

Nebraska Department of Transportation

12/08/2023

ROW Condemnation Plat and Legal Description Guidance for LPA Projects

This guidance is not intended to provide legal advice for the reader. Legal Counsel should be consulted for advice regarding the rights of the parties in any particular condemnation action.

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1. General Information

The acquisition of property rights needed for a transportation project are subject to the project sponsors Governmental Agency's authority of eminent domain as it is allowed by law. A condemnation action will be filed in county court when it is determined that the Governmental Agency and the owner and/or tenant of a tract cannot reach a satisfactory agreement for the purchase of the property rights needed for the transportation project. By State Statutes a condemnation action is also required in all purchases of Board of Educational Lands and Funds (BELF) acquisitions. The primary objective of a condemnation is to ensure the property owner and any tenants are receiving just compensation for the acquisitions.

2. Condemnation Process

Generally the condemnation action is initiated by the ROW Project Manager or acquisition agent once it has been determined that a suitable effort has been made and an acceptable agreement cannot be reached. At this time the sponsoring agency's or NDOT's Right of Way staff will notify the LPA's ROW Design project principal that a tract has been marked as condemnation. Once notified the ROW Designer will need to prepare a Condemnation Plat and Legal Description for the LPA legal Counsel's use in the condemnation proceedings.

One important component of a condemnation action is that a good faith offer was made to the landowner and/or their tenant, and that the condemnation is based on this good faith offer. Basically this means you cannot condemn for anything that was not made part of the offer. To comply with the good faith offer do not change any of the designs or legal descriptions, other than condemnation language, when preparing the condemnation plat and description. At times an initial offer is made for the minimum acquisitions needed for a project, and then through the negotiation process adjustments to the designs are made to help facilitate the acquisition. When a tract like this goes to condemnation the condemnation acquisition may revert back to the design used in the initial offer, or may incorporate some of the concessions offered in the negotiation process. This will need to be coordinated with the legal counsel to ensure the all the rights can be condemned for and that they meet a good faith offer

When a condemnation action is held all parties who have an interest in the property, except generally holders of existing easement that will be perpetuated, will be named in the condemnation filing. These would include multiple owners in a property and any tenants. If an agreement cannot be reached with the owner of a property only Standard Condemnation plat needs to be prepared and the legal counsel will address any other interests that need to be acquired through the condemnation action or if an agreement has been reached with any of the other parties. If an agreement with the owner of a property has been reached but a condemnation needs to be filed for the tenant interest, then a Leasehold Interest plat would need to be prepared.

3. All Condemnation Documents Must Follow the Nebraska Court Rules for Pleadings

Since all Condemnation Documents are entered into the court system they must follow the current Nebraska Court Rules for Pleadings. Beginning in January 2022 these rules were updated so be sure to update any past templates you are using to ensure they meet the current requirements. The Attorney representing the LPA should be consulted for precise guidance but below are some of the general requirements.

- Fonts preferred are Century and Century Schoolbook, but other allowed fonts are Times New Roman, Baskerville Old Face, Book Antigua or Palatino with a font size of no less than 12 nor more than 13 point.
- Line spacing needs to be 1.15 or 1.2.*
- All margins need to be 1.5 inches.*
- Alignment must be "Left".*
- All documents must be submitted in a searchable electronic format such as a word document or a pdf that all text can be recognized and searched by a computer. For best results all information should be created electronically (i.e. no hand written information) and the

documents to be submitted should be generated directly from the software that created them rather than a scanned copy to ensure they are searchable.

- * At this time it has been generally accepted that the plats are considered exhibits so the margins, line spacings, and text alignments can fall outside of the general requirements. It is still important to make the plats neat and easily readable as feasible as well as submitting them in a searchable electronic format.

4. Private or Corporate Owned Property Condemnation Plats

A condemnation plat may be prepared in accordance with the LPA's standards. The following is NDOT's standards on preparing a condemnation plat that may be used if the LPA does not have any existing standards or wishes to follow the State's procedures.

If working in MicroStation ORD on the State's ProjectWise environment the border for LPA condemnation plats is in the State's MicroStation Cell Library under the "row_design.cel" directory and is called "CONDEM-LPA". This cell will produce a 1" = 100' scale plat on a 8.5" x 11" paper (See Figure 1). A MicroStation ORD File and AutoCAD file with the condemnation border is also available on NDOT's website page at the <https://dot.nebraska.gov/business-center/design-consultant/> link under the "Right of Way Design Documentation" heading.

The plat size must be on 8.5" x 11" paper. Multiple page plats can be used for a tract if needed. Be sure to identify the plat page and the total number of pages using the "Sheet # of #" fields in the information block on the bottom of the plat.

The plat should be prepared to scale and at a size that is easily readable yet minimizes the number of plat sheets. Add detail sketches if needed to illustrate the details of a specific location.

Because the plat will be used in a legal court proceeding it is imperative that it be accurately drawn and neatly prepared. A thorough QA/QC check must be performed to ensure there are no inaccuracies.

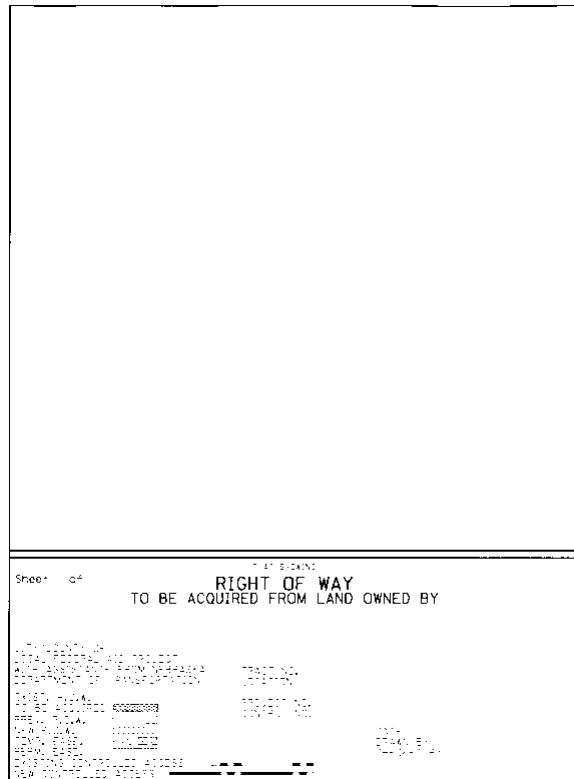


Figure 1 - LPA Condemnation Border Cell "CONDEM-LPA"

Information to be shown or not shown on the Condemnation Plat Includes the Following (See Figure 2):

Title Block

- Sheet # of #
- "TO BE ACQUIRED FROM LAND OWNED BY" field. The legal office will generally fill in this field based in the parties named in the condemnation filing. Leave this field blank unless the legal office provides the information they require here.
- The Governmental Agency acquiring the property rights. Modify to read "City of ####", "County of ###", "#### NRD", etc. as necessary.
- Tract number
- Location - This is the NDOT Project Name

- Project Number. This is the full NDOT Project number, i.e. BRO-1234(0012), etc.
- Control Number
- Areas of acquisitions next to their associated legend. Identify the units of the acquisitions (ACRES or sq. feet).
- Date of the plat.
- Name of individual who prepared the plat.
- Name of individual who checked the plat.

Plat Drawing

- North Arrow.
- Scale bar.
- ROW Survey information (section lines, $\frac{1}{4}$ sections lines, section corners, etc.) Label these features as such.
- Diagram showing Section(s), tract outline, and acquisition footprint of tract being condemned with Section-Township-Range, County, and Nebraska.
- Project alignment, stationing, and stationing tics.
- Street Names.
- Lot Lines.
- Lot Numbers.
- Blocks.
- Subdivision.
- Section-Township-Range.
- Property lines and property line symbols.
- Existing ROW, Control of Access and Permanent Easement Lines (for plat drawing coverage only).
- Existing ROW and permanent easement patterning (for plat drawing coverage only).
- New ROW, Control of Access, Permanent Easements and Temporary Easements lines (only show for the acquisitions being acquired from the tract being condemned).
- New ROW, Control of Access, Permanent Easements and Temporary Easement patterning's (only show for the acquisitions being acquired from the tract being condemned).

- Metes and Bounds or Bearings and Distances for acquisition areas and control of access.
- Large scale detail of any acquisitions or parts of acquisitions as needed.
- Stations and offsets of deflection points of new and existing ROW and permanent easements, and new temporary easements.
- DO NOT SHOW any existing topography features or construction features.
- DO NOT SHOW any property information or new acquisition information for any tracts other than the one that is being condemned.

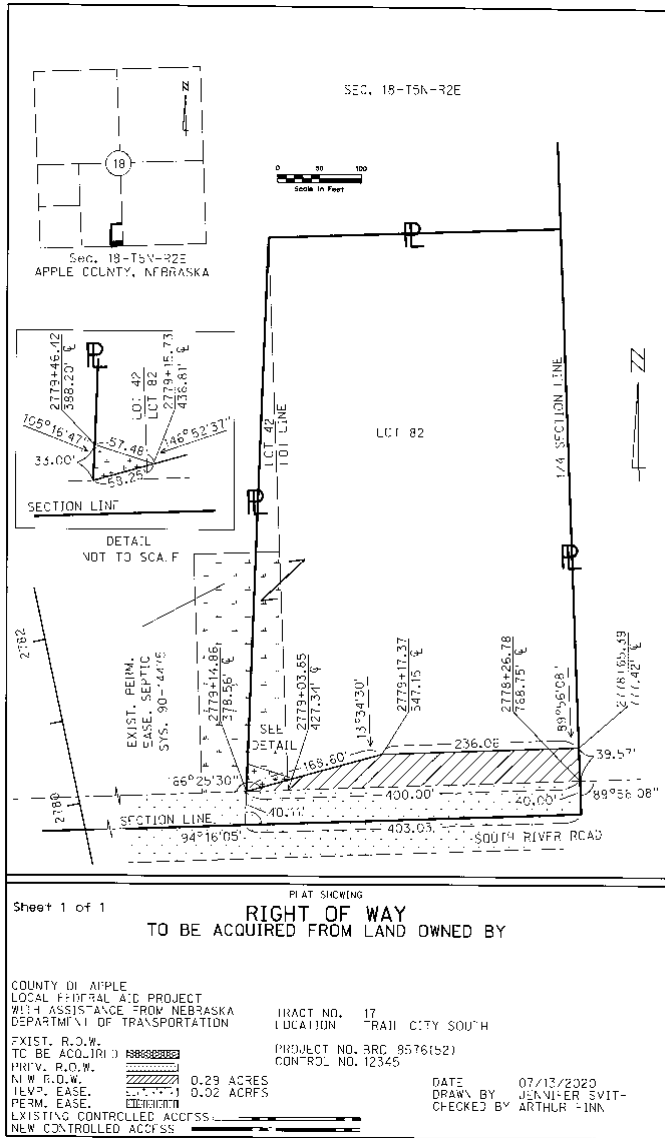


Figure 2 - Sample LPA Condemnation Plat

5. Private or Corporate Owned Property Condemnation Legal Description Language

The condemnation legal is the same as the acquisition legal except you will need to convert certain aspects of it to the condemnation language. This primarily consists of changing the preamble language and any references of “Grantor” to “Condemnee”.

NDOT’s Standard ROW Legal Description Statements can be downloaded from NDOT’s Website at <https://dot.nebraska.gov/business-center/design-consultant/> under the Right of Way Design Documentation heading. In this document you will find our standard statements and the condemnation versions for statement numbers 150 to 250. The even numbered statements in this range are for normal acquisitions, and odd numbered in this range are the condemnation version of the previous even numbered statement. For example statement 151 is the condemnation version of statement 150. If you used a statement in this number range you will need to convert it to its condemnation counterpart in your legal. Example is shown below.

Normal Statement 150

150 A TEMPORARY EASEMENT TO A TRACT OF LAND FOR ____ PURPOSES, LOCATED IN ____, TOWNSHIP ____ NORTH, RANGE ____ OF THE SIXTH PRINCIPAL MERIDIAN, ____ COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

Condemnation Version of Statement 150 (Statement 151)

151 A TEMPORARY EASEMENT TO A TRACT OF LAND AND ALL IMPROVEMENTS THEREON, IF ANY, FOR ____ PURPOSES, LOCATED IN ____, TOWNSHIP ____ NORTH, RANGE ____ OF THE SIXTH PRINCIPAL MERIDIAN, ____ COUNTY, NEBRASKA, AS ILLUSTRATED ON THE ATTACHED PLAT AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

You will also need to read through your legal and change any references of “Grantor” to “Condemnee”.

6. Standardized Condemnation Legal Description Template

The condemnation legal description will need to be produced in a standardized format. A Microsoft Word version of the standardized condemnation legal description template (Condemnation Legal Description Template.dot) can be downloaded from NDOT’s Website at <https://dot.nebraska.gov/business-center/design-consultant/> under the Right of Way Design Documentation heading. When you first open this template you may have to enable the macros and then it will ask you for the project number, control number, County, and tract number. These fields will be used to fill out the header at the top of the template. You will then need to paste the legal description into the body of the template. To leave enough space for the legal office to insert the

condemnee information paste the legal description over the “COPY AND PASTE CONDEMNATION DESCRIPTION OVER THIS SET FONT TO **CENTURY SCHOOLBOOK**, SIZE **12PT**, ALIGNED AS **LEFT**” text as stated in the template. All the text should be in capital letters. Once pasted change the text formatting to Century Schoolbook font, size 12pt, and aligned as Left as it states in the template and make sure your line spacing is 1.15 or 1.2 (See figure 3).

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C O N D E M N A T I O N

COPY AND PASTE CONDEMNATION DESCRIPTION OVER THIS.
SET FONT TO **Century Schoolbook**, SIZE **12PT**, ALIGNED AS
LEFT.

Figure 3 - LPA Condemnation Legal Description Template

7. BELF Condemnations

Board of Educational Lands and Funds (BELF) condemnation plats and legal descriptions are prepared essentially the same as a private or corporate owned property as outlined above with a few differences as noted below:

- A. In the Legal Description add “**OWNER: BOARD OF EDUCATIONAL LANDS AND FUNDS (BELF)**” under the “CONDEMNATION” heading (See Figure 4). You will need to reduce the paragraph spacing after the “CONDEMNATION” heading to make room for this text.
- B. Use the standard condemnation preambles in the legal description except the beginning will need to be changed to start out with “A TRACT OF LAND” instead of the standard “FEE SIMPLE TITLE.....” (See Figure 4). This allows the ROW to revert back to BELF when it is no longer needed for highway purposes.
- C. Since all BELF tracts require a condemnation there is only one Mineral Rights Statement (Statement 18) that is used on all BELF Tracts (See Figure 4).
- D. In the past some ROW was occupied or acquired from BELF however no payment was made to BELF for its use. It has since been legislated that all BELF lands occupied as ROW, past and present, must be compensated for if they have not already been. The ROW Designer must therefore determine if compensation was made to BELF for any existing property used or occupied as ROW. The local LPA files should be searched to determine if a payment had previously been made. BELF may also be contacted to determine if their records show if any payment was ever made. Any ROW that previous payment has been made can be shown as existing ROW. Any ROW that is currently occupied and is still needed but no payment has been made should be patterned as “Existing ROW to Be Acquired” (See Figure 5). Any additional ROW is to be patterned as New ROW. Supporting documentation as to any previously purchased ROW should be sent along with the plat for BELF’s use.
- E. In the legal description the entire area to be occupied, all previous and new should be described and the total area stated, then the areas broken as “Previously Purchased Public Right Of Way, Existing Public Right Of Way To Be Acquired, and New Right Of Way To Be Acquired”. (See Figure 4)
- F. In the Title Block on the plat insert “**OWNER: BOARD OF EDUCATIONAL LANDS AND FUNDS (BELF)**” (See Figure 5)

As part of the BELF acquisition procedures the State Surveyor will review the plats and legals on BELF’s behalf so please be sure they are complete and accurate. A thorough QA/QC Check must be performed to ensure accuracy.

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C O N D E M N A T I O N

OWNER: BOARD OF EDUCATIONAL LANDS AND FUNDS (BELF)

A TRACT OF LAND AND ALL IMPROVEMENTS THEREON, IF ANY, FOR HIGHWAY RIGHT OF WAY PURPOSES LOCATED IN SECTION 36, TOWNSHIP 5 NORTH, RANGE 2 EAST OF THE SIXTH PRINCIPAL MERIDIAN, PLAIN COUNTY, NEBRASKA, AS ILLUSTRATED ON THE ATTACHED PLAT AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36; THENCE WESTERLY A DISTANCE OF 877.43 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO THE POINT OF BEGINNING; THENCE WESTERLY DEFLECTING 000 DEGREES, 00 MINUTES, 00 SECONDS, A DISTANCE OF 95.63 FEET ALONG SAID LINE TO A POINT ON THE WESTERLY EXISTING HIGHWAY 61 RIGHT OF WAY LINE; THENCE NORTHERLY DEFLECTING 010 DEGREES, 25 MINUTES, 10 SECONDS RIGHT, A DISTANCE OF 1034.92 FEET ALONG SAID LINE TO THE NORTHWEST CORNER OF SAID SECTION 16; THENCE EASTERLY DEFLECTING 089 DEGREES, 28 MINUTES, 55

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SECONDS RIGHT, A DISTANCE OF 54.04 FEET ALONG THE NORTH LINE OF SAID SECTION 16; THENCE SOUTHERLY DEFLECTING 088 DEGREES, 25 MINUTES, 00 SECONDS RIGHT, A DISTANCE OF 814.02 FEET; THENCE SOUTHERLY DEFLECTING 000 DEGREES, 02 MINUTES, 15 SECONDS LEFT, A DISTANCE OF 1033.83 FEET; THENCE SOUTHERLY DEFLECTING 010 DEGREES, 00 MINUTES, 50 SECONDS RIGHT, A DISTANCE OF 381.57 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 16 POINT OF BEGINNING CONTAINING 11.77 ACRES, MORE OR LESS, WHICH INCLUDES 0.545 ACRES, MORE OR LESS OF PREVIOUSLY PURCHASED PUBLIC RIGHT OF WAY AND 7.61 ACRES, MORE OR LESS OF EXISTING PUBLIC RIGHT OF WAY TO BE ACQUIRED AND 3.62 ACRES, MORE OR LESS OF NEW RIGHT OF WAY TO BE ACQUIRED.

COAL, OIL, MINERALS OR OTHER NATURAL RESOURCES ON OR CONTAINED IN THE LAND ARE RESERVED BY THE STATE AS PROVIDED BY LAW.

Figure 4 - Sample BELF Condemnation Legal

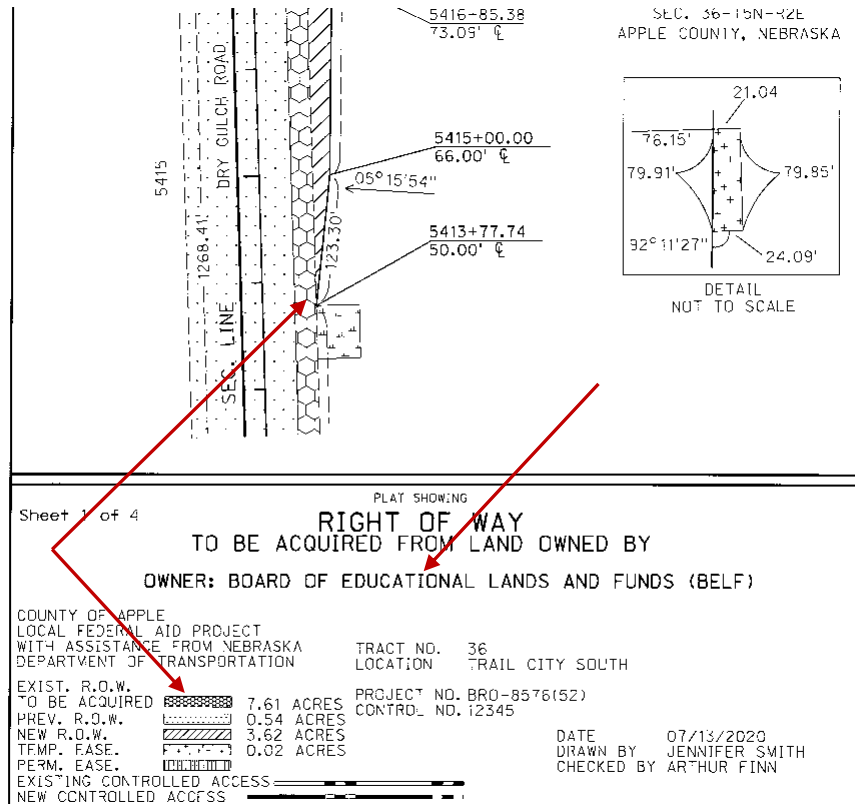


Figure 5 - Sample BELF Condemnation Plat

8. Leasehold Interest Condemnation

When an agreement for the purchase of additional property rights has been reached with the owner of the property, but an agreement cannot be reached with a tenant a separate condemnation action will be held to condemn for the leasehold interest only. A leasehold interest condemnation plat and description only needs to be prepared when you are notified that a condemnation action is for the tenant or leasehold interests only. Otherwise a normal condemnation plat is used to condemn the interests from the owner and any tenants that an agreement cannot be reached with. Details of the leasehold interest plat an descriptions are as noted below.

- A. The preambles for the ROW acquisitions should start out with “A LEASEHOLD INTEREST IN AND TO A TRACT OF LAND LOCATED IN THE.....” instead of “FEE SIMPLE TITLE.....”.
- B. The preambles for the Permanent Easements should start out with “A LEASEHOLD INTEREST IN AND TO A PERMANENT EASEMENT FOR _____ PURPOSES LOCATED IN THE.....” instead of “A PERMANENT EASEMENT FOR _____ PURPOSES LOCATED IN THE.....”.
- C. The preambles for the Temporary Easements should start out with “A LEASEHOLD INTEREST IN AND TO A TEMPORARY EASEMENT FOR _____ PURPOSES LOCATED IN THE.....” instead of “A TEMPORARY EASEMENT FOR _____ PURPOSES LOCATED IN THE.....”.
- D. Any reference to “OWNER” in the legal description should be changed to “LESSEE”.
- E. Any reference to “OWNED” in the legal description should be changed to “LEASED”.
- F. The legal descriptions for LEASEHOLD INTERESTS also do not have a mineral rights statement included. Remove any mineral right reservation statements if they were included in the owners acquisition.
- G. Leasehold Condemnation plats should also be drawn following the same instructions as used for Private and Corporate-owned tracts except the wording in the title block should be changed from “TO BE ACQUIRED FROM LAND OWNED BY” to “TO BE ACQUIRED FROM LAND LEASED BY”. (See Figure 6).

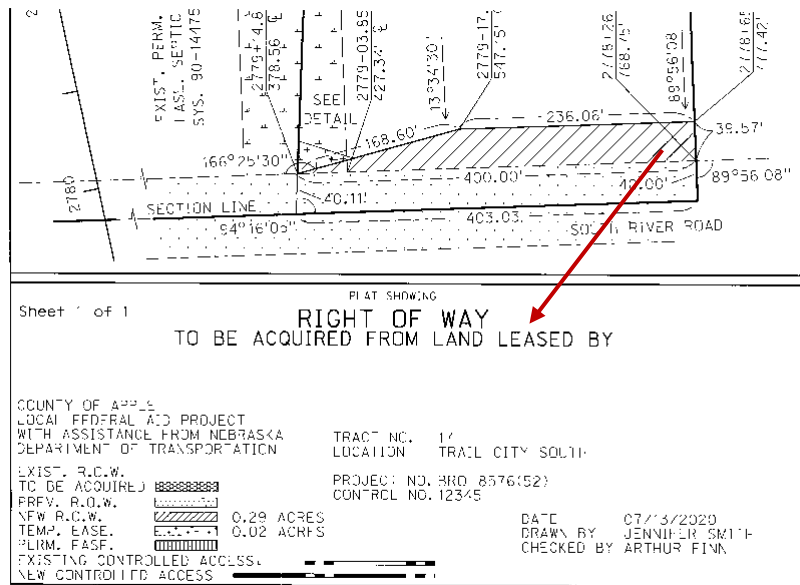


Figure 6 - Sample Leasehold Interest Condemnation Plat