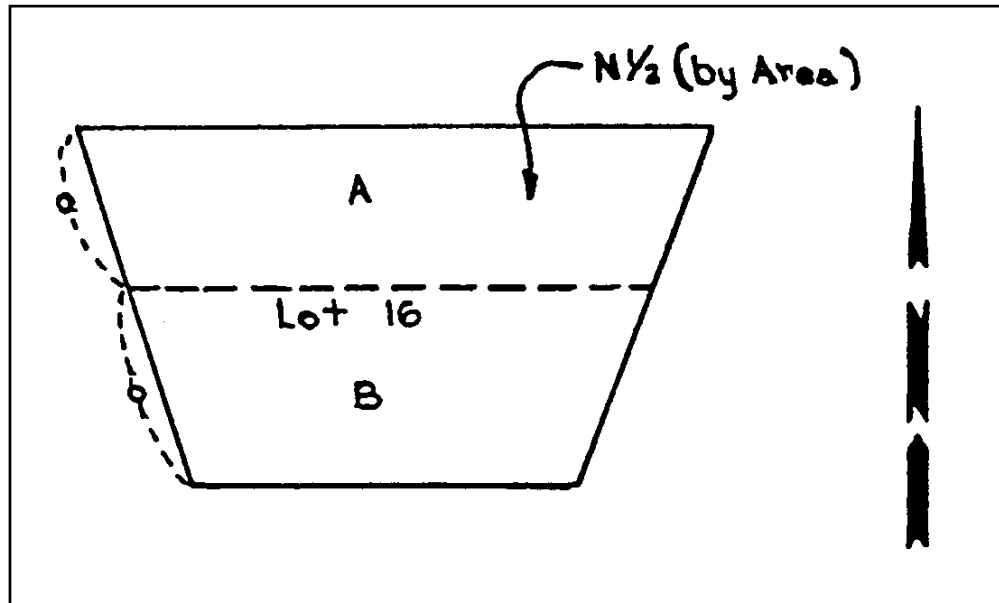


- B. Generally, directions unless qualified or controlled by other words (such as “parallel with” or “along the section line”) will be construed as meaning due North, East, etc. (2 Wash. 198, 135 Wash. 539).
- C. “A description calling for the “north half” is interpreted north half in area” (16 Wash. 39, 68 Wash. 351). The description of Tract “A” in [Exhibit 9-8](#) is as follows: “N ½ Lot 16.” Therefore, Lot 16 is divided by a due East-West line so that the area of Tract “A” is equal to the area of Tract “B.” Obviously, the distance “a” is less than the distance “b.”

Even if the north and south boundaries were not parallel, the dividing line would be a due East and West line, creating two parcels equal in area.

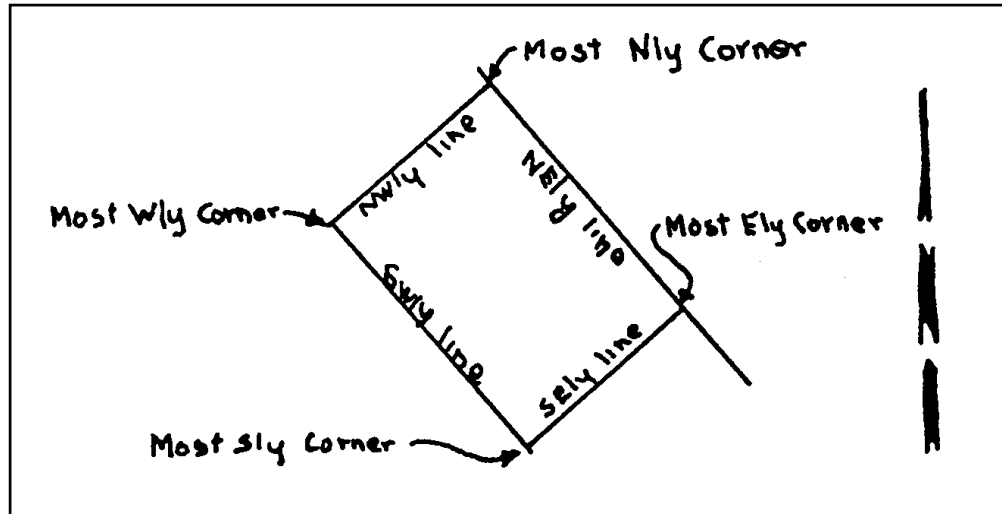
The only exception to the above rule is where such language is used in connection with the government subdivision, then the rules for subdividing sections apply (see [Section 9-10.3](#)).

**Exhibit 9-8 Subdivision by Area – Platted Lands (Example)**



- D. Where a lot is not oriented N and S, or nearly so, the possibility of confusion exists when referring to the lines and corners of the lot. In [Exhibit 9-9](#), it would be difficult to determine which corner is the “northwest corner” of the lot, or which line is the “North” line. Terminology which eliminates the difficulty is shown in [Exhibit 9-9](#).

Exhibit 9-9 Orientation of a Lot (Example)



- E. Care must be taken in combining descriptions of fractions of lots with full lots to be certain that the resulting description is free of ambiguity. For instance, does “the W  $\frac{1}{2}$  of lot 7 and lot 8” mean all of lot 8 or only the “W $\frac{1}{2}$ ?” All question of interpretation is removed by reciting the full lot first, as “All of Lot 8 and the W $\frac{1}{2}$  of Lot 7,” if that is the desired intention.
- F. If parts of two lots, together with a full lot are to be described, clarity can be assured by the following style:
- The N  $\frac{1}{2}$  of Lot 7, all of Lot 8 and the S  $\frac{1}{2}$  of Lot 9.

### 9-10.8 Streets, Roads, and Highways

Generally, any description adjoining on a street, road, or highway, which is only an easement, carries by implication the underlying fee to the center of the street. This is not true where the right of way is held in fee. For many years, almost all state highways have been acquired in fee, and since June of 1909, streets acquired by condemnation by cities and towns could be acquired in fee and therefore properties adjoining such rights of way do not carry any underlying interest in the road. Practically, all streets dedicated to the public on recorded plats are considered to be easements, and the owner of an abutting lot also has the underlying fee to the adjacent half of the street (79 Wash. 455 and 137 Wash. 452).

Where a street has been vacated, a question arises as to whether the vacated portion adjoining will pass without specific mention thereof in the conveyance. Generally, this will be governed by whether or not the vacated portion is of sufficient size to be capable of separate use.

If the vacated land is a narrow adjacent strip, as where an 80-foot street is narrowed to 60 feet by the vacation of the outer 10 feet on each side, or where it is a narrow alley, a conveyance of the adjoining land after the vacation would carry the vacated lands automatically whether mentioned in the deed or not (52 Wash. 341, 167 Wash. 39).

However, if the vacated strip is capable of separate use, it must be described to indicate an intent of the grantor that he did not wish to retain title to the strip (74 Wash. 462, 137 Wash. 452).

A perimeter street in a plat dedicated prior to June 13, 1901, attaches entirely to the abutting lots, provided the platlor owned nothing beyond the limits of the area platted. The logic is obvious that owners outside the limits of the plat had no part in the dedication of the perimeter street, and when the easement to the public is lifted by the vacation proceedings, the original boundary line is restored to exactly where it was at the time of the vacation (54 Wash. 595).

The Act of 1901 purports to take the outer half of a perimeter street away from its rightful owner (i.e., the platlor or his successors) and give it to the abutting owner outside the limits of the original plat. This point has apparently not been before our courts, but it is very likely that the statute might be considered unconstitutional. Article I, Section 16, Amendment 9, provides that private property shall not be taken for private use.

In addition to the usual formal vacation proceedings, a platted street may become vacated under the nonuser statutes (Laws of 1889-90, Section 32, page 603, amended by Laws of 1909, Chapter 90, page 188) provided that all of the following conditions are met:

- A. The plat must have been recorded on March 12, 1904, or earlier.
- B. The streets dedicated thereon must have remained unopened for a period of not less than five years after platting and prior to March 12, 1909.
- C. The plat must have been outside the limits of a corporate city at the time of platting and for the entire five-year period during which the streets remained unopened.

In simple cases, the vacation of a street causes the adjacent half of the street to attach to the abutting ownership between the side lines of the property projected to the center of the street. For complicated intersections, as with diagonal streets, the area which attaches to each lot becomes very controversial and may even result in some portions remaining with the original platlor, or even "no man's land" (203 Wash. 331). The best language to use in a description which includes portions of vacated streets or alleys falling in this category is: "...together with that portion of vacated street attaching thereto by operation of law."

An additional point of importance in right of way work, is that since June 9, 1949 (Laws of 1949, Chapter 14), a city or town may retain an easement for utilities within the vacated streets or alleys. This could take the form of reserving the right to continue the occupation and maintenance of existing utility facilities, or may even reserve the right to grant future easements and franchises within the area. Further, since June 12, 1975 (Laws of 1975, Chapter 22), counties may retain easement rights for the construction, repair, and maintenance of public utilities and services whenever a county road, or portion thereof, is vacated. The public utility must be authorized or physically located on the land being

vacated prior to the time the county, by resolution, authorizes said land to be vacated. The legislative body is restricted from conveying such easement to any public utility, but may convey a franchise to a public utility.

Formal vacation of streets and roads outside the limits of cities is accomplished by order of the Board of County Commissioners ([RCW 35.79](#)). Within cities, it is accomplished by ordinance ([RCW 36.87](#)).

## 9-10.9 *Title Problems*

### 9-10.9.1 **Overlaps and Gaps**

From various causes, such as faulty conveyancing or surveying, we frequently find titles which overlap each other, or where a hiatus (gap) has been created between two ownerships. While the solution of this problem can be complex as between the parties, it is relatively simple to handle as far as acquisition of the highway right of way is concerned.

In the case of the overlap, particularly where the area involved is small and not of high value, the right of way deeds should be so drawn that the controversial strip is included in the deeds secured from all parties having an apparent interest. The matter of compensation can usually be resolved by payment of 50 percent of the value of the overlap area to each party (presuming only two parties have claims on the area).

In the event of a hiatus, some weight can be given to physical boundary markers (as fences, rock walls, etc.) which might show that the party on one side or the other of the gap is claiming possession. This is especially true where the boundary marker has been recognized as such and acquiesced to by the neighbor for a period of ten years or longer.

In the event that there are no physical boundary indications, or if the area is of high value, the best procedure is to include the strip in the deeds from the owners on either side (or take a separate quitclaim deed), as well as securing the joinder of the original owner who conveyed out the two parcels and created the hiatus. In all but the most simple cases, the Region RESM (or his designee) refers the problem to the Acquisition Program Manager for resolution prior to final negotiation.

### 9-10.9.2 **Appurtenances**

A deed not only conveys all of the lands embraced within the legal description, but also carries, without the need of specific mention, all the appurtenances and incidentals rightfully belonging to it, and which are essential to the full and perfect enjoyment of the property (29 Wash. 70, 121 Wash. 572).

It is quite commonly known that this includes buildings, fences, timber, wells, crops, etc., but there are many other interests and rights which will pass with the deed which are not so well known. Some of these are:

- A. Appurtenant easements (120 Wash. 144).
- B. The underlying title to adjoining streets, roads, and railroads (if they are easements and not fee).

- C. Ditches (72 Wash. 547).
- D. Vacated alley (52 Wash. 341).
- E. After acquired title (if Statutory Warranty, or Bargain and Sale Deed, or if Quit Claim Deed specifically includes after-acquired title clause).
- F. Title to a building lying partly outside the limits of the lands conveyed (30 Wn. 2d 4).

## 9-10.10 *WSDOT Line Survey Descriptions*

### 9-10.10.1 **General**

- A. In a total acquisition, the only property descriptions on the instrument is the parcel description.
- B. In a partial acquisition, the instrument includes both a description of the acquisition portion and the parcel description.
- C. In the case of a partial acquisition for roadway purposes, the state normally employs a “line survey description” in which the portion to be acquired is described in its relation to the highway project engineering data “over and across” the parcel description. All call-outs of Highway Engineer’s Stations (HES) must be preceded by a proper line survey identification; e.g., LL, LR, A12. Example:  
“...at a point opposite HES LR 250+00 on the LR line survey of...”
- D. Upon demand by a grantor having substantial real estate holdings (usually a corporate body), a metes and bounds description of the acquisition is drawn by the Region RESM in coordination with the Acquisition Program Manager. The Region RESM initiates action to have the appropriate metes and bounds incorporated on the Right of Way Plan.
- E. All engineering data upon which any acquisition description is based appears on the approved plan of the project (i.e., the Right of Way Plan or the Sundry Site Plan).
- F. The sample descriptions cited in [Section 9-10.14](#) are used as models for drafting of property descriptions for acquisition purposes.

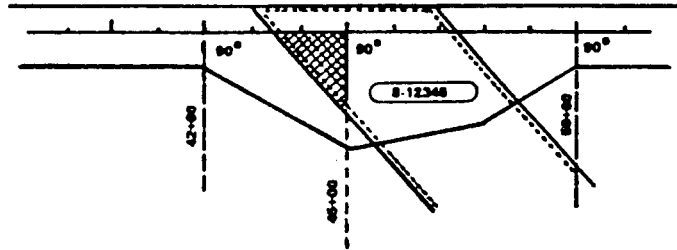
### 9-10.10.2 **Rules**

The following rules apply to “line survey” acquisition descriptions:

- A. The word “opposite” properly means, “at right angles to” when in reference to a determined point (HES) on an established line (line survey) whether the established line is straight or a curve. When measured “opposite” an established curved line, the measurement is along the radius of such curve.
- B. The term “when measured at right angles to and/or radially from” is properly used when the distance measured is from an established line without reference to a point on the established line.
- C. A line which is parallel with an established line follows all the sinuosities of the established line and remains the stated distance from the established line.

- D. If that portion of a parcel which is to be acquired lies in a given direction from a described line, perpendiculars to the reference line drawn from the ends of the described line, must include all of the portion of the parcel which is to be acquired (see [Exhibit 9-10](#)).

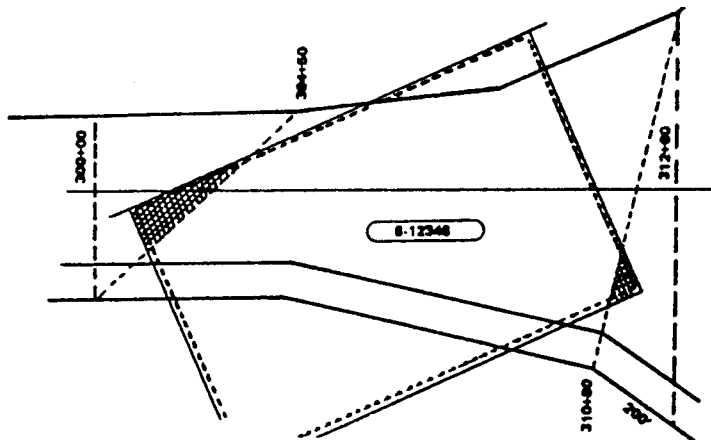
**Exhibit 9-10 Partial Acquisition (Example 1)**



Although the point opposite HES 45 + 00 lies outside parcel 8-12345, the shaded area would not be included in the description. (See Section 9-9.13.I)

- E. If that portion of a parcel which is to be acquired lies between two lines, lines drawn to connect the ends of the two described lines must lie beyond all of that portion of the parcel to be acquired (see [Exhibit 9-11](#)).

**Exhibit 9-11 Partial Acquisition (Example 2)**



Although the points opposite HES 300 + 00, HES 304 + 50, HES 310 + 80, and HES 312 + 00 are all outside parcel 8-12346, the shaded areas would not be included in the description if the "take lines" are limited to between HES 304 + 50 and 312 + 00 on the north side and between HES 300 + 00 and 310 + 80 on the south side. It is obvious that lines drawn between the respective termini fail to include all of the necessary take. The "take lines" in this case must extend from HES 300 + 00 to 312 + 00 on both sides. See Section 9-9.13.J.

- F. The ends of a strip which are contiguous to a right of way are closed by lines which are described as being perpendicular to the highway line survey or by using a metes and bounds description.
- G. Reference in a description to a right of way plan title is made at the first mention of any highway project. For example: "Beginning at a point on the "X" Line survey of SR No. (plan title in full)." Thereafter, reference may be made by stating "said highway".
- H. In the use of the word "said": No similar item can intervene between the item and references to it in the description. Thus, if two line surveys are involved in a description, all references to the "said line survey" which refer to the first line survey should precede any mention of the second line survey. If an intervention must occur, the next reference to the first survey line must repeat the identification of the first line survey. "Said (noun)" always refers to the last previous use of that noun and its descriptive modifiers.
- I. Unnecessary wordiness is avoided. E.g., "To wit"; "thence run" or "thence running"; stating "said Township and Range" after each mention of a section; "distant" or "a distance of" (but see M, below); etc.
- J. The words "a distance of" are used only to separate two sets of sections. E.g., "189+24 254.25 feet" should be written "189+24 a distance of 254.25 feet."
- K. The following are always spelled out:
  - 1. The word "feet."
  - 2. Reference to subdivisions of a section (northwest quarter) and directions (northerly).
- L. Symbols (' for feet) or abbreviations (NW) (Nly) are avoided, except that bearings are shown as follows: North 1° 34' 27" East.
- M. When describing strips of land as being certain widths on each side of a survey line, the term "on each side" is used only when the widths are the same. Do not use the term "on either side."
- N. If reference to line survey stationing appears more than once in a description, the following statement may be used at the first reference: "Highway Engineer's Station (hereinafter referred to as HES)." Thereafter, the abbreviation "HES" may be used. When two lines are described as the boundaries of the acquisition description, they should both proceed in the same direction (preferably in the direction of increasing HES numbers).

## 9-10.11 Parcel Description

- A. In the case of a total acquisition, the legal description of the grantor's property is given exactly as it appears in the title report.
- B. In the case of a partial acquisition, either:
  1. The parcel description is inserted as a Parcel "A" type of description following the description of the acquisition portion
    - a. The term "Parcel A type description" refers to a method of acquisition description in which the acquisition portion is separate and distinct from the parcel portion of the description. The acquisition portion includes the phrase "all that portion of the following described Parcel A lying . . .", and is followed by the whole parcel description as contained in the PC and identified in the instrument as "PARCEL A:." The use of "A" is arbitrary and may be any other letter of the alphabet, but no letter is used more than once in any given instrument.
    2. The parcel description is included within the acquisition description when the parcel description is very short and the acquisition description is relatively simple.
  2. A Parcel "A" description too long for a preprinted form may be typed and appended as an "EXHIBIT" on a separate, 8½" x 11" sheet of white bond paper. In the space on the preprinted form in which such description would otherwise appear is inserted the reference, binding the exhibit to the instrument.
- D. There are often cases in which more than one acquisition is required from a single ownership and/or where more than one parcel is described in the title report, with acquisitions required from more than one such parcel.
  1. Multiple acquisitions in a single instrument are identified as "Tract I," "Tract II," etc., and are used in the following situations:
    - a. Acquisitions which are separated from each other, although taken from a single parcel of property.
    - b. Acquisitions in which the acquisition portion of the description would be so complicated that greater clarity can be achieved by breaking it into two or more parts.
  2. Multiple parcels on the title report are identified in "Parcel A type descriptions" as "Parcel A," "Parcel B," etc.
  3. Examples:

"Tract I: All that portion of the following described Parcel A lying . . ."

"Tract II: All that portion of the . . . following described Parcel A (B) lying . . ."



### 9-10.12 *County Roads Acquired*

Conveyances from the counties for all roads within a given highway project contain adaptations from the following property description:

“All County Road rights of way, together with all appurtenances thereto, located within ...”

### 9-10.13 *Exchange Agreement*

The exact description used on the deed from the state may vary somewhat in detail from the description used in the Exchange Agreement (RES-322). Care is exercised to provide an accurate description in the Exchange Agreement based on conventional survey ties, on plats or on survey line ties and distances shown on the appropriate Project Plan.

(Note: PAS to verify legal description of the surplus property with Property Management section.)

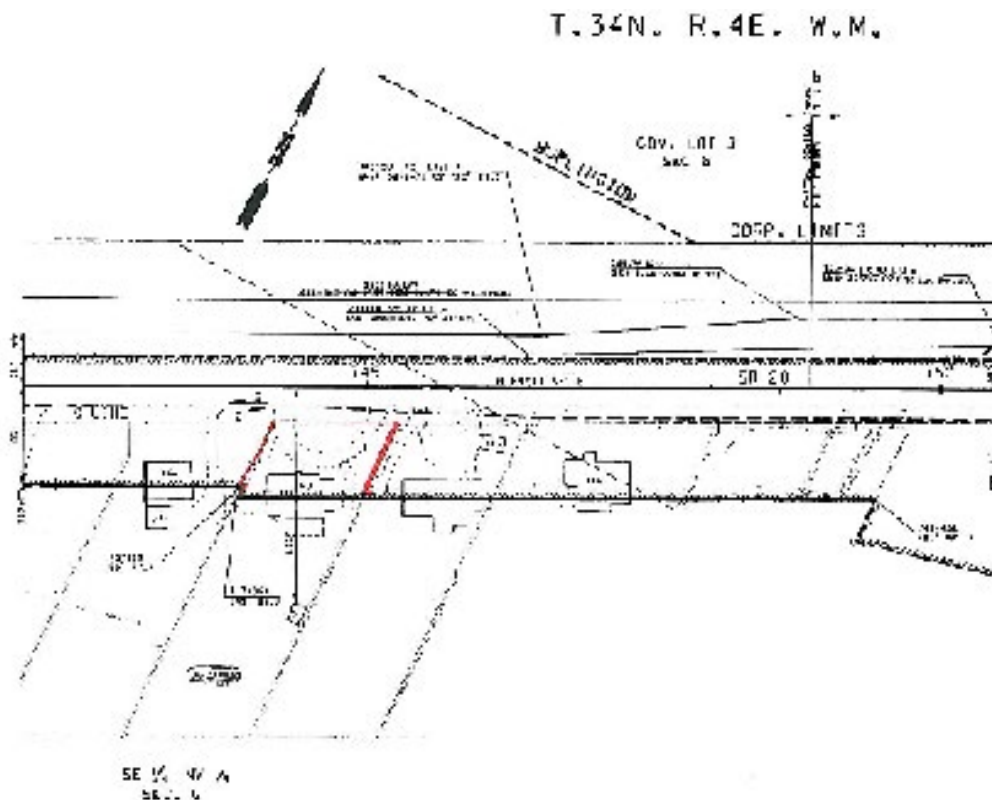
### 9-10.14 *Vacated Street or Road*

If the title report or a court determination attaches a vacated street or road (or portion thereof) to the parcel description, include in the parcel description appropriate language from the PC to cover the vacation, or adapt the following:

“together with that portion of vacated (name of street) attaching thereto by operation of law”

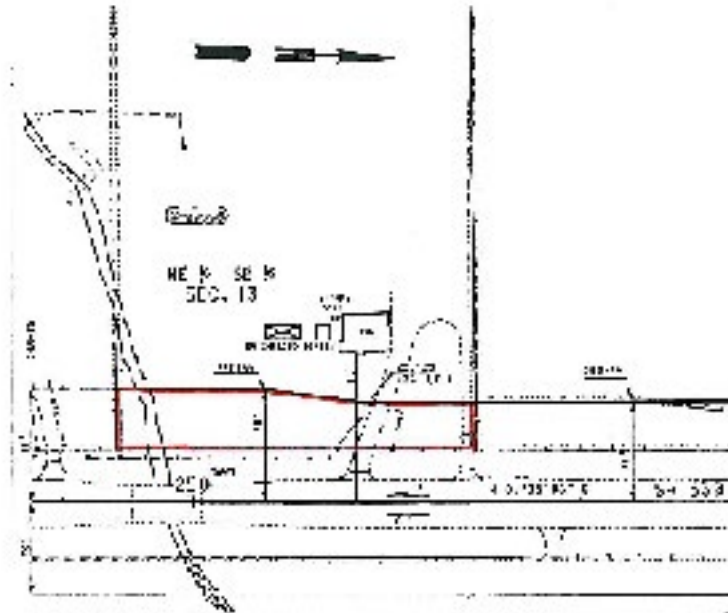
### 9-10.15 *Sample WSDOT Descriptions*

Exhibit 9-12 Line Description That Can Be Used on Multiple Acquisition Parcels



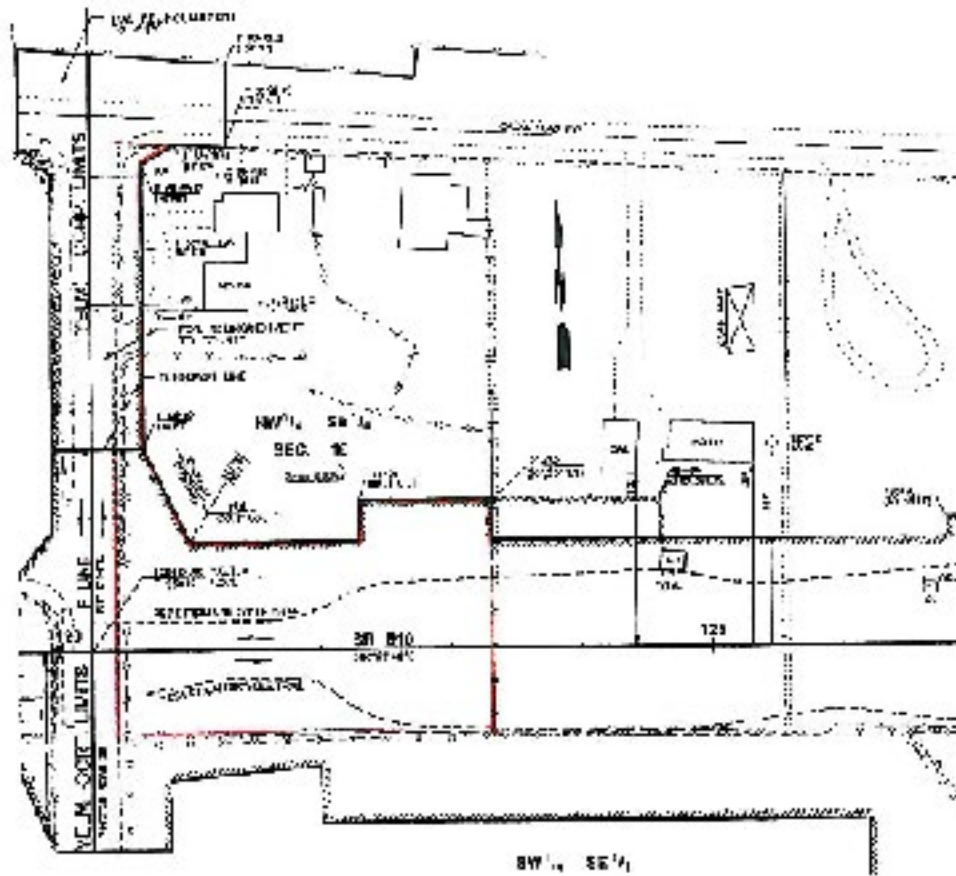
All that portion of the hereinafter described PARCEL "A" lying northwesterly of a line drawn parallel with and 95 feet southeasterly of, when measured at right angles to, the SR 20 line survey of SR 20, Fredonia to Pulver Rd. Vic.

**Exhibit 9-13 Simple Line Acquisition Description**



All that portion of the hereinafter described Parcel "A" lying easterly of a line beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 248+75 on the SR 539 line survey of SR 539, Horton Road Vic. to Ten Mile Road Vic. and 85 feet westerly therefrom; thence northerly, parallel with said line survey, to a point opposite HES 250+55 thereon; thence northeasterly to a point opposite HES 251+35 on said line survey and 75 feet westerly therefrom; thence northerly, parallel with said line survey, to a point opposite HES 253+40 thereon and the end of this line description.

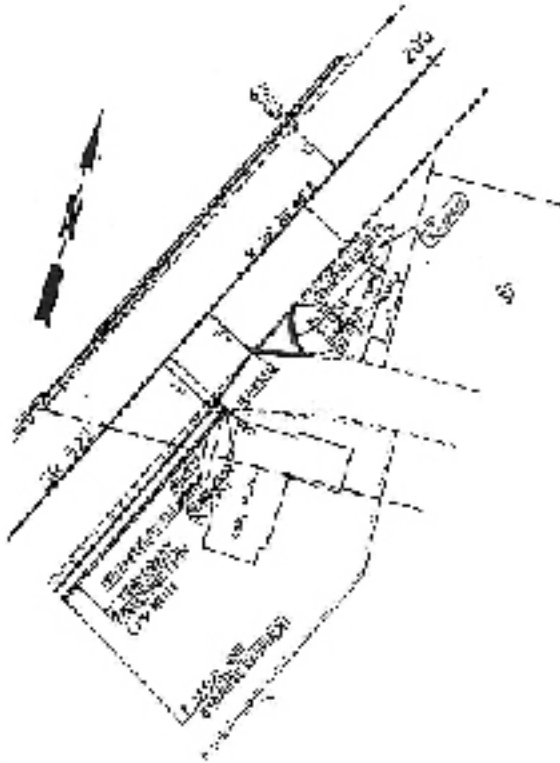
Exhibit 9-14 Complex Line Description



All that portion of the hereinafter described Parcel "A" lying Westerly and Southerly of a line described as:

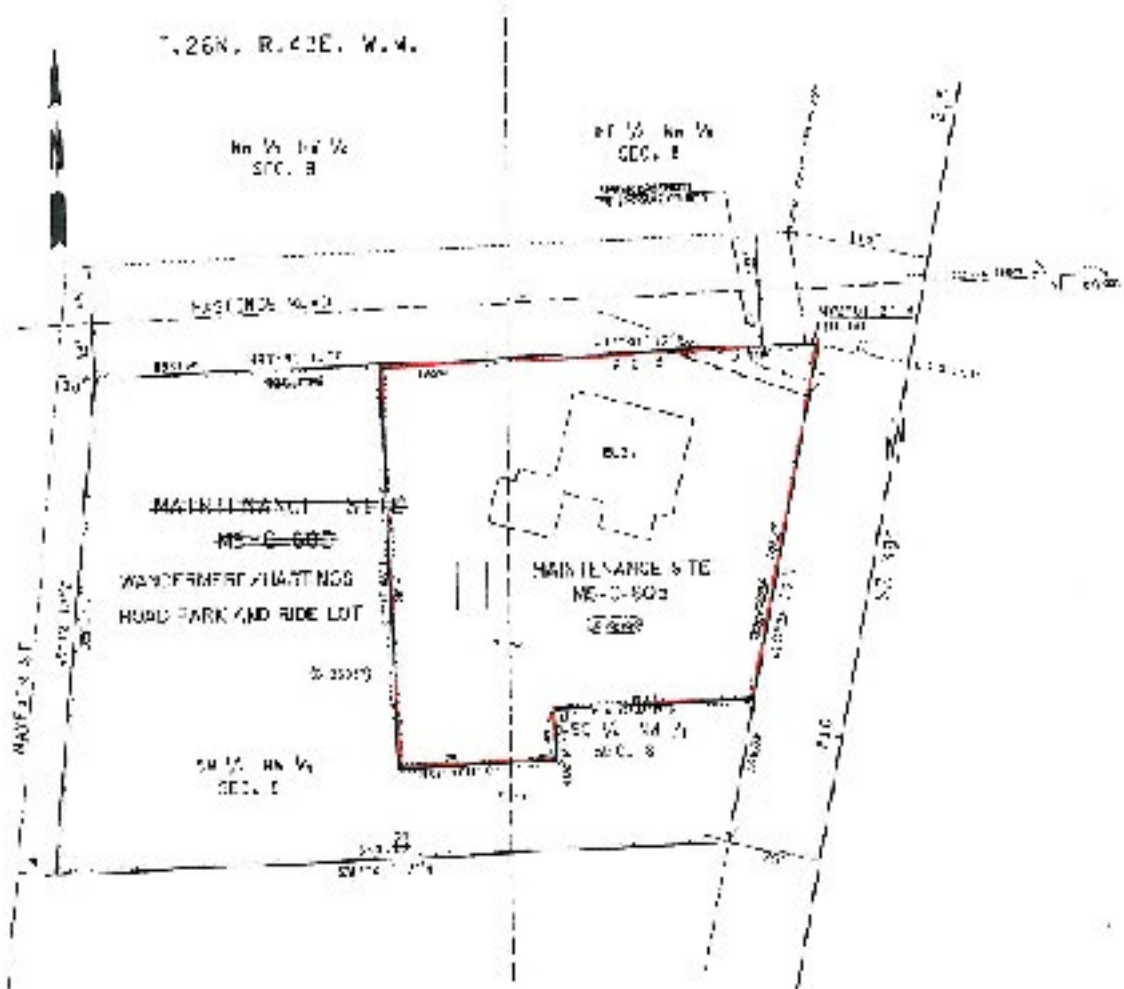
Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) F 69+40.29 on the F line survey of SR 510, Mud Run Rd. Vicinity to SR 507 Vicinity and 105 feet Easterly therefrom; thence Southerly, parallel with said line survey, to a point opposite HES F 68+77.46 thereon; thence Westerly to a point opposite HES F 68+79.42 on said line survey and 65 feet Easterly therefrom; thence Southwesterly to a point opposite HES F 68+65.63 on said line survey and 40 feet Easterly therefrom; thence Southerly, parallel with said line survey, to a point opposite HES F 66+50 thereon; thence Southeasterly to a point opposite HES 121+00 on the SR 510 line survey of said highway and 80 feet Northerly therefrom; thence Easterly, parallel with said SR 510 line survey, to a point opposite HES 122+30 thereon; thence Northerly to a point opposite said HES and 110 feet Northerly therefrom; thence Easterly, parallel with said SR 510 line survey, to a point opposite HES 124+60 thereon and the terminus of said line description.

Exhibit 9-15 Perimeter Acquisition Description and Curve Description



All that portion of the hereinafter described PARCEL "A" lying within a tract of land beginning at a point opposite Highway Engineer's Station (herein after referred to as HES) 197+66.53 on the SR 522 line survey of SR 522, N.E. 145th St. to N.E. 165th St. and 40 feet southeasterly therefrom; thence northeasterly to a point opposite HES 197+90.55 on said line survey and 70 feet southeasterly therefrom; thence northwesterly on a curve to the right having a radius of 33 feet, an arc distance of 37.58 feet to a point opposite HES 198+09.60 on said line survey and 40 feet southeasterly therefrom; thence southwesterly parallel with said line survey to the point of beginning.

Exhibit 9-16 Sundry Site Acquisition Description (Metes & Bounds)



That portion of Section 8, Township 26 North, Range 43 E.W.M. described as follows:

Beginning at a point opposite Highway Engineer's Station L212+97.52 on the L line survey of Spokane County Sundry Site Plans, Maintenance Site MS-C-605 Wandermere/Hastings Park and Ride Lot and 75 feet Northwesterly therefrom; thence North 79°01'27" West a distance of 10.00 feet; thence South 87°41'12" West a distance of 242.12 feet; thence continuing South 87°41'12" West a distance of 102.61 feet; thence South 2°18'48" East a distance of 317.15 feet; thence North 87°43'12" East a distance of 125 feet; thence North 2°16'48" East a distance of 40 feet; thence North 87°43'12" East a distance of 161.27 feet; thence North 10°58'33" East a distance of 282.72 feet, more or less, to the point of beginning.

## 9-11 Miscellaneous Clauses

### 9-11.1 *Limited Access*

#### 9-11.1.1 Acquisition of Access Rights Only

- A. For acquisition from a fee owner, the appropriate form is used for conveying access rights (RES-305 or RES-307). If there are exceptions to full control of access, the appropriate exception clause is also inserted as explained in [Section 9-11.1.5](#) et seq.
- B. For acquisition from a benefitted parcel (dominant estate), the appropriate form is used for conveying access use rights ([RES-356](#)). If there are exceptions to full restriction of access, the exception clause 9-11-1.5.3.C.3 is inserted.

#### 9-11.1.2 Acquisition of Land and Access Rights

- A. For a fee owner the access control clause follows the property description clause in a conveyance of a partial acquisition adapting the following:

"Also, the grantors herein convey and grant to the State of Washington all rights of ingress and egress (including all existing, future or potential easements of access, light, view and air) to, from and between (plan title) and the remainder of said (Parcel A).

It is expressly intended that these easements, covenants, burdens and restrictions shall run with the land and shall forever bind the grantors, their heirs, successors and assigns."

- B. For a benefitted parcel owner the restriction of access clause is as follows:

"Also the grantors herein convey to the State of Washington all their easement rights to use the access approach belonging to the hereinafter described Parcel (use servient estate description) for ingress and egress to, from and between SR and the remainder of said Parcel (dominant estate)."

**Note:** If an access reservation is provided, continue with the appropriate clause in [Section 9-11.1.5](#) et seq.

### 9-11.1.3 Release of Lessee's Interest

The access control clause agrees with the language of the conveyance from the owner, adapting the following:

“Also, said lessee hereby releases from the effect of said lease, all rights of ingress and egress (etc., as in [Section 9-11.1.2](#)) . . . and the remainder of the real property described in said (lease) (Parcel \_\_).”

### 9-11.1.4 Release of Mortgagee's or Beneficiary's (Deed of Trust) Interest

The access control clause agrees with the language of the conveyance from the owner, adapting the following language in the satisfaction or request for reconveyance:

“Also, said (mortgagee/trustee) hereby releases from the effect of said (mortgage/deed of trust) all rights of ingress and egress (etc., as in [Section 9-11.1.2](#)) and the remainder of the real property described in said (mortgage/deed of trust).”

### 9-11.1.5 Access Reservation

If the access control is modified by any “Access Note” or other feature appearing on the approved plan, such feature is specified in the instrument of conveyance or release by adding to the “Access Control Clause” (see [Section 9-11.1.2](#) et seq.) an “Access Reservation Clause” adapted from one of the following clauses.

Composing proper language for a road approach reservation can present challenges. In instances where the following clauses do not meet unique requirements, work with the Headquarters RES Acquisition and Title staff.

The language of such clause in a partial release of lease, substitutes the words “said lessee” in place of the words “grantor” or “grantor herein.” Likewise, the word “mortgagee” is substituted in a partial release of mortgage and the word “trustee” is substituted in a partial reconveyance of a deed of trust.

#### 9-11.1.5.1 By Highway Connection

For access specifically permitted by way of a highway connecting with an access controlled facility:

“ . . . EXCEPT that the (grantors, lessees, mortgagees, trustee(s)) herein do (does) not convey any rights of ingress and egress (including all existing, future or potential easement of access, light, view and air) being conveyed (\_\_\_\_\_ erly of HES \_\_\_\_\_ + \_\_\_\_\_ on the “\_\_\_\_\_” Line survey of said highway and \_\_\_\_ feet \_\_\_\_\_ therefrom).” Continue with the text in [Sections 9-11.1.5.3.1](#), [9-11.1.5.3.2](#), or [9-11.6](#) as appropriate.

A. By Frontage Service Road State to Construct – Now

“ . . . , EXCEPT that as a part of the consideration of this transaction, the state agrees to construct on the right of way a frontage service road along the (easterly) side of said highway, and to which frontage service road only, the grantors, their heirs, successors or assigns reserve a right of reasonable access.” Continue with the text in Sections 9-11.1.5.3.1, 9-11.1.5.3.2, or 9-11.6 as appropriate.

B. State to Construct – Future

“ . . . , EXCEPT that as a part of the consideration for this transaction, the state agrees to construct on its right of way at a future date, a FRONTAGE SERVICE ROAD along the (easterly) side of said highway, it being understood and agreed that the grantors herein, their heirs, successors and assigns reserve a temporary right of reasonable access . . . .” Continue with Sections 9-11.1.5.3.B.1 or B.2 as required.

1. Direct Access to Highway. “ . . . directly to said highway until such time as said FRONTAGE SERVICE ROAD is actually constructed at which time all such temporary rights of direct access to the highway shall cease and the rights shall then be limited to the right of reasonable access to the FRONTAGE SERVICE ROAD.” (Insert description of location and/or use restrictions of temporary direct access as appropriate.) Continue with the text in [Sections 9-11.1.5.3.1, 9-11.1.5.3.2, or 9-11.6](#) as appropriate.
2. Other Temporary Access. When temporary access other than via a direct route to the highway is to be provided, such as allowing temporary access only to a specific other public road that is available or can be made available, insert the details as to the type, location, and any restriction of the access as stated in the design specifications. Continue with the text in [Sections 9-11.1.5.3.1, 9-11.1.5.3.2, or 9-11.6](#) as appropriate.

## 9-11.1.5.2 By Road Approach

A. Type “A” (Residential)

“.. EXCEPT that the state shall construct on its right of way a Type “A” off and on approach, not to exceed 30 feet in width, for the sole purpose of serving a single family residence, on the \_\_\_\_\_ side, at or near Highway Engineer’s Station \_\_\_\_\_, as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only.” Continue with the text in [Sections 9-11.1.5.3.1 and 9-11.7](#).



B. Type "B" (Farm)

1. One Side

"... EXCEPT that the state shall construct on its right of way a Type "B" off and on approach, not to exceed 50 feet in width, for those uses necessary to the normal operation of a farm but not for retail marketing on the \_\_\_\_\_ side at or near Highway Engineer's Station \_\_\_\_\_, as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach, only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

2. Each Side

"...EXCEPT that the state shall construct on its right of way a Type "B" off and on approach, not to exceed 50 feet in width for those uses necessary to the normal operation of a farm but not for retail marketing, on each side of said highway, at or near Highway Engineer's Station \_\_\_\_\_, as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approaches the grantors, their heirs, successors and assigns, reserve the right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

a. Multiple Approaches – Controlled Movement

Used if the grantor has reserved road approaches on each side and traffic may not cross or make left turning movements at grade.

"...The direction of travel to and from each of said approaches shall be limited to the same direction as the movement of the traffic in the lane abutting said approach."

b. Temporary Grade Crossing

Used if the grantor has reserved road approaches on each side without restriction on crossing or left turning movements at grade.

"...It is understood and agreed that the state may temporarily permit the crossing of said highway at grade and free turning movements from each of said approaches. However, whenever necessary in the opinion of the Department of Transportation, all grade crossings shall cease and terminate and the direction of travel to and from each of said approaches shall be limited to the same direction as the movement of the traffic in the lane abutting said approach."

### C. Type "C" (Special Use)

Used only on the instrument with the parties who are to have the right of use of such approach. The Special Use must be defined in the document, consult with Region Access or HQ Access units.

#### 1. State to Construct

"...EXCEPT that the state shall construct on its right of way a Type "C" off and on approach, not to exceed (\_\_\_\_\_) feet in width, (insert purpose per right of way plan), on the \_\_\_\_\_ side, (northbound) only, at or near Highway Engineer's Station \_\_\_\_\_, as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors, or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-11.1.5.3.1 and 9-11.7.

#### 2. Owner to Construct

"...EXCEPT that the state agrees to permit the construction on its right of way of one Type "C" off and on approach to the remainder of said Parcel "A", not to exceed (\_\_\_\_\_) feet in width, for the uses necessary to the normal operation of a farm (or whatever use is specified by the highway plan), at a point on the \_\_\_\_\_ side of said highway, between Highway Engineer's Station (\_\_\_\_\_) and Highway Engineer's Station (\_\_\_\_\_), and to which off and on approach only, the grantors, their heirs, successors or assigns reserve a right of reasonable access for that purpose only." Continue with the text in [Sections 9-11.1.5.3.1](#) and [9-11.1.5.3.2](#).

#### 3. Benefitted Parcel (Dominant Estate) State to Construct

"...EXCEPT that the State shall construct (reconstruct) on its right of way a Type "C" off and on approach for the remainder of Tract "X" (servient estate), not to exceed \_\_\_(insert width of approach) in width for (insert language for purpose from Type "A", "B" or "D" approaches) on the \_\_\_\_\_ side of said highway, at or near Highway Engineer's Station \_\_\_\_\_, as shown on Sheet \_\_\_ of \_\_\_ Sheets of the hereinafter mentioned map of definite location. The Grantors, as holders of an easement to cross the remainder of Tract "X", their heirs, successors or assigns, shall have the right to use this Type "C" off and on approach onto SR \_\_\_ only for such time as the easement across Tract "X" remains in effect.

## 4. Benefitted Parcel (Dominant Estate) [Encumbered Parcel Owner to Construct]

“...EXCEPT that the State agrees to permit the construction (reconstruction) on its right of way of a Type “C” off and on approach for the remainder of Tract “X” (servient tenement), not to exceed \_\_\_(insert width of easement) in width for (insert language for purpose from Type “A”, “B” or “D” approaches) on the \_\_\_\_\_ side of said highway, between Highway Engineer’s Station \_\_\_\_\_ and Highway Engineer’s Station \_\_\_\_\_, as shown on Sheet \_\_\_ of \_\_\_\_ Sheets of the hereinafter mentioned map of definite location. The Grantors, as holders of an easement to cross the remainder of Tract “X”, their heirs, successors or assigns, shall have the right to use this Type “C” off and on approach onto SR \_\_\_ only for such time as the easement across Tract “X” remains in effect.

## D. Type “D” (Commercial Single 50 Foot Width)

Used only where Modified Access Control has been established, and further subject to provisions of [WAC 468-58-090](#).

“...EXCEPT that the state shall construct on its right of way a Type “D” off and on approach not to exceed 50 feet in width for use necessary to the normal operation of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only.” Continue with the text in [Sections 9-11.1.5.3.1](#) and [9-11.7](#).

## E. Type “E” (Commercial Double 30 Foot Width)

**Note:** This approach is to be utilized only with approval of the HQ Access and Hearing Engineer’s office.

“...EXCEPT that the state shall construct on its right of way a separated off and on approach with each opening not exceeding 30’ in width, for use necessary to the normal operations of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only.” Continue with the text in [Sections 9-11.1.5.3.1](#) and [9-11.7](#).

### 9-11.1.5.3.1 Maintenance of Road Approach

“ . . . , which approach shall be maintained between the right of way line and the shoulder line of said (highway, frontage service road of said highway, highway and/or frontage service road, “ “ Line of said highway) by the grantors, their heirs, successors or assigns.”

### 9-11.1.5.3.2 Construction Costs and Permits – Owner to Construct Approach

“Obtaining required permits from responsible agencies and the complete construction (and maintenance) costs of said approach shall be the sole responsibility of the grantors, their heirs, successors or assigns.”

### 9-11.1.5.3 By Highway Structure

Used when the approved Right of Way Plan contains an “Access Note” which permits access under or over the traveled way by use of a highway structure – adapt the text of the “Access Note”:

“ . . . , EXCEPT that traffic movement will be permitted under the highway structures at the (insert name of bridge, etc.) between HES \_\_\_\_\_ + \_\_\_\_\_ and HES \_\_\_\_\_ + \_\_\_\_\_ as restricted clearances will permit.” If appropriate, continue with the text in [Sections 9-11.1.5.3.1](#) and [9-11.1.5.3.2](#).

## 9-11.2 Specific Details

Used in each instrument (deed, easement, temporary easement, etc.) involving a partial acquisition also can be used on other instruments as a courtesy. Specific details are not used for a description involving a total acquisition parcel or donation or dedication not shown on the right of way plan.

### 9-11.2.1 One Type of Acquisition

The cited language is used in instruments relating to conveyances of only one type, e.g., fee, easement, permit, lease.

When mile post information is provided and appears to be included in the plan title name at the lower right of the plan sheet, it is not referenced in the specific detail clause.

#### Example:

If as shown on the plan SR 82 MP 32.48 to MP 33.59, East Yakima Ave. Interchange.

The correct plan title is SR 82, East Yakima Ave. Interchange.

The lands herein (described) (condemned) contain an area of (xxx square feet or x.x acres), more or less, the specific details concerning all of which are to be found on sheet xx of that certain plan entitled SR (plan title), now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval xxxx,xx, xxxx, revised xxxxx,xx, xxxx.

### 9-11.2.2 Multiple Types of Acquisition

The cited language is used in instruments relating to conveyances of combinations of fee, easement, permit, etc., most frequently used with negotiated possession and use agreements.

“The lands herein described in fee contain an area of (\_\_\_\_\_ acres, \_\_\_\_\_ square feet), more or less, and herein described in (easement, permit) contain an area of (\_\_\_\_\_ acres, \_\_\_\_\_ square feet) more or less, the specific details concerning all of which... (see [Section 9-11.2.1](#))”.

### 9-11.2.3 Release of Easement

The cited language is used in instruments releasing the servient estate (encumbered parcel) from the easement.

“Herein conveyed is the extinguishment of that portion of the above described easement containing an area of (xxx square feet or xxx acres), more or less the specific details all of which are to be found on sheet xx of that certain plan entitled SR (plan title), now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval xxxx, xx,xxxx, revised xxxx, xx, xxxx.

## 9-11.3 *Payment Authorization*

Used in instruments where there are multiple signatories and all the parties agree to the state making payment to one of their members. Commonly known as a “pay one clause.”

### 9-11.3.1 By Grantors to One Grantor

“The undersigned grantors hereby authorize and instruct the State of Washington , Department of Transportation to pay the entire consideration to \_\_\_\_\_, and direct that the state voucher in payment thereof shall be executed only by said \_\_\_\_\_.”

### 9-11.3.2 By Mortgagee to Mortgagor/Beneficiary to Grantor

Used on the (Partial Release of Mortgage/Request for Partial Reconveyance of Deed of Trust) to authorize payment to the grantor (borrower).

“The undersigned herein consents to the payment of any consideration for the lands being herein released directly to the (mortgagor/grantor), his or her heirs, successors, or assigns.”

### 9-11.4 **Improvement Straddling Right of Way Line**

Used in each case in which improvements straddle the right of way line. All improvements within the acquisition area are automatically acquired with the land as “real property.” Owners (or others) do not “retain” or purchase improvements to be removed or salvaged but may purchase them as personal property by purchasing salvage rights. Salvage rights (sales of personalty) are transacted and documented in a separate Fixtures and Improvements Agreement ([RES-335](#)).

“It is understood and agreed that the (specify type of improvement(s)) located partially upon the lands herein conveyed and partially upon the grantor’s remaining lands is (are) conveyed herein in its (their) entirety to the State of Washington , its agents or assigns.”

“The grantor herein further grants to the State of Washington, or its agents, the right to enter upon the grantor’s remaining lands where necessary to (construct said approach, remove said improvement, remove said crop, remove said timber, etc.)”

### 9-11.5 **Timber (Crop) Removal**

Use if timber (crops) are to be removed by the grantor:

“The grantor herein reserves the right to remove (all hay, the sugar beet crop, all standing or down timber) located (insert right of way centerline or other legal description of the area where timber/crop removal is permitted) at any time until (insert exact date); however, all (timber, crops) yet remaining on said lands after said date shall become the property of the State of Washington and all rights of the grantor to said (timber, crops) shall then cease and terminate.”

### 9-11.6 **Road Approaches – Nonlimited Access**

Access to nonlimited access state highways is managed under the provisions of [Chapter 47.50 RCW](#).

All new or altered road approaches must be documented by permit. Region Real Estate Services staff will assist those assigned to granting permits. We will attempt to obtain signatures on all permits on any project even though there may not be an acquisition from that particular property owner. If any owner refuses to sign, the PAS should so note on the permit, leave a copy with the owner, and return the original to the region. A copy of all road approach permits must be included in your acquisition files.

For nonlimited access within an incorporated city, WSDOT has no jurisdiction to grant road approach permits.

A record of authorized road approaches will be maintained in the State Access and Hearings Engineer’s Office in Olympia. The information in this computer file will be input and updated in each region office responsible for issuing the permits.

Acquisition documents will not make reference to any road approach or access rights. All information about the approach type, location, maintenance, right of entry, etc., will be in the permit. Region Real Estate Services will coordinate closely with those issuing the permits to assure the appropriate language is included in each one.

If the owner requests any additional approaches, the PAS should explain the procedure established in the statute and provide whatever help is appropriate for the owner to apply. If at all possible, any request for additional or modified access should be separated from our acquisition activities.

If the owner insists on a document assuring them the state will reconstruct any existing approach, we can provide a letter from the authorized region personnel but the letter should not contain any reference to a type or location.

The construction memorandum regarding road approaches may still be prepared and provided to the project engineer. That decision will probably vary region to region. The memorandum does not have to be sent with your acquisition file. Remember that the project engineer's signature on this memo *does not constitute approval of the approach* but only agreement that it will be constructed as part of the project. This memorandum is intended for internal use and should not be given to the property owner.

### 9-11.7 **Construction Item**

If the instrument contains a clause requiring or potentially obligating the state to perform any nature of construction or labor on or adjacent to the grantor's remaining land, the following is inserted as part of said clause in the grantor's instrument only:

"The grantor herein further grants to the State of Washington , or its agents, the right to enter upon the grantor's remaining lands where necessary to (construct said approach, remove said improvement, remove said crop, remove said timber, etc.)."

### 9-11.8 **Occupancy Date**

Occupancy of unimproved real property will occur upon payment being made available to the grantor(s). No clause is required.

### 9-11.9 **Land Locked**

On occasion the owner will retain an uneconomic remainder. Determine if the remainder will have access. If there is no access, inform the owner and put notes in the diary accordingly.

### 9-11.10 **Release of Damages**

The following are examples of clauses which are to be inserted between the words:

" . . . by reason of" and the words "due to the . . . ." on the Release of Damages ([RES-315](#)) to identify the specific damages for which the state of Washington is making a settlement.

**Note:** Since these clauses are inserted in the middle of a sentence, the clauses do not require capitalization or final punctuation.

#### 9-11.10.1 **Fencing**

The following clause releases the state from the obligation to erect and maintain fencing:

" . . . its obligation to erect and maintain fencing along the right of way line contiguous to the hereinafter described property . . . ."

### 9-11.10.2 Water Systems

See [Chapter 6](#) for well and water system agreements.

### 9-11.10.3 Release of Road Maintenance

- A. Eliminating obligations relating to road maintenance provisions concerning property being condemned.

“TOGETHER WITH all claims of the defendants herein, their heirs, successors or assigns, from any liability of future costs and obligations of the road maintenance provisions incurred as set forth in that certain (name of recorded document from which the obligations for payment come) recorded under Auditor’s file No. XXXXXXXX as condemned herein by the State of Washington.”

- B. Nonjudicial acquisition of property that has as an appurtenant, a road maintenance obligation.

“ALSO, the Grantors hereby release the Grantee from all liability of future maintenance costs and obligations of the road maintenance provisions incurred as set forth in that certain (name of recorded document from which the obligations for payment come) recorded under Auditor’s File No. XXXXX. The Grantors, their heirs, successors and assigns further agree to assume all responsibilities of future maintenance costs and obligations for all of the hereinafter described Parcel “A”.”

### 9-11.11 Mineral Rights Reservation

Used in some instruments of conveyance to the state (deeds), and in some instruments releasing mineral rights.

“It is understood and agreed that all mineral, coal, oil, ores and gases below the surface of the lands conveyed by this instrument and hereinbefore described, are hereby reserved unto the grantors, their successors and assigns; EXCEPT, however, that in the exploration, development, excavation, mining or removing of same, the surface of said lands shall not be occupied or used, the exercise of said rights shall not injure or damage in any manner the highway or highways to be built thereon, increase the cost of maintenance thereof, or interfere with the primary use of said lands and rights of way by the State of Washington , its successors or assigns for road, street, highway or other purposes, or franchises granted across, along, or beneath the surface of said highways, nor shall the grantors, their successors or assigns, do any exploration, development, excavation or mining beneath the surface of the lands hereinabove conveyed within a vertical depth of 500 feet below said surface until the said grantors, their successors or assigns have a plan for such exploration, development, excavation or mining approved by the Secretary of Transportation of the State of Washington , or his successors and assigns, determining that such plan will not be injurious to the primary use of the surface.”



### 9-11.12 ***Pit Site and Common Borrow***

Mineral rights may include gravel and similar material, consult with Acquisition and Title Section Manager prior to final acquisition.

### 9-11.13 ***Slope Easement, Termination of***

At the request of an owner, the state may terminate its rights in a recorded slope easement. This would be considered when the owner has excavated and/or placed an embankment on the area covered by the slope easement to the level of the grade of the abutting highway. Upon inspection by the state of work performed by the owner and, if such work is found satisfactory to the state, the state may release the slope easement. Be certain that the easement does not include reservation of sidewalk areas, utility rights of way, etc. The rights are terminated by a conveyance from the state containing the following:

“ . . . slope easement(s) conveyed to the State of Washington , Department of Transportation by instrument recorded xxxxxx, under Auditor file Number XXXXXX is hereby released . . . ”

### 9-11.14 ***Easement for Transfer***

Used only when the easement is to be transferred to another party, e.g., a slope easement for a frontage service road that is to be relinquished to the county. “It being understood and agreed that, upon completion of construction, the easement rights granted herein are to be transferred to \_\_\_\_\_ by an appropriate instrument to be placed of record and that thereafter the rights of the state shall cease and terminate.” When acquiring such rights consider the needs of the transferee; what rights would be acquired if they made the purchase direct?

### 9-11.15 ***Reversion***

Used only upon demand by major land owners maintaining substantial real property holdings such as a railroad and federal government that traditionally have conveyed only easements, provided that the acquisition compensation reflects the reversion right, and only with prior approval of Acquisition Program Manager.

#### 9-11.15.1 **Reversion Clause**

“Upon abandonment of the lands conveyed herein, all of the state’s right, title and interest in and to said lands shall revert to the grantors, their heirs, successors, or assigns; subject to any permits or franchises for public or private utilities.”

### 9-11.16 ***Right of First Refusal***

Used only upon demand by grantor(s) with prior approval of the Acquisition Program Manager.

### 9-11.16.1 Right to Repurchase Clause

“Upon determination by the State of Washington, Department of Transportation that all or any portion of the lands herein conveyed are surplus to the needs of the state the grantor(s), \_\_ (his, her, their) \_\_ heirs, successors, or assigns shall be offered the right to repurchase. Said right shall be exercised within (60) days of the date the property is offered to the grantor at the current fair market value as determined by the states appraisal.

### 9-11.17 Donation Clause

A donation of property rights may be accepted only after the owner has waived in writing their right to an appraisal and payment of just compensation. This applies to individuals, businesses, corporations, and other private entities. Donations from government agencies are exempt from these requirements. Right of way obtained through donation may be incorporated into a federal aid project without jeopardizing participation in other project costs.

The appropriate clause is:

(My/Our) donation of (parcel number or property description) to the state of Washington, Department of Transportation, is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation therefore. (I/ We) hereby waive the state’s requirement of obtaining an appraisal for the acquired property.

### 9-12 Delivery Clause

The following delivery clause is included in all forms.

“It is understood and agreed that the delivery of this (deed, etc.) is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, by and through the Department of Transportation, by its authorized agent.”

### 9-13 Instrument Date

The Instrument Date is normally the date the instrument is signed by the (first) grantor(s). The following text appears above the grantor(s) signature(s): Dated this \_\_\_\_\_ day of \_\_\_\_\_.”

## 9-14 Execution

### 9-14.1 General

- A. Each person appearing as or representing the grantor is required to sign the instrument in his own hand, spelling out his name(s) and/or initial(s), as applicable, exactly as the name appears of record. The desired form or appearance for the signature is predetermined and is typed under the appropriate signature line before offering the instrument to the signatory for execution.
- B. The act of signing may be done before the qualified officer who is to certify an acknowledgment (see [Section 9-15](#)). The act of signing may be done elsewhere but each person signing an instrument must personally appear before said qualified officer and acknowledge his own signature.
- C. If the initial space provided for signatures is insufficient add additional pages (see [Section 9-1.2.2](#)) for adding pages for all signatories.

### 9-14.2 Individuals

#### 9-14.2.1 Personally

Where individuals are executing for themselves, the interest held or the relationships between such signatories is not stated at the signature blank.

#### 9-14.2.2 Signature by Mark

A witness to a signature is desirable in the case of a sane person who, due to illiteracy, old age, or incapacitating illness, can sign only by using a mark. There is no legal requirement that a signature by mark be witnessed, but the use of witnesses offers great protection to the state because of the agency relationship of the PAS who frequently also acts as the Notary Public. For further guidance consult with Region Title Examiner.

#### Exhibit 9-17 Signature by Mark With Witnesses (Example)

S/ _____ Richard Roe, Witness	His	Mark _____ John Doe
S/ _____ Jack Smith, Witness		

### 9-14.2.3 Fiduciary

A person executing an instrument in the place of, or on behalf of, the party in interest does so, by identifying their official and/or legal capacity at the signature blank on the instrument (see Exhibit 9-18). The language for identifying the signatory agrees with the language of the party clause.

#### Exhibit 9-18 Execution By Fiduciaries (Example)

##### Execution Only as a Fiduciary

S/ John Doe (written by the attorney in fact)

By: \_\_\_\_\_  
Jane Doe, as his attorney in fact

Richard Roe, as trustee under the will of  
Joe Doe, deceased

Richard Roe, as trustee for John Doe

Richard Roe, as (Executor/Personal  
Representative) for the estate of  
JohnDoe, deceased

##### Execution, Individually *and* as a Fiduciary

Jane Doe

S/ John Doe (written by the attorney in fact)

By: \_\_\_\_\_  
Jane Doe, as his attorney in fact

Richard Roe

Richard Roe, as trustee under the will of  
John Doe, deceased

Richard Roe

Richard Roe, as trustee for John Doe

Richard Roe

Richard Roe, as (Executor/Personal  
Representative) for the estate of John Doe,  
deceased

## 9-14.3 Corporations

### 9-14.3.1 Private Corporations

Ordinarily, the corporation's president and secretary are the officers who can execute conveyances for the corporation. Their names and titles are typed beneath their signatures (see Exhibit 9-19). An instrument from a private corporation is accompanied by a resolution. Consult with Region Title Examiner for certain exceptions.

#### Exhibit 9-19 Corporate Signature Block (Example)

ABLE BAKER CHARLIE COMPANY, INC.

By: \_\_\_\_\_  
John J. Doe, President

By: \_\_\_\_\_  
J. Paul Smith Jr., Secretary

### 9-14.3.2 Local Public Bodies

Examples of signature blocks for local public bodies are given in Exhibit 9-20. An instrument from a public body is accompanied by a resolution.

Exhibit 9-20 Signature Blocks for Local Public Bodies (Examples)

Counties\*

1. Commissioner System

(SEAL)

\_\_\_\_\_ County

\_\_\_\_\_  
John J. Doe, Chairman

\_\_\_\_\_  
Mary E. Smith, Commissioner

Attest: \_\_\_\_\_  
County Auditor and Clerk of the Board of  
County Commissioners

\_\_\_\_\_  
James J. Jones, Jr., Commissioner

2. Executive – Council System

(SEAL)

\_\_\_\_\_ County

Attest: \_\_\_\_\_  
Director of Records and Elections

\_\_\_\_\_  
John J. Doe, County Executive

Cities\*

1. Mayor – Council (Commissioner) System

(SEAL)

City of \_\_\_\_\_

\_\_\_\_\_  
John J. Doe, Mayor

\_\_\_\_\_  
Mary E. Smith, Councilman (Commissioner)

Attest \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Paul P. Peters, Councilman (Commissioner)

2. Manager – Council System

(SEAL)

City of \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
John J. Doe, City Manager

Other Political Subdivisions\*

1. Example: A School District

Board of Directors of \_\_\_\_\_  
School District No. \_\_\_\_\_

\_\_\_\_\_  
John J. Doe, Chairman

\_\_\_\_\_  
Mary E. Smith

Attest: \_\_\_\_\_  
Clerk of the Board of Directors of School District  
No. \_\_\_\_\_ of \_\_\_\_\_ County, Washington

\_\_\_\_\_  
James J. Jones, Jr

### 9-14.4 **Partnerships**

- A. If the PC shows title held in name of firm, which proves to be a partnership, modify corporate form (Exhibit 9-19) to show firm name and identity of signers as “Partner” if a general partner, or “Limited Partner” if such is the provable fact.
- B. If the PC shows title held by individuals, take signatures as prescribed in [Section 9-14.1](#).

### 9-14.5 **Limited Liability Company (L.L.C.)**

- A. If the PC shows title held in name of an LLC, obtain a copy of the operating agreement to identify the appropriate parties to execute the instrument. This could be one or more individuals acting as either a partner, member or manager of the LLC. After reviewing the agreement, if there are questions of who should sign, consult with the Region Title Examiner.

## 9-15 **Acknowledgment**

References: [RCW 42.44](#) Notaries Public, [RCW 64.08](#) Acknowledgements

### 9-15.1 **General**

- A. To be recordable and to permit its entry as evidence in a court of law without witnesses, a person signing an instrument must acknowledge before a qualified officer that the signature on the instrument is his signature and that he signed the instrument as his free and voluntary act and deed. The signature of the Governor of the state of Washington requires an attest by the Secretary of State.
- B. A witness is not a party in interest and his signature is not acknowledged.
- C. An officer, or person taking an acknowledgement shall certify by a certificate written up on attached to the instrument acknowledged and signed by him or her and sealed with his or her official seal.
- D. A single certificate may be used for all parties who acknowledge their signature on an instrument on the same date, provided that the same language in the certificate is otherwise applicable.

### 9-15.2 **Rules**

- A. A notarial officer who takes an acknowledgement has satisfactory evidence that a person is the person whose name is signed on the instrument if that person:
  - 1. Is personally known to the officer or person taking acknowledgement.
  - 2. Is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgement, or
  - 3. Provides satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgement has the identity claimed and that the signature on the record is the signature of the individual

- B. If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.
- C. The date of the certificate of acknowledgment must be the same as or later than the date of the instrument.
- D. The certificate must state that the person who signed an instrument did so as his free and voluntary act and deed.
- E. The certificate for a corporate grantor must state that the officers of the corporation who signed an instrument were authorized to do so.
- F. The qualified officer taking an acknowledgment must derive no personal profit as a result of the execution of the instrument.
- G. The acknowledgment must be taken within the territorial jurisdiction of the qualified officer; for example a Washington notary can not acknowledge a signature physically obtained in Oregon.
- H. The certificate must recite the capacity for which the person is acting.
- I. The certificate of an attorney in fact must state that his principal is alive and sane and that the instrument was executed in behalf of said principal.
- J. If the qualified officer taking an acknowledgment is required to have a seal, said seal must not have expired and must be affixed to the certificate. If the qualified officer taking an acknowledgment does not have a seal, a certificate of authority must be attached to the acknowledgment, except that no certificate of authority is required of officers of the U.S. Armed Forces or the U.S. Merchant Marine (see Sections 9-15.2.K.9 and 9-15.2.K.10).
- K. The signature of the grantor must be in the same form as it appears within the party clause and within the certificate, unless it is a signature by mark.
- L. Officers qualified to take acknowledgments within the geographic area of their respective jurisdictions are as follows:
  - 1. **State of Washington** – A notary public in and for the state of Washington; A United States district court commissioner; A judge, clerk, or deputy clerk of the Supreme Court of the state of Washington.
  - 2. **Another State other than Washington** – A notary public in and for any other state than the state of Washington; A commissioner appointed by the governor of that state; A judge, court commissioner, clerk, or deputy clerk of a court of any other state than the state of Washington;
  - 3. **Tribe** – A notary public of a federally recognized Indian tribe, a judge, clerk, or deputy clerk of a court of the tribe or any other individual authorized by law of the tribe to perform the notarial act.



4. **Federal Authority** – A judge clerk, or deputy clerk of the court; An individual in military service or performing duties under the authority of the military service who is authorized to perform notarial acts under federal law; an individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas.
5. **Foreign Country** – A minister plenipotentiary, secretary of a legation, charge d'affairs, consul, vice-consul, consular agent or commercial agent designated by the United States department of state; an individual under authority and in the jurisdiction of the foreign country/state; A notary public, judge, clerk, or other proper officer of any court of a foreign country; The mayor or other chief magistrate of any city, town, or municipal corporation in a foreign country.

**Note:** the certificate must be written in English or in dual languages, one of which must be English.

- M. Whenever an instrument is sent out of state for signature and acknowledgment, attach the certificate form appropriate for the state of Washington. The format may be modified by the official taking the acknowledgment to meet the requirements of the jurisdiction where the signature and acknowledgment is actually taken.

### 9-15.3 *Format Examples*

Refer to forms for notary acknowledgements on the WSDOT Intranet site as shown in Section 9-1.2.1.

## 9-16 Attachments/Corollary Documents

### 9-16.1 *General*

- A. Items which may be attached to an instrument are referenced within the body of the instrument as "Exhibit" with a letter identification, e.g., EXHIBIT "A," EXHIBIT "B." The attachment is labeled with the same reference.
- B. A document such as an affidavit may be required to answer questions of grantors' identity, status, interest, etc. This is seldom made as an attachment to the instrument, but held in the file. Most likely such affidavit would be a requirement of the title company.

### 9-16.2 *Rules*

- A. Attachments to an instrument are verbally bound to such instrument by appropriate language within the instrument at the point the attachment is first mentioned (see Section 9-16.3).
- B. Attachments to an instrument are marked EXHIBIT "A," EXHIBIT "B," etc., in the order in which reference is made to each in the instrument.
- C. There is no relationship required between the identifying letter of an exhibit and other identifications within the instrument, e.g., Parcel "A". A legal description, if lengthy, may be attached as an exhibit.

- D. The word “EXHIBIT” followed by its sequential exhibit identification letter (“A,” “B,” etc.) in addition to being at the header of the page is also inserted in the lower right-hand corner of each page of each exhibit above the Parcel Number.
- E. All attachments (appendages, exhibits, etc.) to an instrument are prepared and attached prior to execution of the instrument.

### 9-16.3 Exhibits

#### 9-16.3.1 Parcel Descriptions

- A. The legal description is an acceptable attachment.
- B. The exhibit is verbally bound to the instrument by inserting (in the instrument at the location at which the parcel description would otherwise appear) language such as the following: “See EXHIBIT “A” attached hereto and by this reference made a part hereof.”

#### 9-16.3.2 Exhibit Maps

- A. Exhibit maps are rarely attached to recorded documents. This is due to the standards for which documents including exhibit maps must comply in order to be recorded.
- B. Check with the county auditor/recorder prior to obtaining signature of the grantor to determine if a specific map is acceptable for recording. The determination may consider map details, font, margins and legibility.
- C. Each map sheet reproduction is identified above the title block by the “EXHIBIT” identification letter given to it within the instrument.
- D. The exhibit maps are prepared by showing the areas to be conveyed as hachured.
- E. If more than one type of interest is to be conveyed, the exhibit maps should identify the other interest in alternate hachures or symbols.

### 9-17 Acceptance and Approval

- A. After completion of review and verification that the title and/or interest required by the state is adequately described and suitably clear to the state, the WSDOT authorized signature with date signifies acceptance and approval of the instrument.
- B. Instruments not contingent upon acceptance and approval by the WSDOT authorized signatory may be any instrument or document which:
  - 1. Does not directly or indirectly commit the state to a monetary or other financial obligation.
  - 2. Does not encumber property under the ownership or control of the state.