

# Chapter 25 Right of Way

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## 25.1 General Discussion

[LP ROW Services website](#)

The Washington State Department of Transportation (WSDOT) has overall responsibility to the Federal Highway Administration (FHWA) for the acquisition, management, and disposal of real property on all FHWA funded transportation projects in the state.

WSDOT Local Programs Right of Way act as consulting experts to local governments in Washington State who are acquiring right of way for federally funded transportation projects. They independently provide high-level technical assistance, compliance monitoring, certification compliance reviews, as well as training and project support to local engineering and technical staff, their consultants and right of way professionals on behalf of WSDOT's Local Programs Division (Local Programs).

The acquisition process is regulated by Public Law 91-646 "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended", [49 CFR Part 24, Chapter 8.26 RCW](#) and [WAC 468-100](#). Neither the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) nor its implementing regulations at [49 CFR Part 24](#) allow the certification of right of way (ROW) to be sub-delegated to any agency or any agency with Certification Acceptance (CA) status.

[49 CFR 24.101\(b\)](#)  
[49 CFR 24.101\(d\)](#)  
[ROW Manual Section 25.2](#)  
[LPA-001](#)

**If there is federal funding on ANY phase of the project, Right of Way must be acquired in accordance with the following policies and procedures in order to be eligible for federal funding:**

- **Local Agency's Approved ROW Procedures** (see Section 25.2 for additional information)
- **Federal/State requirements**
- **The guidelines outlined in this manual**
- **WSDOT's *Right of Way Manual***

The different project phases are the Preliminary Engineering Phase (P.E.), Right of Way phase (ROW), and Construction phase (CN),

ROW acquired prior to July 1, 1971, is exempt from the above policies and procedures. In addition, the local agency must comply with Title VI requirements identified in [Chapter 28](#).

[23 CFR 710.201\(h\)](#)

It is the responsibility of WSDOT to fully inform political subdivisions of their responsibilities in connection with federally funded transportation projects and to provide training to the local agencies. It is the local agencies' responsibility to comply with the requirements of this chapter, the URA, and [49 CFR Part 24](#). The local agency will assess their staff's level of expertise with the requirements stated above. If the local agency determines their staff does not fully understand these requirements, it is their responsibility to request assistance and/or training to ensure the acquisition process is followed correctly.

It is essential that local agencies and WSDOT communicate freely and work closely together during the entire acquisition process to expedite projects and to assure that all federal and state requirements are met. Early notification to the Region Local Agency Coordinator (LAC) is required for projects with right of way acquisition when there are federal funds in any phase of the project.

**.11 WSDOT Services** – At the earliest possible date, the local agency should notify the LAC of upcoming federal-aid projects that have ROW activities. In addition, the local agency should advise the LAC of the need for WSDOT assistance. WSDOT is committed to an ongoing program that will provide effective assistance and guidance to local acquiring agencies. To this end, WSDOT will designate an LAC to act as consulting expert to local governments who are acquiring right of way for federally funded transportation projects. The LAC provides oversight and guidance on the federal acquisition process to ensure local agencies are acquiring, managing, and disposing of real property and real property interests consistent with state and federal regulations. ROW activities include title, appraisal, appraisal review, acquisition/negotiation, relocation, and property management activities (collectively referred to as acquisition or acquisition process).

**.12 Consultant Services** – When the local agency does not have adequate staff to perform appraisal, negotiation, or relocation functions, it may contract for these services and obtain federal participation in the costs.

[Chapter 31](#)

The local agency should contact the Region Local Programs Engineer (LPE) for assistance in preparing any contract for services to assure FHWA participation in the contract. FHWA requires that the consultant agreements for ROW services meet the consultant contracting requirements.

Local Agencies may, by written agreement (Approved ROW Procedures), use the services of land acquisition organizations of other counties, municipalities, or other state or local governmental agencies for acquiring rights of way for FHWA projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services, and if its practices and procedures are in substantial conformity with WSDOT accepted procedures.

**.13 Development Services Group** – When a local agency has a project that is at or near a state route, the local agency must contact WSDOT Development Services. Best practices are for the local agency to engage with Development Services as soon as possible, but at least when the project is at 30% design. This will give the local agency ample time to discuss WSDOT's review times and permitting.

## 25.2 Approval of Right of Way Acquisition Procedures

[23 CFR 710.201\(a\)](#)  
[23 CFR 710.201\(h\)](#)  
[LPA-001](#)  
[LPA-001b](#)

When a local agency intends to use federal funds in any phase of a project, the local agency must assure their ROW Procedures are current and approved prior to initiating ROW activities and must demonstrate at the time of certification that current staff is qualified and that their procedures meet LAG manual requirements. ROW procedures need to be reviewed every three years to verify that there have not been any staff or policy changes. Procedures will need to be updated for one or more of the following reasons:

1. Staffing changes
2. If the local agency is thinking of doing early acquisition for an unfunded project, the local agency needs to have current procedures.
3. A change is requested regarding who can perform specified activities.
4. Revisions to the ROW Program, such as statutory, regulatory, or policy changes.

Acquisition procedures are submitted on local agency letterhead to the LAC for review and approval prior to final execution by the local agency. The local agency will be approved to acquire ROW based upon the submitted procedures.

The responsibilities and expectations for each of the local agency ROW positions are defined in the ROW Procedures form. The level at which a local agency will be approved will depend on the local agency's staff qualifications and the completion of the required online training. Qualifications should be specific to the right of way function for which the staff is listed. Local Program's notifies the local agency of the approval with a copy to the LAC. Periodic reviews of procedures will be conducted by the LAC for agencies acquiring ROW on federal aid projects. If through these periodic reviews it is determined that the local agency acquisition practices are not in full compliance, or the local agency no longer has staff qualified to perform a particular function, then Local Programs will determine what actions are required to achieve full compliance and the use of qualified staff.

Approved procedures will designate the title of the position and the current staff member's name. When staff changes or additions occur, the local agency will submit the person's right of way experience and qualifications to the LAC. Minor staffing changes can be submitted to the LAC for approval using form LPA-001b. This eliminates the need to update all ROW Procedures every time a minor staffing change occurs.

Procedures shall include the following:

1. Agreement to comply with state and federal laws and FHWA regulations. The local agency agrees to follow this manual and the *Right of Way Manual M 26-01* or the local agency's own manual if they have a WSDOT/FHWA approved ROW manual.
2. Agreement will list local agency's current staff and position(s) performing the separate functions of program administration, appraisal, appraisal review, acquisition, relocation, and property management. All local agency staff who perform any of these separate functions should be listed. **Note:** Local agency personnel such as administrators and members of the executive branch who might participate in the acquisition of ROW for federal aid projects need to be aware that their actions must conform to the Uniform Act and [49 CFR Part 24](#).
3. Resumes for all current staff, including their position(s) and a brief statement of their qualifications pertaining to the function they are performing (see Sections [25.51](#), [25.6](#), & [25.91](#) of this chapter for additional information).

Staff listed under Program Administrative are required to complete the eLearning Administrative Settlement and No ROW Verification trainings.

Staff listed under Acquisition are required to complete eLearning Administrative Settlement training. These trainings are available on the Local Programs ROW Training & Education website.

4. Waiver Valuation procedures, which needs to include the local agency's minimum payment policy (if applicable).
5. A procedure for handling administrative settlements including the approving authority(s) and process (see Section [25.52](#) of this chapter for additional information).

Local Agencies must have a relocation appeal procedure in place, **prior** to starting relocation activities for any projects involving relocation assistance, as required by federal regulations. The local agency shall notify the LAC prior to starting relocation activities.

**Note:** Local Agencies need to submit FHWA Annual ROW Statistical Report for federal aid projects by **October 25th each year**. The data provided is for ROW activities from October 1 through September 30 and should reflect parcel activities that occurred within the reporting period.

[LP ROW Training & Education Website](#)

[49 CFR 24.10](#)  
[RCW 8.26.085](#)  
[WAC 468-100-010](#)  
[ROW Section 12-5.5](#)

- .21 Acquiring Right of Way** – Acquisition of ROW may be performed by the following entities:
- By a local agency that is adequately staffed, equipped, and organized to discharge its ROW responsibilities and has ROW procedures approved by Local Programs. Staff may consist of qualified contract personnel and/or licensed private Real Estate Brokers (see [RCW 18.85](#) in addition to or in lieu of regular employees of the local agency).
  - By another local agency that meets the requirements above.

## 25.3 Preliminary ROW Activities

[23 CFR 710.203\(a\)\(3\)](#) There are certain right of way activities that are eligible for preliminary engineering funds if those activities take place prior to National Environmental Policy Act (NEPA) approval or after NEPA approval but prior to the ROW being authorized. Those ROW activities that are eligible are identified in the table below:

Preliminary ROW Acquisition Activities Eligible for Preliminary Engineering Funds 23 CFR 710.203(a)(3)	Pre-NEPA or Post-NEPA & Pre-ROW Authorization
Title Searches and Review	X
ROW Planning w/ ROW Staff and/or Consultants	X
ROW Plan Preparation	X
ROW Design Development (determining ROW needs)	X
Public Meetings/Hearings (projects w/ROW)	X
ROW Estimates & Schedules (scoping)	X
ROW Funding Estimate	X
Appraisals (including inspections), Appraisal Review, and Administrative Offer Summary (AOS)*	X
Right of Entry (testing, surveying, etc.)	X
Relocation Plan/Study (includes survey of occupants)*	X

\*Completing an appraisal/ROW Funding Estimate/Relocation Plan during the PE Phase is a local agency risk decision. If a local agency chooses to complete these items too early, it may require a subsequent update or a new one to be completed again. FHWA will not pay for an activity twice if the need for the second payment was due to a local agency's business decision. However, if the update is needed due to an unexpected delay beyond the local agency's control, the incurrence of expenses for a second time may be eligible expenses.

Agencies **cannot** start activities that could be considered negotiations with property owners pre-NEPA for the project, unless they are acquiring under [23 CFR 710.501](#) (local agency funded early acquisition) or Section 710.503 (protective buying and hardship acquisition). Early contact of occupants cannot give the appearance of initiation of negotiations. In addition, if the local agency plans to request to use the value of the acquired property as a match, they need to meet the requirements in [23 CFR 710.501](#).

Local Programs conducts billing reviews each year for selected construction projects that will address any non-compliance issues.

[23 CFR 710.501](#)

## 25.4 Right of Way Acquisition

LPA-011  
LPA-012  
LPA-007

When there is federal participation in **any** phase of a project (PE, RW and/or CN), federal regulations **must** be followed. The checklist of Federal Aid Requirements (LPA-007) provides useful reminders and should be used as guidance to ensure compliance.

### .41 Determining Whether Right of Way (Acquisition) is Needed (Appendix 25.174 & 25.175)

1. **ROW (acquisition) Needed** is defined as land or property rights or interests necessary for construction, operation and/or maintenance of the proposed project, or any prior (early/advanced) acquisition that was acquired specifically for the current project. This includes temporary rights required to complete the construction as shown on the Plan, Specification & Estimate (PS&E) (such as placing personnel, materials, equipment, and machinery outside of existing ROW).

23 CFR 710.501

If the property and/or property rights were acquired specifically for this project prior to NEPA start date the local agency may be required to demonstrate compliance with [23 CFR 710.501](#). The local agency should contact the LPE and Environmental Engineer to determine whether additional documentation is required. If the property was purchased for use on the current project (e.g. early/advanced acquisition), then the ROW must have been acquired in accordance with the requirements of this manual.

**Early/Advanced acquisition** is defined as prior acquisition of property and/or property rights or interests that was completed specifically for the current project prior to NEPA approval. This does not include properties within the existing ROW that were purchased as part of a previous project. Regardless of the funding source, early/advanced ROW acquisition parcels must be included in the ROW Certificate. Please contact the LAC if you have questions (see Section 25.44 of this chapter for additional information).

- If it is later determined that ROW is needed, ROW Funding Estimate, a ROW Plan, and a Relocation Plan (if required) must be prepared and submitted to the LPE who will notify the LAC (who is responsible for review and approval).
2. **No ROW (acquisition) Needed** means that the proposed project can be built entirely within the local agency's existing ROW. Existing ROW is defined as land already incorporated into the roadway facility or land certified under a previous federal aid project. Leases, permits and easements for construction activities, slopes, drainage, etc., whether temporary or permanent, are considered ROW acquisition.

If it can be documented that the land or property rights/interests were purchased for a purpose other than the transportation related project being certified then the Uniform Act and [49 CFR Part 24](#) requirements do not apply. This would be considered existing right of way.

It is the responsibility of the local agency to determine that "No ROW" is needed for a project at the time the Design Approval Documentation form is completed and prior to the obligation of funding. This can be accomplished by applying the Sufficient Property Rights Flowcharts (Appendix 25.174, Appendix 25.175, and Appendix 25.176). The local agency will complete and sign the Design Approval Documentation form (Appendix 43.62) that acknowledges they have completed reviewing existing property rights. In the case of a non-CA local agency, the local agency will work with the LPE. The No ROW Needed Verification Checklist

and online e-learning are tools that can be used during the local agency's ROW determination process.

Once the project has been fully designed and prior to advertising the project for construction, the local agency shall verify that No ROW is needed for the project. Local agency staff must be qualified to sign acknowledging the ROW part of the Design Approval Documentation form and to perform the Program Administration function under their Approved ROW Procedures and have taken the eLearning course available on the Local Programs ROW Training website. Local Programs will maintain a list of CA local agency reviewers who have completed the training. Non-CA agencies will need to work with the LPE and LAC to complete the verification process.

If ROW needs change, the local agency will follow the current process of updating the design approval, project prospectus, and NEPA. It is also recommended that the local agency provide an amendment to the Statewide Transportation Improvement Program (STIP).

LP ROW Training  
Website

#### **.42 Acquiring Sufficient Property Rights** – A local agency must acquire real property interests

23 CFR 1.23

23 CFR 710.201(e)

that are adequate for the construction, operation, and maintenance of the project ([23 CFR 1.23](#) and [23 CFR 710.201\(e\)](#)). The preference is for local agencies to purchase fee rights or temporary and permanent easements. However, there are circumstances when other real property interests can be considered. The details of these circumstances should be discussed with the LAC prior to submitting the Right of Way Plan for approval.

If the local agency is considering acquiring something other than fee or permanent easement real property interests, then they must provide documentation establishing how the real property interests they are acquiring satisfy the requirement for sufficient property rights. FHWA must be assured that their investment in the project is in the public interest and will last for a reasonable amount of time that is commensurate with the level of investment. There are no set guidelines that describe the appropriate term length, but 20 years is the absolute minimum term that should be considered. Longer terms may be required, and the higher the federal investment, the longer the term expected by FHWA. An analysis of the design life of the improvement must be done and the minimum term must equal the design life. Unless leases are with public agencies, leases should be considered only under rare and unusual circumstances since they typically have termination clauses that could require the removal of improvements with little notice, and possibly without cause. Things to consider include:

- Is the term of the real property interest at least as long as the life cycle of the improvement? When will major maintenance be required and does the property interest term extend to when the first major maintenance is expected?
- What is the likelihood for renewal of the term of the real property interest, or invocation of any provision for its termination?
- Can a rational explanation of why the project is a good investment for FHWA under such circumstances be provided?
- If the rights acquired are from a governmental local agency, is there anything in their regulations that prevent them from granting the rights requested?

**Note:** If FHWA does not accept the local agency's justification, they must be prepared for FHWA to either make a finding that they have not acquired sufficient property rights (which would preclude ROW certification) or FHWA may consider a conditional approval

that would require the local agency to either repay the project funding or reestablish a replacement improvement in a new location with their own funds (and the right of way for the new location must have been acquired in accordance with the Uniform Act).

The following situations are sufficient, and do not require the local agency to complete a justification to be submitted for FHWA approval:

- **DNR aquatic lands** – DNR typically grants only term easements for uses of state-owned aquatic lands. The term of an easement will normally not exceed 30 years and is not renewable by policy. A new easement may be applied for one year in advance of the current easement agreement term expiration.
- **BPA (Bonneville Power Administration)** – BPA typically grants only revocable permits (Land Use Agreement Fee) for uses under their power lines.
- **WSDOT** – WSDOT typically grants only term leases and/or easements for uses of their property.
- **Bureau of Indian Affairs (BIA)** – BIA policy may vary by tribe as not all tribes are willing to grant permanent easements. Some tribes may grant only a non-permanent easement.

ROW Manual  
Section 6-7.3

**Government-Acquisitions (Political Subdivisions)** – Examples of political subdivisions of the state of Washington are state, federal, counties, cities, towns, school districts, irrigation districts, etc. Government agencies are entitled to just compensation for the acquisition of property rights needed for federal aid transportation projects and the provisions of the URA will apply. Acquiring permanent rights or less than fee long-term rights should be done in accordance with [Chapter 6](#) of the ROW Manual; however, there may be some deviation of URA requirements as legal authority may control how agencies transfer real property to other agencies. The provisions of the URA ([49 CFR 24](#)) may not apply if the local agency needs to acquire temporary property rights from another local agency to construct your project. The acquisition of these rights are generally through mutual consent and agreement between agencies using a permit or interlocal agency agreement. The risk is low that government agencies will not acquire the temporary property rights from each other when constructing their federally funded transportation projects. Local Programs is making a risk-based decision to not certify temporary property rights acquired under a permit or interlocal agency agreement if there is mutual consent between agencies and the agencies have complied with the laws and regulations pertaining to the conveyance of property rights. In addition, a ROW phase will not be triggered if an agency only needs temporary property rights from another agency and no other rights are acquired for the project.

ROW Chapter 11

**Use of WSDOT Owned Property** – The LAC should be contacted immediately when it is determined that the local agency project requires the use of WSDOT owned property. The LAC will advise the local agency of the process and timeline needed to acquire sufficient legal rights to construct and operate on WSDOT owned property. The length and type of use of WSDOT owned property will determine if it will be considered an acquisition and subject to certification requirements. If a local agency requires temporary use of property owned by WSDOT for the construction of a transportation project and those rights are obtained under a WSDOT general permit or agreement, WSDOT will not consider this part of the acquisition process and the permit would not be subject to ROW certification. This also applies if a local agency obtains permanent rights from WSDOT through a relinquishment. These activities are governed by 23 CFR Part 710 Subpart D, Real Property Management and are not Uniform Act activities, nor activities which

23 CFR 710.409  
23 CFR 620  
23 CFR 635.309

must be addressed under the certification requirements found in federal regulations. The acquisition of all other permanent property rights and/or property interests acquired from WSDOT for a federally funded local agency project is subject to certification requirements. The local agency will need to work closely with the appropriate region Real Estate Services staff to acquire the necessary property rights. Please see 25.1.13 of this chapter for additional information.

#### .43 Determining Acquisition of Property and/or (Sufficient) Property Rights (Appendix 25.175)

**Fee** – Fee title should be acquired when the local agency needs the exclusive use and occupancy of the property for itself. Fee simple is the unqualified ownership and power of disposition of property; all rights to control, use, and transfer the property at will are acquired.

**Easements** – An easement is a transfer of an interest in land from one party to another providing a right or privilege to enjoy the property or a part of it for a specific purpose that is not inconsistent with the owner's use and enjoyment. Easements can be temporary, permanent, or for a specified term.

**Permanent Easements** – A permanent (perpetual) easement may be acquired when the local agency needs a non-exclusive right to enter upon the property of another. A permanent easement for road, street, or highway purposes should include, but not be limited to, the right to occupy, construct, control, operate, maintain, and reconstruct the facility.

**Non-Permanent Easements** – An easement that has a defined term and expiration date. Some property owners, including state/federal agencies, are unwilling to grant permanent easements. Term easements may be acceptable provided the term equals the design life (see [Section 25.42](#) of this chapter for additional information).

**Temporary Easements** – A temporary easement is used when the local agency requires a property right which is temporary in nature but are not part of the permanent right-of-way. Temporary rights expire by the terms in each individual temporary easement.

[49 CFR 24.101\(c\)\(2\)](#) **Permits** – A permit or right of entry is not an interest in land. It only provides basic permission to enter upon property to a named entity for a specific purpose, usually for a specific period of time. It cannot be transferred and can be terminated or revoked by the owner at will. In most situations, permits are used when no other property rights are to be acquired from the same ownership as part of the same project and are normally obtained without the payment of compensation (commonly referred to as mutual benefits) because the provisions of the Uniform Act do not apply in these situations. The term mutual benefit is not defined in federal regulations and is often misunderstood and incorrectly applied on federal aid transportation projects. The use of a permit is acceptable when the local agency is solely performing work exclusively for the benefit of the property owner, would not create a compensable damage, and is not needed to construct your project. Permits can be used with other local agencies to perform work on their property, such as tying into another roadway. Permits are generally not considered sufficient to construct, operate or maintain proposed projects. When considering the use of permits or other property rights such as leases, rights of entry, land use licenses, etc. consult with the LAC. All rights acquired for the project, including advanced/early acquisitions must be shown on the right of way plan (see [Section 25.42](#) of this chapter for additional information).

Property Right vs. Permit (Right to Enter)

	Property Right	Permit (Right of Entry)
ROW Chapter 6 RCW 18.85.151(6) RCW 18.85.081	Required/needed for the project	Not required/needed for the project
	Element of project design	Not part of project design
	Prior to offer	Post offer
	Mitigation for compensable damage	Requested by owner
	Show rights on ROW plan	Not shown on ROW plan
	Valuation includes cost of item	No compensation paid
	Temporary Construction Easement (TCE) obtained	Permit obtained
	Transfers with ownership	Non-transferrable
	Sufficient for construction	Not sufficient for construction

**.44**

23 CFR 710.105  
23 CFR 710.303  
23 CFR 710.501(a)  
NEPA Categorical  
Exclusions – A  
Guidebook for Local  
Agencies

**Early/Advance Acquisitions** – *Early acquisition* is defined in federal regulations (23 CFR 710.105), as the acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project. In addition, as a condition of Federal funding under title 23 (23CFR 710.303), the agency must obtain FHWA authorization or agreement in writing or electronically before proceeding with any real property acquisition using title 23 funds, including early and advanced acquisitions. In practical use, early acquisition refers to the acquisition of real property prior to the final National Environmental Policy Act (NEPA) decision on a project: The Record of Decision (ROD), for projects developed with an Environment Impact Statement (EIS); a Finding of No Significant Impact (FONSI), for projects developed with an Environmental Assessment (EA); or a Categorical Exclusion (DCE/ECS).

**Note:** Reliance on Early Acquisition is not a tradeoff to shorten a ROW schedule.

Local Programs has the following two types of early acquisitions that occur in advance of a project’s NEPA decision:

1. **Early Acquisition:** Property acquisitions that occur prior to the initiation of NEPA.
2. **Concurrent Early Acquisition:** Property acquisitions that occur after the initiation of NEPA but prior to its approval.

In addition, there is an Advanced Acquisition option, which is different than Early Acquisition that refers specifically to Hardship Acquisitions and Protective Buying. The parcel being acquired must be environmentally cleared prior to starting negotiations.

In each case, federal guidelines must be followed in the acquisition process. The local agency must notify their LAC prior to starting an Early Acquisition, Concurrent Early Acquisition or Advanced Acquisition. The LAC will need to Spot Check and complete a Pre-Certification review as part of the acquisition. This will ensure full compliance and prevent issues at the time the Early Acquisition, Concurrent Early Acquisition, or Advanced Acquisition parcel is incorporated in a Federally funded project. The local agency will need to create a parcel acquisition file for the early acquisition that will become part of the future project file.

A local agency may use eminent domain (except under Early Acquisition Option 4), but the local agency must be able to prove public use and necessity, which may be difficult when the environmental alternatives have not been evaluated or selected. The use of eminent domain on a locally funded acquisition in advance of a project NEPA approval is a decision that the local agency should make after undertaking a risk analysis to determine if they want to proceed with the acquisition using eminent domain. The risk analysis should

consider if the proposed project has multiple alignments that could be considered to address the transportation issue. If there is only one obvious alignment, the local agency's ability to prove public use and necessity is good, which makes the risk low. If there are multiple alignments to address the transportation issue, then the local agency should determine the property needs for the multiple alignments. If each alignment requires different parcels to address the transportation issue, then the local agency's ability to prove public use and necessity may be low due to uncertainty of the need for the parcel, and the risk is higher.

[23 CFR 710.501](#)

For **Early Acquisitions**, prior to the initiation of the NEPA process, the local agency must show that the early acquisition did not influence the project through the decision or need to construct the project, the consideration of alternatives, or the selection of the design or location of the proposed improvement and demonstrate compliance with [23 CFR 710.501](#). The local agency should contact the LPE and Environmental Engineer to determine whether additional documentation is required. If NEPA cannot be approved, then the local agency cannot incorporate the parcel into a federally funded project. If the project cannot be built without the parcel, then the entire project may be ineligible for federal funding. **Concurrent Early Acquisition** parcels will be covered under the overall NEPA evaluation.

**Note:** ROW Certification cannot happen with Early Acquisition until NEPA has been approved and the parcel has been incorporated into a federally funded project.

**Early Acquisition, Concurrent Early Acquisition, and Advanced Acquisition Alternatives (Appendix 25.177).** There are five alternative methods (item #5 has two methods) of Early Acquisition, Concurrent Early Acquisitions, and Advanced Acquisitions provided in federal statutes and regulations. Each alternative has distinct conditions which must be met, as described below. However, there are certain specific conditions that every alternative must meet:

- The property must be lawfully obtained.
- The acquisition must fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- Per 23 CFR 701.501(c)(5) and 771.113(d)(4) and 40 CFR 1506.1, these early acquisitions cannot have an adverse environmental impact or limit the choice of reasonable alternatives in the NEPA analysis for the project or have an adverse environmental impact on the parcel. (e.g., If a building that would have been determined to be eligible for the National Register of Historic Places is acquired and demolished, this would be an adverse environmental impact on the parcel). The FHWA must concur with the agency that the Early Acquisition did not influence NEPA for the project including:
  - The need to construct,
  - The consideration of alternatives,
  - The selection of design or location.

**Note:** The required concurrence by FHWA will occur at the time the early acquisition/advanced acquisition parcel is incorporated into a federally funded project.

- Local agencies will not do early acquisition on properties that are protected under section 4(f) of the Department of Transportation Act of 1966, codified at 23 USC 138, and the regulations at 23 CFR 774.
- The acquisition must fully comply with Title VI of the Civil Rights Act of 1964.

## Early Acquisition &amp; Concurrent Early Acquisition Options:

23 CFR 710.501(b)

1. **Agency-Funded, No Match or Reimbursement (Eminent Domain allowed)** – The local agency may initiate acquisition of real property, using local funds, at any time it has legal authority to do so, based on program or project considerations prior to NEPA clearance. Pre-approval of the use of this option is **not** required from FHWA, and this option can be useful for corridor preservation, access management, or similar purposes. This option is used when the local agency will not be seeking either reimbursement or matching credit from FHWA. As noted above in the early acquisition alternatives, this alternative must fully comply with the Uniform Act and not have adverse environmental impacts or limits the choice of reasonable alternatives in the NEPA analysis for the project or the parcel.

23 CFR 710.501(c)  
23 CFR 710.507(a)  
LPA-318

2. **Agency-Funded with Matching Credit (Eminent Domain allowed)** – In order for the local agency to use the early acquisition costs as a credit toward the local agency's matching share (non-federal share) of a federal-aid project, the agency must meet the mandatory terms and conditions specified in the requirements and the following additional condition:

- The property will be incorporated into the project to which the credit will be applied.

FHWA FAQ on ROW  
(see #48)

In determining the costs to apply credit for the matching share of the project, the local agency is limited to the historic acquisition cost or the current fair market value of the property. The historic acquisition cost is limited to the amount that was paid to acquire the property at the time of its acquisition, and excludes appraisal fees, relocation costs, and any other costs incurred beyond the acquisition price itself. When the historic acquisition costs cannot be reasonably obtained, or such cost was not typical for the time due to extenuating circumstances, the local agency may use the current fair market value of the property. For property that is donated under this option, the fair market value of the property at the time of the acquisition by the local agency is what would be credited.

Credit Example: If the non-federal share is 20% then the matching credit would be limited to 20% of the acquisition costs.

The local agency will need to engage with their LAC and use Early Acquisition Option 2 Checklist (form LPA-318). The agency will need to provide detailed documentation along with this form related to the credit amount being requested. The agency and LAC will sign-off on the form upon completion of the pre-certification review. **The required concurrence by FHWA will occur at the time the early acquisition parcel is incorporated into a federally funded project.** Once FHWA concurrence is received, the local agency will submit the completed and signed checklist to Local Programs Program Management along with their funding paperwork.

23 CFR 710.501(d)  
23 CFR 710.203(b)  
LPA-319

3. **Agency-Funded with Reimbursement (Eminent Domain allowed)**

To utilize this option the Project in which the parcel is being incorporated into must have a federally-funded ROW Phase.

In order for the local agency to receive reimbursement for costs incurred prior to the completion of environmental review, the agency must demonstrate and FHWA concur that the mandatory terms and conditions specified in the requirements have been met in addition to the following conditions:

- The property will be incorporated into a title 23 project

State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under state law and the acquisition was determined in advance by the Governor as consistent with the State Transportation planning process;

**Note:** Washington's Growth Management Act (GMA) meets these requirements and enables local agencies to utilize this option.

- Alternative for which the real property interest is acquired is selected by the agency pursuant to NEPA;
- Acquisition does not influence NEPA;

Federal participation and reimbursement of the costs associated with early acquisition will not occur until after the completion of NEPA.

Reimbursement Example: If the federal share is 80% then the reimbursement would be limited to 80% of the direct eligible acquisition costs.

The local agency will need to engage with their LAC and use Early Acquisition Option 3 Checklist (form LPA-319). The agency will need to provide detailed documentation along with this form related to the reimbursement amount being requested, which must include all invoices and itemized timesheets (if applicable). The agency and LAC will sign-off on the form upon completion of the pre-certification review. The required concurrence by **FHWA will occur at the time the early acquisition parcel is incorporated into a federally funded project**. Once FHWA concurrence is received, the local agency will submit the completed and signed checklist to Local Programs Program Management along with their funding paperwork.

In determining the costs for reimbursement of the project, the local agency can seek reimbursement of the cost of the acquisition as provided in 23CFR 710.203(b) including appraisal fees, title fees, relocation costs, and other costs incurred as part of the acquisition.

[23 CFR 710.501\(e\)](#)

4. **Federal-Funded Early Acquisition (Eminent Domain is NOT allowed)** – A local agency may program an Early Acquisition Project in the STIP and, after meeting the additional conditions listed below, request authorization from FHWA ROW to proceed with the acquisition and obtain federal funding participation. This early acquisition alternative is particularly useful for doing corridor preservation, as it does not require that the local agency have a specific transportation project programmed or in development at the time the early acquisition, using federal funds is carried out.

There are some specific conditions that apply to this alternative:

- The early acquisition project must be included in the STIP.
- A NEPA analysis must be performed for the scope of the early acquisition project, and must be approved by FHWA. In most cases, if the purpose and need for this project is simply to acquire property and hold it until needed for a transportation project, the NEPA clearance would be done with a DCE/ECS. For

the purpose of the NEPA analysis, and consistent with the federal requirement, an early acquisition project under this alternative is considered to have independent utility.

- Although the local agency must follow the Uniform Act, as required for all other early acquisition alternatives, early acquisition under this alternative may not be carried out under the threat of eminent domain. If an agreement cannot be negotiated with a property owner, the local agency will have to wait until a specific transportation project requiring this property has been completed through the NEPA process and FHWA funding is authorized for such project.
- Real property interests acquired under this option may not be developed in anticipation of the “transportation project” until a NEPA decision for the specific transportation project requiring this property has been completed and FHWA funding is authorized for the project. No development activity related to demolition, site preparation, or construction can occur unless necessary for public health and safety with prior approval by FHWA.
- If the real property acquired under this alternative is not incorporated within 20 years in a project eligible for FHWA funding, FHWA will offset the State’s federal funding by the amount of federal funds used in this early acquisition project.

**Note:** Since eminent domain is not allowed under this option the Statutory Evaluation Allowance (SEA) is not required by State law to be offered to the property owner. See Section 25.8.96 for additional information on the SEA.

- Eligibility for Relocation Assistance is required for anyone displaced as a direct result from a binding written agreement for the early acquisition purchase of the real property interest.

[23 CFR 710.503\(a\)](#)

5. **Advanced Acquisition-Hardship Acquisition and Protective Buying.** In addition to the early acquisition options set out in 1 thru 4, federal regulations provide for doing advance acquisition under two options: Hardship and Protective Buying. (Unless otherwise stated elsewhere in this manual, the term “advance acquisition” will be understood to apply specifically to hardship and protective acquisition.) Normally, these two options will apply to a limited number of properties, whereas the early acquisition provisions of 1 thru 4 may apply to some or all properties on a project. The agency must meet the mandatory terms and conditions specified in Section 25.44 for early acquisition and the following additional conditions:

- The project must be included in the currently approved STIP.
- The state must have complied with the public involvement requirements addressed in federal regulations at 23 CFR parts 450 and 771.
- If applicable, the Section 4(f) determination must have been made on these properties.
- If applicable, the Section 106 requirements of the National Historic Preservation Act must have been completed on these properties.
- All other required NEPA clearances must have been completed on these properties. NEPA approval will be secured by following the [2015 Programmatic Categorical Exclusion Agreement](#).
- For federally funded projects, FHWA Right of Way approval for doing a hardship or protective acquisition is required.

2015 Programmatic  
Categorical Exclusion  
Agreement

[23 CFR 710.503\(c\)](#)

- A. **Hardship Acquisition** – A hardship acquisition is initiated by a property owner, not the acquiring local agency, when the property owner provides a written statement that:
- Supports the hardship on the basis of health, safety, or financial reasons, and that remaining in the property would pose an undue hardship compared to others.
  - Documents the inability to sell the property at fair market value, within a time period that is typical for properties not impacted by the impending project.

Because hardship acquisitions are initiated by the property owner, this advance acquisition option is not practical as a part of a local agency's project schedule. Note, also, that the local agency is NOT required by federal regulation to agree to a hardship purchase request.

[23 CFR 710.503\(b\)](#)

- B. **Protective Buying** – In order to do advance acquisition of a property under this option, the local agency must clearly demonstrate to FHWA (on federally-funded projects) that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase. **Example:** Vacant parcel under review for commercial development.

Processing Early and Advanced Acquisitions. The decision whether to proceed with one of the early or advance acquisition options will be made by the local agency. It is important to remember that the standard acquisition process, as set out in this chapter, applies to Early Acquisition, Concurrent Early Acquisition, and Advance Acquisitions.

**Note:** To qualify for Early Acquisition or Concurrent Early Acquisitions, the acquisition of the parcel MUST be completed prior to the approval of the NEPA.

**.45 Voluntary Acquisition** – A process called “Voluntary Acquisition,” which differs from “Donations and Willing Seller Transactions,” may on rare occasion be appropriate for acquisition of property, but only if all the following circumstances apply:

[49 CFR 24.101\(b\)\(1\)](#)  
[WAC 468-100-101\(2\)\(a\)](#)  
[49 CFR 24 Appendix A](#)

- No specific site or property needs to be acquired, although the local agency may limit its search for alternative sites to a general geographic area. Where a local agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly.
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all the property within the area is to be acquired within specific time limits. Most federally assisted transportation projects are planned and included in the STIP which means Subpart B applies to the acquisitions of the intended project.
- The local agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The local agency will inform the owner in writing of what it believes to be the market value of the property.

If these circumstances appear to apply to a project, the Voluntary Acquisition process may apply, but **must** be approved by the LAC before any steps are taken to initiate the acquisition process. If approved, steps to follow for voluntary acquisition are governed by federal and state regulations and shall include:

1. Clearly advise the property owner, in writing, prior to making any offers that the local agency will be unable to acquire the property if negotiations fail.
2. Provide the owner with an estimate of the fair market value of the property.
3. Provide relocation assistance to any tenants upon mutual acceptance by the acquiring local agency and property owner.

If approved, the local agency must work closely with the LAC on all steps of the voluntary acquisition process.

**Note:** Real estate transactions using this process are subject to real estate excise tax. Also, the statutory evaluation allowance will **not** be reimbursable, as it is only required for acquisitions made under threat of eminent domain.

**Mitigation sites** – If a mitigation site is required as an environmental commitment for your project it does not meet the test of a voluntary transaction. The local agency is obligated to acquire a mitigation site for the project as failure to do so would likely result in the project becoming ineligible and unacceptable to FHWA. This is true even though your project may have multiple properties to choose from to comply with your environmental commitment.

- .46 Right of Way Funding Estimate** – The ROW Funding Estimate (previously Project Funding Estimate (PFE) or True Cost Estimate (TCE)) is required to determine an estimated cost of the right of way phase of a project. The estimate, based on the project right of way plan, is required to be submitted at the time the ROW is obligated on a project.

LPA-005  
LPA-005b

The ROW Funding Estimate is based on the assessed value of the property being acquired (and abutting properties when necessary). The instructions for utilizing the new form are located under LPA-005 and the form is available under LPA-005b.

The estimate can be completed by local agency staff or a consultant that is familiar with the project and the right of way needs of the project.

The estimate **ONLY** needs to be submitted to the LAC for approval when there is federal funding in the ROW Phase of the project.

There is no longer a link between the ROW Funding Estimate and the Administrative Offer Summary (AOS). This will allow for the AOS to be completed closer to the start of negotiations so that the fair market value is current and updating won't be necessary.

- .47 ROW Plan** – A ROW Plan indicating the property required to build and maintain the transportation project is required. A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.

LPA-006

The local agency's ROW plan shall be considered approved upon seal and signature of a registered Professional Engineer or Professional Land Surveyor in accordance with [RCW 18.43.070](#) and [RCW 58.09](#). The ROW plan shall contain essential data needed for appraisal, negotiation, right of way certification activities, and illustrate the following information (see LPA-006 ROW Plan Checklist).

- Survey line or centerline for the alignment, including sufficient ties to physically locate the alignment. Please contact the LAC if other acceptable survey practices are proposed to establish the alignment.
- Sufficient information for preparation or verification of legal descriptions of the affected properties and types of property interests to be acquired.

- Width of the right of way (alignment), grade changes, and other design features/ details of the construction.
- The property lines in their entirety and owner's names for each affected property, along with all contiguous parcels to the property being acquired and owned by the same owner, the parcel identification number; the calculated area(s) of the existing parcel(s); the areas to be acquired, including any easement areas; and the calculated area(s) of the remainder parcel(s).

It is recommended ROW plans illustrate the following additional information:

- For affected parcels, improvements within 100' feet of the existing ROW, including those improvements that may be damaged by the project (i.e., residences, commercial structures, signs, septic systems including reserve area, wells, driveways, fencing, irrigation systems).
- Vicinity Map showing the project limits.

A draft of the ROW plan should be submitted to the LAC for review and comment prior to its approval by the local agency.

**Note:** If the ROW phase of a project has been authorized, fee parcels can't be removed from the ROW Plan without first consulting with the LPE and the LAC, and in some cases, FHWA. When temporary rights are removed the local agency needs to confirm with the LAC that their existing ROW is adequate for the project.

- .48 ROW Phase with Federal Funds** – Prior to the authorization of federal funds for ROW, the following requirements must be met: compliance with [Chapter 14](#), FHWA approval of environmental (NEPA) documents, and the submittal of the following documents to the LPE.

[Appendix 43.62](#)

- Local Agency Agreement Supplement.
- ROW Funding Estimate
- Approved ROW plan (part of Approved Design Documentation).
- Approved relocation plan (if relocation is required, contact the LAC for assistance).

The obligation of federal funding is the approval (authorization) by FHWA to participate in a share or portion of federally eligible expenditures on an agreed-upon scope of work (also known as a project). This commitment occurs when a project phase or additional funding for a phase is approved, and the project agreement is authorized by FHWA. The dollar amount of federal funds approved on the project agreement is known as the obligation of federal funds. Only after the local agency receives written authorization from Local Programs are costs incurred eligible for reimbursement. Once FHWA approval has been obtained for the obligation of funds for the ROW Phase, Local Programs will notify the local agency of authorization to proceed with ROW acquisition. Acquisition activities should not occur prior to the obligation of funds. No acquisition costs are eligible prior to this authorization, except those preliminary ROW costs that are allowable in the PE phase.

- .49 ROW Phase with Local Agency Funds Only** – If federal funds are to be used in any part of the project, or the property is later incorporated into a federally funded project, federal guidelines for acquisition of the ROW must be followed. The local agency must also follow the local agency's approved procedures, which requires the LAC to review some or all offers and supporting data before they are presented to the property owner. **The ROW plan requirement applies if there are federal funds in any phase of the project. The**

**ROW Funding Estimate ONLY** needs to be submitted to the LAC for review and approval if there are federal funds in the ROW Phase of the project (see Section 25.41 of this additional information).

To minimize potential problems which may surface during the certification process, the local agency submits a copy of the ROW plan and Relocation Plan (if applicable) for review/approval before starting the acquisition process. A copy of the ROW plan must be made available at the time of certification.

## 25.5 Appraisal/Waiver Valuation – Administrative Offer Summary (AOS)

ROW Chapter 4  
49 CFR 24.102(n)(3)

**Negotiators cannot supervise appraisers, review appraisers, or waiver valuation preparers, unless FHWA approves a waiver of this requirement, and appraisers, review appraisers, or waiver valuation preparers shall not have any interest, direct or indirect, in the property being valued.**

**.51**  
49 CFR 24.103  
WAC 468-100-102

**Appraisal** – The requirements pertaining to the appraisal of property to be acquired and an explanation of requirements for an acceptable appraisal report are provided in *Right of Way Manual M 26-01 Chapter 4*. The Approved Consultant list is available online at: <http://fmdata.wsdot.wa.gov/ROWservices/home.php>

49 CFR 24.103(d)  
WAC 468-100-102(4)

The appraiser shall be an experienced, qualified appraiser. At a minimum, an appraiser should have a college degree or four years of active experience in the real estate field leading to a basic knowledge of real property interest valuation, or any combination of such experience and college study to provide a total of four years beyond high school graduation. An appraiser who is qualified under WSDOT criteria and on WSDOT's approved appraiser list will be considered qualified for FHWA projects.

49 CFR 24.103(a)  
WAC 468-100-102(1)  
49 CFR Appendix 24.103  
LPA-217  
LPA-218

The appraiser shall prepare an appraisal report which is a written document containing among other elements, the following:

1. The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised.
2. The estimate of just compensation for the acquisition. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages to remaining property in either the report or a separate statement.
3. The data and analyses (or reference to same) to explain, substantiate, and document the estimate of just compensation.

49 CFR 24.103(a)(2)(i)

4. An adequate description of the physical characteristics of the property being appraised, including items identified as personal property. Local Programs created templates that are available for use but are not required if the local agency has a similar form.

49 CFR 24.102(c)(1)  
49 CFR 24.102(f)  
RCW 8.26.180(2)  
WAC 468-100-102  
ROW Appendix 4-1 Part  
1(A)(f)

**Appraiser/Owner Contact** – Property owners have the legal right to inspect the property with the appraiser. Every effort must be made to ensure that the property owner has been extended that opportunity for a joint inspection. The appraiser shall document in the appraisal report his or her attempts to contact the property owner, which shall include attempts to contact the property owner either by phone and/or in person. The appraiser should be flexible with scheduling to accommodate the property owner.

If contact cannot be made by telephone, the appraiser shall send a letter explaining the need for the inspection and inviting the owner to join in the inspection. The letter shall be sent "Return Receipt" to document the attempt for contact.

### **.52 Waiver Valuation (commonly referred to as Administrative Offer Summary (AOS))** – In

49 CFR 24.102(c)(2)(ii)  
RCW 8.26.180(2)  
WAC 468-100-102(1)

accordance with federal regulations, an appraisal and appraisal review can be waived in certain cases. To qualify, the just compensation must be no greater than the waiver valuation limit as defined in the agency's approved ROW procedures (typically \$25,000), **AND** the acquisition **must be uncomplicated**, with the only damages being minor cost to cure items. The combined estimate of the just compensation plus the cost to cure(s) cannot exceed the local agency's approved waiver limits.

For example, if the local agency plans to acquire a strip of land that they estimate is worth \$12,000, but the acquisition will change/limit the owner's ability to develop their property at some point in the future, the Waiver Valuation Procedure **cannot** be used because it is no longer uncomplicated, and an appraisal must be prepared by a qualified appraiser.

In such instances where the valuation is waived, just compensation should be based on current comparable sales. All data used to arrive at an estimate of just compensation must be included in the project file. When the waiver procedure is used, it is important that the local agency determines that the offer being made is fair and equitable.

The AOS policy is as follows:

- If the AOS is \$10,000 or less, the offer must state that an administrative offer is being made and an appraisal has not been completed.
- If the AOS is \$10,001 or greater, the offer must state that an administrative offer is being made, that an appraisal has not been completed, and an appraisal will be prepared if requested by the property owner.

Waiver Valuation (AOS) Value Limits	
Condition A: \$10,000 or Less	Condition B: \$10,001 to \$25,000
No requirement to offer to provide property owner with an appraisal.	Offer letter must include provision that the local agency will provide an appraisal at the property owner's request.

Section 25.51

Under Condition B, if the owner requests an appraisal, the local agency **is required** to provide and pay for one that meets the standards.

## **25.6 Appraisal Review**

49 CFR 24.104  
WAC 468-100-103  
ROW Chapter 5

The reviewing appraiser should be knowledgeable of the property values in the project area. The depth of review should be in direct relationship to the difficulty of the appraisal. The reviewing appraiser must be either a WSDOT review appraiser, on the WSDOT Approved Consultant List, or an employee of the acquiring local agency, who is authorized by their ROW procedures to review appraisals. To qualify a local agency review appraiser, an individual must, at a minimum, be a Certified General Appraiser with the Washington State Department of Licensing and have successfully completed at least one appraisal review training class approved by WSDOT.

The reviewing appraiser shall, at a minimum, complete a desk review of all appraisals. The local agency and/or reviewing appraiser may elect to complete a field review in lieu of a desk review. A field review shall include inspection of the subject property and all the comparable sales used in determining the fair market value. All complex appraisal assignments shall be reviewed under a field review.

The reviewing appraiser shall examine the appraisal reports to determine that they:

1. Are complete in accordance with this manual and contain the criteria required by *Right of Way Manual Appendix 4-1 Appraisal Guide*.
2. Follow accepted appraisal principles and techniques in the valuation of real property interest in accordance with existing state law.
3. Include consideration of compensable items, damage, and benefits, but do not include compensation for items non-compensable under state law.

LPA-214b

The reviewing appraiser shall place in the parcel file a signed and dated certification of value setting forth:

1. An estimate of just compensation including, where appropriate, the allocation of compensation for the property acquired and for damages to remaining property.
2. A listing of the buildings, structures, fixtures, and other improvements on the land which were considered part of the property to be acquired.
3. If applicable, a statement that there is an uneconomic remnant/remainder, and the value of the remainder.
4. A statement that the reviewing appraiser has no direct or indirect present or future interest in such property or in any monetary benefit from its acquisition.
5. A statement that the estimate has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

**Note:** A consulting firm may complete the appraisal and the appraisal review if the reports are completed independently. In addition, to avoid a conflict of interest the consultants performing the acquisition/negotiation cannot be involved in the appraisal and appraisal review process.

**.61 Uneconomic Remnants** – An uneconomic remnant is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the local agency has determined has little or no value or utility to the owner.

49 CFR 24.102(k)  
RCW 8.26.180(9)  
RCW 47.12.160  
ROW Section 5-5.2  
ROW Section 6-1.2.F  
ROW Section 6-11.1

For partial acquisitions, the review appraiser determines (if local agency staff) or recommends (if consultant) whether the remainder is uneconomic. If the remainder will no longer have utility to the owner, and the **local agency determines** that it is uneconomic, the local agency must offer to purchase the remainder from the property owner.

Detailed instructions regarding the review appraiser’s responsibilities for reporting and documenting uneconomic remnants can be found in the ROW Manual. Please note, it is WSDOT’s policy that even though a parcel may be considered to have little or no utility or value in the “before” situation, when an acquisition leaves a remainder, that remainder should be declared an “uneconomic remnant”. This step is not required by federal regulations. If your local agency decides to follow WSDOT policy, it must apply it uniformly on the entire project.

## 25.7 Agency Concurrence for Setting Just Compensation

49 CFR 24.102(d)  
RCW 8.26.180(3)  
ROW Section 6-1.2.B  
LPA-214b

It is the responsibility of the local agency to set just compensation. This can be done by adding a line to the bottom of the review appraiser's certificate as shown on the Local Agency Certificate of Value, to the bottom of the Administrative Offer Summary (AOS), or by stating the same information in a separate memo. In any case, the statement must be signed and dated by an employee of the local agency who has approving authority **prior** to the time the offer is made. When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required.

Before initiating negotiations for the acquisition of real property interests, the local **agency** shall establish the just compensation which **shall not** be less than the approved appraisal of the property and shall make a written offer to acquire in that amount. Appraisals are not required if an AOS has been prepared or if the owner has indicated a willingness to donate the ROW after being informed of their right to receive just compensation. If a waiver valuation was used to set just compensation, the negotiator must notify the property owner that they can request an appraisal be prepared in accordance with the local agency's Approved Waiver Valuation Procedure. (The threshold for offering an appraisal depends on the local agency's approved Waiver Valuation Procedure in place at the time of the offer). The local agency is responsible for providing and paying for this appraisal.

## 25.8 Title

ROW Chapter 8

The local agency will acquire evidence of the condition of title for all properties from which real property interest rights are to be acquired. The title report shall not be older than six months at the time the offer is made to the vested owner. It is suggested that a preliminary title report be ordered from a title company, and the title to the property acquired cleared so that a policy of title insurance can be issued showing title vested in the local agency subject only to those exceptions which can reasonably be accepted. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

Special care should be taken to ensure that the parties shown as the vested owners by the title evidence are named correctly in the conveyance instruments, and that the parties signing are the same or have authority to sign. The notary acknowledgement form (jurat) should be appropriate for the status of the granting party.

In general, the elements necessary to acquire the needed real property interest(s) are:

- i. Acquisition instruments signed by all parties with an interest in the fee title.
- ii. Releases from mortgages and deeds of trust. If the local agency determines that it wants to accept title subject to a monetary lien, the local agency should look to [Chapter 8](#) of the [ROW Manual](#) for guidance as to informing the owner of their potential risks.
- iii. Releases of encumbrances, such as easements, which adversely impact the rights being acquired.
- iv. Releases of priority liens, such as materialman's liens, judgments, state tax liens, and federal tax liens.

## 25.9 Negotiations

**.91 Qualifications** – For local agency staff to be approved to acquire property without direct supervision by the LAC, they must have either an Associate Degree in real estate or a bachelor’s degree or equivalent experience. In addition, they must have two years full-time experience in real estate acquisition, sales, leasing, appraisal, title, escrow, or property management. One year of experience must be in eminent domain acquisition performed according to the provisions of the Uniform Act. Additional experience in eminent domain acquisition can replace education on a year-for-year basis.

ROW Chapter 6  
RCW 18.85.151(6)  
RCW 18.85.081

Local agencies using staff to negotiate who do not have the necessary qualifications must work closely with the LAC throughout the acquisition process.

RCW 18.85.011

If a local agency uses a consultant fee negotiator, the consultant must meet the applicable state licensing requirements. At a minimum, this must be a current, valid real estate salesperson’s license issued by the State of Washington. Consultant fee negotiators must also have qualifications and experience generally equivalent to those for local agency staff negotiators.

**.92 Separation of Functions** – A separation of functions maintains the integrity of the acquiring local agency’s transactions. Thus, the appraisal, appraisal review, and negotiations for a parcel are performed by three different persons. It is recognized that the use of two separate individuals as appraiser and negotiator on a low-value acquisition can be both difficult and expensive. The use of a single qualified individual to both, appraise (or prepare an AOS) and negotiate a parcel is permitted where the value of the acquisition is \$10,000 or less. It should be noted that the appraisal shall be reviewed prior to negotiations, and the review appraiser shall be neither the appraiser nor the negotiator.

49 CFR 24.102(d)  
49 CFR 24.102(e)  
RCW 8.26.180(3)  
ROW Section 6-1.2.C

**.93 Offer/Summary Statement** – Upon initiation of negotiations, the local agency shall provide the owner of real property and/or property rights to be acquired with a summary of the appraisal (they can provide the appraisal to fulfill this requirement), or if an AOS a copy of the comparable sales data, a written offer letter, including a summary of the basis for the amount it has established as just compensation for the proposed acquisition. At a minimum the offer letter shall include the following:

1. The amount established as just compensation.
2. A statement explaining that the offer is based either on an appraisal made by a qualified appraiser and reviewed by a qualified Review Appraiser, or an AOS under the Waiver Valuation Procedure. The local agency’s current approved Waiver Valuation Procedure will determine their obligations for offering an appraisal if one was not performed.
3. Identification of the real property to be acquired, including the estate or interest being acquired.
4. Identification of improvements and fixtures considered to be part of the real property to be acquired.
5. The amount of just compensation for the real property to be acquired and any amount included for damages to remaining real property shall be separately stated. If the local agency does not provide a copy of the AOS/Appraisal then items addressed in the valuation that will be handled during construction shall be explained in the offer and a construction memo signed.

If there are federal funds in any phase of a project, Eminent Domain language should be included in all Offer Letters. If Eminent Domain language is not included in the offer letter than the local agency may **NOT** be able to condemn, and the project may be in jeopardy if negotiations fail. When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required, especially if the acquisition area or the property interests to be acquired changes.

LPA-350

The local agency should review their current approved Waiver Valuation Procedure to confirm that the correct language is being used in the offer letter.

- .94 Donation (see Also Section 25.10 Donated Property)** – A donation may be accepted only after the owner has been informed in writing and has waived, in writing, their right to just compensation, and has released the local agency from its obligation to have the property appraised. This applies to individuals, businesses, corporations, other private entities, and non-federal government agencies (state, local and tribal governments). Non-federal governmental agencies must follow their laws and regulations relative to the conveyance of property and make sure they have the legal authority to donate. If a donation is accepted in advance of NEPA clearance, it is considered an early acquisition.

23 CFR 710.105(b)  
 23 CFR 710.305(d)  
 23 CFR 710.505  
 23 CFR 710.507  
 49 CFR 24.108  
 RCW 8.26.180(10)  
 WAC 468-100-106  
 ROW Section 6-1.2.J  
 LPA-383

- .95 Dedication** – ROW obtained through normal zoning, subdivision, or building permit procedures may be incorporated into a federal aid project without jeopardizing participation in other project costs, provided such dedication does not constitute an unconstitutional taking. Dedicated land incorporated into the roadway facility is considered part of the existing ROW. As such, dedicated land is not required to be included in a right of way certification (see Section 25.21 of this chapter for additional information).

- .96 Statutory Evaluation Allowance (SEA)** – The local agency must notify the property owner of the availability of a SEA not to exceed \$750 to help defray the owner's expenses actually incurred in evaluating the local agency's offer. Reimbursement made to the property owner shall not be delayed due to negotiated settlement or project delays.

RCW 8.25.020

The SEA requirement only applies to offers made under the threat of eminent domain. Therefore, when a local agency's offer is NOT under threat of eminent domain, either by choice or regulation (such as early/advance or voluntary acquisitions), the local agency does NOT have to notify the owner of the \$750 SEA. A local agency is not prohibited from offering the \$750 SEA on non-eminent domain offers; however, FHWA may not participate in the cost. Local agencies must be consistent in their policy on whether to offer the \$750 SEA to property owners and apply it uniformly.

- .97 Incentive Programs** – A local agency can offer an incentive payment within the Offer Letter. However, on federally funded projects, the local agency will need to obtain FHWA approval and meet their requirements (Appendix 25.171) prior to the offer. This approval is necessary even if the incentive payment will be covered with local funds (no federal participation in the ROW phase).

**.98 Documentation** – A diary or negotiator’s log must be maintained for each parcel wherein everyone involved in a negotiation, a relocation, or a property management function shall enter and initial a suitable description of each contact and other information concerning that function. See [Section 25.15](#) for additional direction on preparing diaries. Upon request, the LAC will provide explanations and examples of adequate records.

49 CFR 24.9  
WAC 468-100-009

When negotiations are complete, the negotiator shall keep in the project file a signed statement for each parcel that:

1. The written agreement embodies all considerations agreed to by the negotiator and the property owner.
2. The negotiator understands that the acquired property is for use in connection with a federal aid transportation project.
3. The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future.
4. The agreement has been reached without any type of coercion.

**.99 Negotiations by Mail** – If no relocation is involved, the local agency may conduct ROW negotiations as follows:

49 CFR 24.5

1. Mail certified or registered first-class return mail, receipt requested to the owner the offer letter, a summary statement (explains nature of acquisition, conditions affecting remainder after construction, and other pertinent details which would have been explained in a face-to-face meeting with owner), the document of acquisition (deed, easement, or other document required for signature), property plat or sketch showing acquisition limits and effects on any remainder, and a copy of an acquisition brochure.
2. Within a reasonable period of time, typically about two weeks, make a follow-up phone call (documented in the diary). Answer questions or, if owner requests it, make an appointment for personal contact.
3. Follow normal procedures for further negotiations.

**Note:** If a property owner requests that the offer and supporting documents be emailed, it doesn’t relieve the local agency of the requirement to send these items via certified mail. However, email and delivery of items to the property owner in person is sufficient in eliminating the need to send via certified mail. Agent should obtain the signature of the property owner on the acknowledgement for delivery.

**.910 Acquisition of Contaminated Properties** – The local agency should take reasonable care to determine if properties needed for a project are contaminated. In the case where properties being acquired by the local agency will become part of a state highway, the local agency must involve WSDOT in the acquisition process as early as possible to ensure that the property will be in an acceptable condition for WSDOT to accept the transfer of ownership. The local agency should contact the LAC if they are considering acquisition of contaminated properties.

**.100 Global Settlements** – A global settlement is the combining of just compensation and relocation benefits into a lump sum settlement.

Because global settlements could compromise the entire project’s federal aid eligibility, **FHWA will not accept a project ROW certification if it includes a global settlement.** The local agency should contact the LAC if they are considering global settlements.

**.101 Functional Replacements** – When publicly-owned real property, including land and/or facilities, is to be acquired for a federally funded transportation project, in lieu of paying the fair market value for the real property interest, the local agency may provide compensation by replacing the publicly-owned real property with another facility which will provide equivalent utility.

The local agency must contact the LAC if they are considering a functional replacement. **FHWA will be involved in this process and will have final approval.**

23 CFR 710.105(b)  
23 CFR 710.501

**.102 Option to Purchase** – An Option to Purchase is a streamlining technique used to obtain a contractual right to acquire an interest in land. The use of an option to purchase can facilitate earlier acquisition of a property interest and, in some cases, may be structured to forestall development of the land until a clearly determined need of that property for the project has been established. This option also provides for the purchase of a right to temporarily control or restrict development of the property for a defined period. The use of options or purchase of temporary rights can save both time and costs for the project.

## 25.10 Donated Property

Section 25.94  
LPA-383  
Transportation Needs &  
You Brochure  
23 CFR 710.105(b)  
23 CFR 710.305(d)  
23 CFR 710.505  
23 CFR 710.507  
49 CFR 24.108  
RCW 8.26.180(10)  
WAC 468-100-106  
ROW Section 6-1.2.J

Donations of right of way can be accepted only after the owner (includes non-federal government agencies) has been fully informed by the local agency in writing of their rights to receive just compensation and has released (in writing) the local agency from its obligation to have the property appraised. A copy of the donation letter issued to the property owner informing them of their rights available and the donation letter acknowledgment signed by the owner must be included in each parcel file. It is acceptable for a local agency to have an informational discussion with a property owner prior to the initiation of negotiations and start of the appraisal process to see if a property owner is interested in donating property. This is acceptable as long as the local agency does not enter into negotiations or tell a property owner that the project will not move forward if they do not donate. Coercion is not allowed. If a local agency elects to have an informational meeting, they should provide an informal letter to the property owner explaining the donation process in general terms and provide the property owner with the Transportation Property Needs and You brochure explaining all of the compensation and benefits they are entitled to receive if they choose not to donate.

The donation clause must be included in the conveyance instrument. Section 323 of 23 USC provides for using the value of donated lands as part of the match against a local agency's contribution to the project. Certain conditions need be met:

- The credit may only be applied to a federal aid project if federal financial assistance was not used in any form to acquire the land. Credit to the matching share may not exceed the matching share of costs for that project and excess costs may not be utilized on other projects.
- The donation must be related to the project requiring the donated land.

Donations of privately-owned real estate made after April 2, 1987, and subsequent to NEPA clearance, are eligible for credit purposes. If a donation is accepted prior to the initiation of NEPA you will need to contact the LPE to determine if additional information is required. The value of publicly owned real estate donated after June 8, 1998, is eligible for match credit.

## 25.11 Administrative Settlements

49 CFR 24.102(i)  
ROW Section 6-12

The Uniform Act requires that “The head of a federal agency shall make every reasonable effort to expeditiously acquire real property interests by negotiation.” Negotiation implies an honest effort by the acquiring local agency to resolve differences with property owners. Additionally, the legislative history of the Uniform Act indicates that offers can be flexible, and there is no requirement that they reflect a “take it or leave it position.” Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by local agencies to expedite the acquisition of real property interests by agreements with owners and to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and Local Programs encourage local agencies to carefully consider and maximize use of administrative settlements in appropriate situations.

An administrative settlement or stipulated settlement is a negotiated settlement of a ROW acquisition case in which the local agency has administratively approved payment in excess of fair market value as shown on the local agency’s approved just compensation. Since relocation benefits by regulation cannot be waived, care should be taken not to include “relocation” in a blanket settlement (or global settlement) as the local agency may still be required to pay additional benefits as part of the relocation program (see Section 25.10 of this chapter for additional information).

- i. **Any administrative settlement which exceeds the fair market value must be documented, thoroughly justified, and the rationale set forth in writing in order to be eligible for federal aid funds.** The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from LAC.
- ii. The local agency shall document the following and make it available for review by LAC if it is not already part of the local agency’s Approved ROW Procedures:
  1. Identify the responsible official who has the authority to approve administrative settlements.
  2. Describe the procedure for handling administrative settlements.
- iii. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information. The settlement must include an analysis of the circumstances of each individual parcel and provide justification as to why the administrative settlement is in the public’s best interest. This documentation shall be completed and approved by the designated local agency official prior to payment(s) being made. The list below is a sample of items to be considered for an administrative settlement, and should **not** be used as a template.
  - The negotiator’s recorded information, including parcel details, estimates, bids, research information, all available appraisals, including the owner’s and the owner’s rationale for increased compensation. This is the most important part of the justification.

- Recent trends in court awards in cases involving similar acquisition and appraisal problems and the length of time it takes to get on the court's schedule.
- A statement can be made that condemnation will take additional time and money, but do not attach a dollar amount to the statement since it would be speculative. You should include items such as updating the appraisal for trial, pretrial, conference, staking of right of way, attorney's expenses, and witness fees (appraisers, consultants, etc.) will be additional incurred costs. You should not speculate about increased project costs resulting from a delay. You could try to quantify your administrative costs resulting from condemnation proceedings such as additional staff time.
- Describe the trial risks based on experience in the particular jurisdiction (e.g., county, city).

**Note:** Specific information about the parcel, including copies of appraisals, estimates, bids, research information, etc., **must** carry the most weight in the justification.

Administrative  
Settlement  
eLearning Course

For additional guidance, see Section 6-12 of the WSDOT *Right of Way Manual*. Local agency staff responsible for writing and approving Administrative Settlements should take the web-based training on how to write an effective administrative settlement. The course can be accessed by clicking from our Local Programs ROW Services Webpage using the following link: [www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm](http://www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm)

The course is estimated to take 1 to 2 hours to complete.

## 25.12 Relocation

49 CFR 24 Subpart C  
ROW Chapter 12

Local agencies that have trained staff and are approved by WSDOT through the procedures process to provide relocation services may do so. All other local agencies should contact their LAC for advice on contracting with private consultants. WSDOT does maintain a list of qualified relocation consultants through its Approved Consultant List; however, Local Programs is NOT currently requiring its use for relocation.

49 CFR 24.205(a)  
RCW 8.26.065(1)  
WAC 468-100-205(1)  
ROW Section 12-4.2

If a project includes relocation, the local agency must submit a relocation plan to the LAC for approval **prior** to starting ROW activities. If there are federal funds in the ROW Phase, the relocation plan must be approved before ROW funding can be authorized.

LPA Form 551

If a project relocation involves Personal Property Only (PPO), a modified Relocation Plan can be prepared and submitted for approval. The PPO Only Relocation Plan can be found under form LPA-551.

A Relocation Plan is not required on projects with only temporary relocations. However, the Certification would indicate "Non-Residential Relocation" with an explanation that all relocations were temporary.

To maintain a project's federal aid eligibility, a relocation plan needs to be submitted and approved prior to starting ROW activities, even if there are no federal funds in a ROW Phase. **This is also true in the case of early or advanced acquisition.**

You may contact a LAC for sample relocation plans or refer to *Right of Way Manual Chapter 12* for guidance. You may also contact the LAC for assistance in preparing relocation plans and carrying out relocation activities.

## 25.13 Right of Way Review and Certification

Spot check reviews are a proactive measure intended to lessen the risk that local agencies have compliance issues that could delay, stop ROW certification, or risk federal funding on current and/or future federal aid projects. Such risks are reduced by elevating the local agency's awareness of the LAC's project monitoring and by providing an early opportunity for the LAC to help the local agency identify problems before they become compliance issues. The LAC acquisition file review process is intended to ensure that the local agency has in fact completed the ROW acquisition process in compliance with federal regulations prior to making a certification to FHWA. The major difference between a spot check review and a certification review is that the project is not complete, so the focus is on the actions taken by the local agency up to the point of spot check review for compliance with the URA. The benefit of performing a spot check review, is regulatory compliance issues can often be caught early enough in the process that corrective actions may be resolved at the LAC level. Another benefit is the prevention of regulatory compliance issues during the certification review.

The LAC will perform spot check reviews on selected federal aid or federal aid eligible projects. The number of spot check reviews is dependent upon the scope of the project, complexity of acquisitions, the local agency's level of experience, and past performance. Spot check reviews may not be required on all projects but will lessen the risk of delays during ROW Certification. Additional information or parcel files may be requested by the LAC to ensure local agency compliance.

Prior to ROW certification, the local agency must ensure that the ROW plans were reviewed and approved as part of the design approval and are consistent with the PS&E (see [Appendix 43.62](#)).

[23 CFR 635.309\(c\)](#)

After ROW acquisition has been completed and about two months before the federal aid project is to be advertised for contract, the ROW certification on local agency letterhead must be submitted to the LPE. FHWA does not formally approve certifications on non-Interstate projects as they have delegated approval of all certificates 1, 2, and conditional 3s (time-based) and excepted parcel 3s on non-Interstate projects to WSDOT-Local Programs. Local Programs will allow local agencies, with proper justification and Local Programs approval, to extend the time-based cert 3 from bid opening to issuance of the Notice to Proceed (NTP) to the contractor. For all non-Interstate Certificates, the actual certification date for federal aid projects is the date on the Local Programs Certification Concurrence Letter sent to FHWA. Local Programs Concurrence is required prior to advertisement. For Interstate projects, FHWA will only approve Excepted Parcel Certificate 3s, and the actual certification date is the FHWA approval letter date. Please note the approval process for ROW certifications for local agencies is different from what appears in [Chapter 17](#) of the ROW Manual. ROW certification is a requirement for construction authorization. Since local agencies are expected to go to ad within six weeks of construction authorization (See [Section 22.1](#)), ROW certification should not occur too far in advance of the anticipated ad date.

The certification provides the following information and assurances.

1. Sufficient property rights to construct, operate, and maintain the facility as shown on PS&E has been acquired.
2. Right of way has been acquired in accordance with Uniform Act requirements.

3. Relocation assistance has been completed in accordance with the Uniform Act and meets the requirements of *Right of Way Manual Chapter 12*.
4. Properties acquired in advance of NEPA Clearance (including donations) shall be identified by parcel number. (This information could take the form of an address or a county tax ID if parcel numbers are not assigned.)

[23 CFR 635.309\(c\)\(1\)](#) For specifics on certification types, definition, procedures, requirements, and examples, see *Right of Way Manual Chapter 17*. **Note:** Under federal regulation, a Certificate 1 can be utilized by a local agency if the local agency obtains a negotiated or stipulated possession and use agreement. This is different from the procedures in *Chapter 17* of the ROW Manual. In addition, certificate 2s must be updated to a certificate 1 for the local agency to have all the necessary rights to operate and maintain the facility.

If additional property rights are needed after the certification of the project, any subsequent acquisition must be certified. Please note provisions should be made to ensure the contractor does not enter onto any property until the local agency has legal and physical possession, and the project has been re-certified.

For Design Build requirements and documentation, please see Chapter 14 of the WSDOT *Right of Way Manual*.

## 25.14 ROW Certification vs URA Compliance

Approved ROW Procedures apply to all federal aid projects regardless of whether the project is to be certified. For example, if the condition of the local agency's Approved ROW Procedures requires the LAC to review parcel files prior to making first offers, the local agency must comply (see Section 25.2 of this chapter for additional information).

[2 CFR 200](#) Based on changes to federal requirements, specifically the implementation of [2 CFR 200](#), in order for local agencies to maintain federal eligibility of federal funds utilized in a project prior to construction, certain federal requirements must be met even though the project is being constructed using local funds. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) is mandatory.

RW Documentation Requirements Based on Funding Source When a Project has RW Acquisition	ROW Certificate	URA Compliance
FHWA Funds in PE Phase		X
FHWA Funds in RW Phase	X	
FWHA Funds in CN Phase	X	
100% Local Funds Only – Federalized by NEPA		X
100% Local Funds Only – Project involves Interstate		X

### ROW Certificate – Construction Authorization (prior to advertising for construction bids)

[23 CFR 635.309\(b\)](#)  
[23 CFR 635.309\(c\)](#)  
[49 CFR 24.101](#)  
[ROW Chapter 17](#)

Per [23 CFR 635.309\(b\)](#) and [\(c\)](#), the ROW certification procedure for federally funded transportation projects identifies the acquisition status of necessary ROW for the purpose of advancing a project to construction. This regulation is specific to construction authorization only and is the only time that a ROW certification is issued by Local Programs/FHWA. Title 23 requires that acquiring local agencies comply with [49 CFR Part 24](#). The requirements of [49 CFR 24.101](#) apply to any acquisition of real property for programs or projects where there is federal funding in any part of project

costs. The phase program or project means any activity or series of activities undertaken by a Federal Agency or with federal funding received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines. The certification process outlined in [Chapter 17](#) of the [ROW Manual](#) must be followed if federal funds are planned in the Construction or ROW Phase of the project.

#### URA Compliance – Non-Construction Authorization

If federal funds of **any** amount are used in the PE phase the project is required to follow the URA. This also applies to projects which have been federalized by NEPA or involve Interstate when local funds are used. For example, a project that has been split into two or more separate projects but is covered by one NEPA document is required to follow the URA when any portion of the overall project involves federal funding.

[49 CFR 24.101](#)

Title 23 requires that acquiring local agencies comply with [49 CFR Part 24](#). The requirements of [49 CFR 24.101](#) apply to any acquisition of real property for programs or projects where there is Federal financial assistance in any part of project costs. The phase program or project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

In addition to the URA, the local agency must adhere to additional ROW requirements listed in [23 CFR 710](#), environmental requirements, Buy America, and Title VI requirements.

#### URA Compliance is required if:

- Federal funds in the PE Phase only
- Locally funded but federalized by NEPA
- Locally funded but involves interstate

#### ROW Project Compliance Reviews (CR):

- To be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines; WSDOT may perform reviews on selected local agency projects that are locally funded but involve interstate, locally funded but federalized by NEPA, or federal funds are only in the PE phase.

**Note:** If a local agency later seeks federal funding in the ROW or CN phase a ROW certification will be required.

## 25.15 Property Management

[23 CFR 710.403\(e\)](#)

If using FHWA funding, the acquiring local agency shall establish property management policies and procedures that will assure control and administration of ROW, excess lands, and improvements acquired. FHWA does not prescribe how local agencies track income or expenditures from the sale or lease of excess real property acquired with federal funds. However, the federal share of income derived from the sale or lease of property that was acquired with federal fund can **ONLY** be used for activities permitted under Title 23.

In an audit, the local agency would be expected to produce documentation to show they are in compliance with the regulations. These procedures shall establish:

- i. Property records showing:
  1. An inventory of all improvements acquired as a part of the ROW.
  2. An accounting of excess properties acquired with FHWA funding.

3. An accounting of the property management expenses, and the rental payments received.
  4. An accounting of the disposition of improvements and the recovery payments received.
- ii. Methods for accomplishing the clearing of ROW when such clearance is performed separately from the control for the physical construction of the project.
  - iii. The methods for employing private firms or public agencies for the management of real property interests.
  - iv. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit. The local agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property. Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with federal funding.

[23 CFR 710.403\(e\)](#)  
[ROW Chapter 11](#)

If the local agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the local agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

[23 CFR 710.409](#)  
[LPA-407](#)

If a parcel acquired for ROW with federal funding, including uneconomic remnants, is declared excess, by a local agency it may dispose of it (sale, lease, easement, etc.) at fair market value only with the approval of Local Programs acting on behalf of FHWA. If the property was acquired with local funds only, approval from Local Programs is not required. To request approval, the local agency must complete and submit form [LPA-407](#). Once approved, the local agency will receive a written notification from the Local Programs Right of Way Manager that they can move forward with their disposal process.

[23 CFR 710.403\(e\)](#)

If the disposal is to a private party, the local agency must determine fair market value through the valuation process. FHWA will either be credited for its share of the net proceeds of the sale or lease payment, or the local agency may use the federal share of the net proceeds for activities eligible for funding under Title 23 of the United States Code for transportation purposes. A disposal may be made to a governmental agency for a continued public roadway use without charge, and no credit to FHWA is required; however, a reversionary clause is required in the deed per [23 CFR 710.403](#).

FHWA approval is required for disposal (sale, lease, easement, etc.) of any rights of way or uneconomic remnants sold at less than fair market value. The local agency will need to complete and submit LPA-407b FHWA will review the write-up to ensure that the less than market value is justified under one of the following criteria:

[23 CFR Part 645](#)  
[23 CFR Part 646](#)

1. Is in the overall public interest based on social, environmental, or economic benefits, or is for a non-proprietary governmental use.
2. Use by public utilities in accordance with 23 CFR part 645.
3. Use by railroads in accordance with 23 CFR part 646.
4. Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.

[23 CFR Part 652](#)

23 U.S.C 142 (f)

5. Uses under 23 U.S.C. 142 (f), Public Transportation Lands and ROWs of a highway constructed using Federal aid highway funds may be made available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

23 CFR 710.703

6. Use for other transportation projects eligible for assistance under title 23 of the United State Code, provided that a concession agreement, as defined in 710.703, shall not constitute a transportation project exempt from fair market value requirements.

Upon FHWA approval, the local agency will include a reversion clause in the deed.

23 CFR 710.105(b)

Federal regulations provide for the use of airspace for non-transportation purposes above, at, or below the highway's established gradeline, lying within the approved ROW limits. Allowing a ROW Use Agreement for recreational activities could result in the parcel becoming a protected 4(f) resource; costs associated with mitigating impacts to these resources will not be eligible for federal aid participation. The airspace may be put to various public and private uses, such as parks, play areas, parking, trails, etc., if it does not interfere with the roadway operations and does not create a safety hazard to the traveling public. Any such lease will need to describe what activities are allowed on the land.

Where an acquiring local agency has acquired sufficient legal right, title, and interest in the ROW of a highway on a federal aid system to permit the use of certain airspace, the right to temporary or permanent occupancy or use of such airspace may be granted by the state subject to prior FHWA approval. If the use of airspace is contemplated, the LAC should be contacted for more detailed policies and procedures that must be considered.

Upon disposal of ROW by deed, license, lease, permit, easement or similar instrument, the local agency shall include the required Title VI lease/deed provisions, as outlined in [Chapter 28](#) (Exhibit 2C).

23 CFR 1.23(b)  
LPA-407

On federally funded projects, all known encroachments, within the project limits, MUST be addressed. This includes encroachments located outside of the construction area but within the right of way of the project.

The options for curing encroachments are as follows:

- Removal of the encroachment.
- Leasing the area to the entity encroaching and charging market rent (form LPA-407 must be completed).
  - In certain situations, a mutual benefits lease will be allowed. Please discuss with your LAC if a mutual benefits lease is being considered.
- Disposing of the encroachment (form LPA-407 must be completed).

## 25.16 Diaries

49 CFR 24.9WAC 468-100-009ROW Chapters 3, 6, 8, 9,  
12, and 13

**.161 General** – The diary (also can be referred to as a negotiator's log) is one of the most important elements of an acquisition or relocation file. It is crucial that it be accurate and complete, for it is frequently the only document in a file that explains how a difficult or complex real property interest transaction proceeded. Diaries are also often the only written documentation that is available to show that ROW transactions were done in compliance with the Uniform Act and [49 CFR Part 24](#). Therefore, diaries need to provide a complete record of the transaction. They need to be well organized and factual, and

they should be written to be understandable by someone unfamiliar with the transaction. Also, they should reference any appropriate documents in the file such as brochures provided to property owners or estimates obtained to support an administrative record.

Each diary entry shall clearly show the month, day, and year of the contact; the name of the individual who made such a contact; how the contact was made (i.e., in person or by phone) and the name(s) of the individual(s) contacted. Each diary entry shall provide a summary of the contact. It is not sufficient to enter a simple posting of events as they occurred. For example, merely recording that the agent presented an offer or that “discussions were held” on a given date is not sufficient. The entry should indicate, at the least, where the event took place, what questions the owner asked and what answers the agent supplied. These elements are at the very heart of the negotiation process, and when an acquisition becomes difficult or negotiations break down, a well written diary may be the most important document protecting the acquiring agency’s interests.

Multiple contacts should not be combined into one diary entry. These entries need to be made as soon as possible to ensure accuracy. Upon completion of activity entry, the specialist should initial each entry. Electronic diaries are recommended. Once a diary is complete, it must be dated and signed at the end.

Diary entries need to be limited to a recitation of the facts because the diary is subject to the rights of discovery by all parties in any court proceeding or appeal case. **All persons** who participate in negotiations with a property owner to acquire real property interests, whether a staff or consultant agent/negotiator, a member of an agency’s administrative or executive branch, or an agency’s attorney, shall maintain an appropriate diary or log of such activities and discussions with the property owner.

A collection of emails pertaining to the acquisition of a parcel does not constitute a diary. Information taken directly from email correspondence often contributes to a good diary, but care should be taken to exclude extraneous information.

If during the LAC Certification Review, it becomes necessary for a Diary to be corrected, amended, or for additional information to be added this must be accomplished through a Supplemental Diary. The original Diary shall NOT be altered to correct erroneous or add missing information.

LPA Form -552

On projects with relocation, a local agency or their consultant may use Relocation Diary (LPA-552). This diary, for relocation only, provides an easy tracking of notification requirements, activity log, and payments made to displaced persons.

## 25.17 Oversight of Consultants Hired to Perform ROW Activities

[23 CFR 710.201\(a\)](#)  
[23 CFR 710.201\(b\)](#)  
[23 CFR 710.201\(h\)](#)  
[LAG 25.2](#)

The local agency (typically the person approved to perform the “Program Administration” function on the Approved ROW Procedures) is responsible for overseeing the delivery of the ROW Program on federal aid roadway projects for their local agency. The local agency must ensure ROW activities are carried out in compliance with federal and state laws, regulations, policies and procedures; therefore, the local agency must be involved in all conversations between the LAC and the consultant. Local Programs’ obligation is to the project owner, not the consultant so any guidance provided will be to the local agency.

Oversight of ROW consultants includes, but may not be limited to:

- Early involvement with LAC
- Use of consultant contract template approved by Local Programs;
- Management of scope of work;
- Management of ROW contracts;
- Management of and QA/QC deliverables (ROW plans, ROWFEs, relocation plans, administrative settlement justifications, recommendations/requests for payment, files, etc.);
- Review and approval of actions and decisions recommended by consultants; and
- Overall responsibility for decisions that are outside the purview of consultant functions.

[LAG Chapter 31](#)

The following checklists are available as a tool for the local agency to use in the oversight of the consultant's work product.

- LPA020 – Project Oversight Review Checklist
- LPA021 – Parcel Oversight Review Checklist
- LPA022 – Relocation Oversight Review Checklist

## 25.18 ROW Training

[LP ROW Training & Education Website](#)

The LAC provides/facilitates annual structured training open to all LPAs and consultants that address the requirements for a federal aid project. If requested or the LAC determines the need, the LAC provides one-on-one or group project-specific training to LPAs on the URA and the ROW process on federal aid projects and/or any projects wishing to preserve federal aid eligibility. This training should be tailored for the project according to the local agency's approved procedures and the ROW acquisitions needed for the project. For instance, if the local agency is using consultants, the training should be for the local agency's management approval activities (e.g., agency approval of just compensation, agency approval of administrative settlements, going to condemnation).

## 25.19 Document Retention

[23 CFR 710.201\(e\)](#)

The acquiring local agency shall maintain adequate records of its acquisition and property management activities. Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with [23 CFR 710.201\(e\)](#) and 49 CFR Part 24. These records shall be retained at least three years after construction is authorized.

If a local agency acquires a property or property interests under Early Acquisition procedures and later wishes to incorporate the property into a federally funded project, the local agency will need to maintain records for that parcel, so they do not jeopardize federal participation on the project or their ability to incorporate the property into their project.

## 25.20 Appendices

**Cautionary Note:** Please contact your LAC prior to modifying any templates in the appendices.

<a href="#">25.170</a>	Vacant (see form LPA-006)
<a href="#">25.171</a>	FHWA-Incentive Programs Policy and Guidance
<a href="#">25.172</a>	Sample Neighborhood Description
<a href="#">25.173</a>	Vacant
<a href="#">25.174</a>	Determining Whether Land or Property Rights or Interest are Needed
<a href="#">25.175</a>	Determining the Type of Property Rights Necessary
<a href="#">25.176</a>	Vacant (see form LPA-008)
<a href="#">25.177</a>	FHWA Early/Advanced Acquisition Options and Requirements Chart
<a href="#">25.178</a>	Vacant (see form LPA-007)
<a href="#">25.179</a>	Acquisition Process Flowchart
<a href="#">25.180</a>	Vacant
<a href="#">25.180a</a>	Vacant
<a href="#">25.181</a>	Vacant
<a href="#">25.181a</a>	Vacant
<a href="#">25.182</a>	Vacant
<a href="#">25.182a</a>	Vacant
<a href="#">43.62</a>	Example of Design Approval Document (See Chapter 43 of the LAG)

## 25.21 Local Programs Right of Way Services Website

[Right of Way Services Home](#)

- Laws & Regulations
- Manuals & Resources
- Clarification & Guidance
- ROW Training & Education
- LPA Forms & Brochures

**Appendix 25.170 Vacant (see form LPA-006)**

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# Appendix 25.171 FHWA-Incentive Programs Policy and Guidance

Planning | Environment | Real Estate

HEP | Events | Guidance | Publications | Glossary | Awards | Contacts



## Subject: Policy and Guidance for Acquisition and/or Relocation Incentive Programs-Voluntary

**From:**  
ORIGINAL SIGNED BY:  
Susan Lauffer, Director  
Office of Real Estate Services

**Date:** April 26, 2006

**Reply to:** HEPR

**To:**  
Division Administrators  
ATTN: Division Realty Professional.

The purpose of this memorandum is to provide guidance for evaluating, approving and implementing right-of-way acquisition and relocation incentive programs for transportation projects using Federal-aid funding in any portion of the project. Use of an incentive payment program is voluntary on the part of the State DOT and the Federal Highway Administration (FHWA).

### Policy

The FHWA, Office of Real Estate Services has determined that the FHWA may participate in right-of-way acquisition and/or relocation incentive payments made under a FHWA approved plan or program. Incentive payments are payments that are over and above the just compensation offer or computed relocation benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Recent studies on the use of incentive payments on transportation projects demonstrate that they can be effective in decreasing the time needed to acquire and clear needed rights-of-way. The use of incentive payments may be project or program specific. The use of acquisition and/or relocation incentive payments is voluntary on the part of the State and the FHWA.

The authority for the FHWA to participate in incentive payments is found in 23 CFR 710.203(b)(2)(ii) which allows Federal participation in relocation assistance and payments provided under the law of the State that may exceed the requirements of 49 CFR Part 24. The FHWA has the general authority to participate in the costs of construction that includes both costs of right-of-way acquisition and relocation assistance. (See 23 U.S.C. §101(a)(3)). An incentive payment could be included as a cost of construction when such payments are used on critical projects, or phases of projects; expedite the completion of a project; and result in significant cost savings. The use of incentive payments for right-of-way acquisition and relocation is analogous to the use of incentive/disincentive provisions for early completion in contracts for construction of Federal-aid projects (See 23 CFR 635.127(d)).

This policy is consistent with the intent of the Uniform Act in that it encourages the expeditious acquisition of real property. Language in the implementing regulation focuses on the assurance that property owners and displaced persons receive at least the level of benefits to which they are entitled.

### General Guidance

The use of acquisition and/or relocation incentive payments is voluntary on the part of the States and FHWA. Should a State elect to utilize incentive payments, it must do so in accordance with the following.

Prior to implementing a right-of-way incentive payment program the State shall:

1. Assure that use of incentive payments is permissible under State law.
2. Assure availability of decent, safe, and sanitary comparable replacement dwelling units.
3. Identify market trends such as escalating property values and increasing right-of-way costs.
4. Determine the propriety of using acquisition and/or relocation incentive payments.
5. Make a public interest finding that clearly demonstrates that the use of incentive payments is cost effective (for example: a comparison of the anticipated cost of the incentive payments to project expenses that would be saved or avoided through the utilization of incentive payments). This can include consideration of such factors as enhanced safety and other benefits to the traveling public created by having a transportation facility in place and operational at an early date.

### Implementation

The State's incentive payment program shall be submitted in writing to the FHWA Division Administrator as a proposed change to the State's Right-of-Way manual. **The Division Administrator will evaluate the merits of the proposal and determine whether the submission represents an appropriate, cost effective use of Federal funds and otherwise meets the documentation requirements of this guidance.** The Division may notify the State that its proposed incentive payment program is approved either on a trial basis or as a permanent addition to the State's Right-of-Way Manual. Alternatively, where warranted, the Division may temporarily withhold approval and recommend revisions to the State's proposal in keeping with this guidance.

The State's determination that the use of incentive payments on a particular project is warranted must address those factors included in the General Guidance section of this memorandum and include the following:

1. An identification and discussion of factors to be considered in justification of the use of incentive payments on a particular project.
2. Description of how payment amounts will be determined, including formula(s) for their computation, payment maximums (caps) and incentive offer expiration limits (for example: Accept the offer within 2 weeks and the incentive is X, accept the offer within 4 weeks and the incentive is X times ½).
3. Description of safeguards in place to eliminate attempts to coerce property owners/occupants.
4. Description of actions to monitor implementation.
5. Identification of those specific performance measures to be used upon project completion to evaluate the effectiveness of incentive payments.

**The use of incentive payments must not be allowed as a substitute for appropriate project planning and development (including the scheduling of adequate right-of-way lead time).**

### Guidance on Acquisition Incentive Programs

The State's determination that the use of acquisition incentive payments on a particular project is warranted must result from a **rigorous examination** of the relevant factors involved, including a discussion explaining why traditional methods will not meet project needs.

Upon the FHWA Division Office's approval of a State's Acquisition Incentive program (including a finding that it is in the public interest), a State may voluntarily choose to make acquisition incentive offers on a project. The State must present such offers to all property owners on the project in conjunction with just compensation offers. Property owners must be given reasonable time to consider and act on the just compensation offers. A minimum of 30 days is suggested, in line with the provisions concerning basic negotiation procedures set out in 49 CFR Part 24.102(f) and Appendix A.

The proposed acquisition incentive payment plan must ensure that the agency will not take any action, coercive in nature, in order to compel an agreement on the price to be paid for the property.

Application of acquisition incentive payments on a project does not preclude the use of administrative settlements. Administrative settlements may be made and should be documented separately on merit. Administrative settlements based on merit are not incentive payments. If a property owner is to receive payment for both an administrative settlement and an acquisition incentive, each should be independently supported and documented.

Receipt of an acquisition incentive payment does not affect an owner's entitlement to relocation payments and benefits.

#### Guidance on Relocation Incentive Programs

Upon the FHWA Division Office's approval of a State's Relocation Incentive program (including a finding that it is in the public interest), a State may voluntarily choose to make relocation incentive offers on a project. A relocation incentive payment may be provided in addition to all traditional relocation payments to which the displacee is entitled. Any acquisition incentive payment made to the displacee shall not be considered when calculating the traditional relocation payment.

The use of a relocation incentive program is voluntary. If a State chooses to use residential relocation incentive offers in order to accelerate relocations and promote early project clearance, the program must be made available to all residential displacees on the project. Each displacee must be given similar amounts of time to act on relocation incentive offers. A displacee may elect to accept the State's relocation incentive offer and voluntarily vacate his/her dwelling. Alternatively, he/she retains the right to decline the incentive payment and continue in occupancy in accordance with the 90 day notice and provisions of 49 CFR Part 24.203 and 204.

Because successful business relocations take substantial planning it may be difficult to assure consistent treatment, however, if a project has many similar business properties, a relocation incentive program may be considered.

#### Oversight

The FHWA Division Office should review the State's approved Incentive Payments program, at least annually for the first two years following authorization (and as warranted thereafter) to insure that it is being implemented in a manner consistent with this guidance.

#### Background

The Office of Real Estate Services and several Division Offices worked with State DOTs to design, approve and implement pilot programs utilizing acquisition and relocation incentive payments. The Office of Real Estate Services and the Divisions have found these payments to be very effective in decreasing the time needed to acquire and clear the rights-of-way needed for Federal-aid transportation projects. For example, FHWA approved a successful pilot program on the Woodrow Wilson Bridge that utilized relocation incentive payments to encourage tenants to relocate quickly. Pilot summaries can be found on the Office of Real Estate Services website, [https://www.fhwa.dot.gov/real\\_estate/right-of-way/utility\\_rights-of-way/pilotsum04.cfm](https://www.fhwa.dot.gov/real_estate/right-of-way/utility_rights-of-way/pilotsum04.cfm).

The pilots demonstrated that benefits from the use of incentive payments include:

- Significant reduction in time required to acquire and clear right-of-way.
- Reduction in right-of-way administration, acquisition, legal and court costs.
- Significant savings in project construction costs by keeping the project on, or ahead of, schedule.
- Personnel hours that can be re-directed to other projects or efforts.
- Significant savings and benefits to the traveling public, including safety, when facilities are in place, on or ahead of schedule, providing higher levels of service, reduced travel time for delivery of goods and services, and reduced commute time.



## **Appendix 25.172 Sample Neighborhood Description**

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### **SAMPLE NEIGHBORHOOD DESCRIPTION FOR PROJECT: YAKIMA COUNTY: SUNSET HILL ROAD WIDENING No. 311**

Date: October 21, 1986

The project vicinity is rural Yakima County lying about 25 miles (40 km) westerly of Yakima city limits in an area commonly called Sunset Hill. The county road connecting the area to the city of Yakima is the Sunset Hill Road, which is currently a two-lane arterial. The area is primarily devoted to agricultural uses, such as cattle raising and forest products, but also is developing with single family lot subdivisions and ranchette residential uses. This part of the county is becoming a bedroom area for commuters to Yakima and several commercial uses have developed along the Sunset Hill Road. Zoning here is Agricultural (AG) minimum 20 acres (8 ha), with areas bordering the Sunset Hill Road zoned Single Family Residential (SR 13), minimum 13,000 square feet (1210 square meters) per site, and a strip along said arterial between Henderson Road and White Bluff Boulevard being zoned for commercial and/or office uses (CPD), with a minimum area required of 15,000 square feet (1 395 square meters) per site. Utilities available along Sunset Hill Road are Puget Power, West Yakima Water (Community System), PNB telephone, and sewers are by individual septic systems (soils percolate adequately). There appears to be minimal demand for new commercial development along Sunset Hill Road.

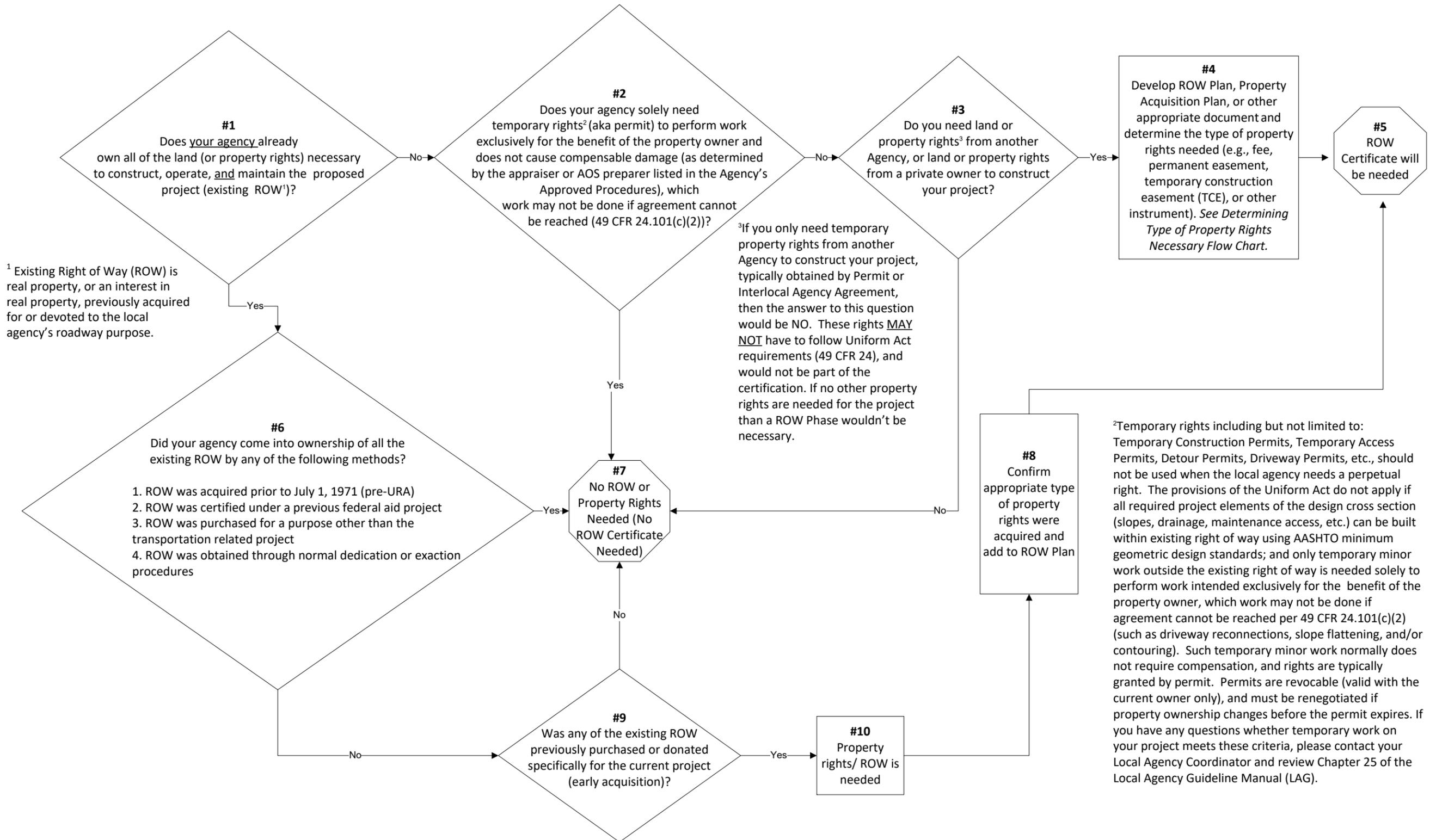
Traffic along the Sunset Hill Road is heavy during the rush hour. Hence, the proposed project is to widen this arterial to four traffic lanes with a dual-left turn lane in the center. A traffic light is planned at the intersection of Henderson Road. The project will be at present grade and will include curbing. Access points will be controlled at existing locations. The right of way needed is a 20-foot (6-meter) strip of fee land from each side of Sunset Hill Road between Henderson Road and White Bluff Boulevard.

Eleven parcels will be affected: seven homes, a tree farm (2,000 acres (810 ha) in size), one convenience store, a small wholesale lumber mill, and a new professional (medical) office complex. One of the residences is partially in the take and possibly will require relocating the owner-occupant family. A machine shed on the lumber mill site is partially in the take and it contains tenant-owned equipment. The convenience store's gasoline dispensers and canopy are partially in the take. About 10 of the 40 parking stalls for the medical office are in the taking, possibly resulting in loss of one tenant. The project should generally benefit the neighborhood by improving traffic flow during the rush hour. The neighborhood should continue to moderately change from agricultural to single family uses, with no major zoning changes immediately foreseeable, since neighborhood commercial services should remain adequate for the next five or more years.



# Appendix 25.174 Determining Whether Land or Property Rights or Interest are Needed

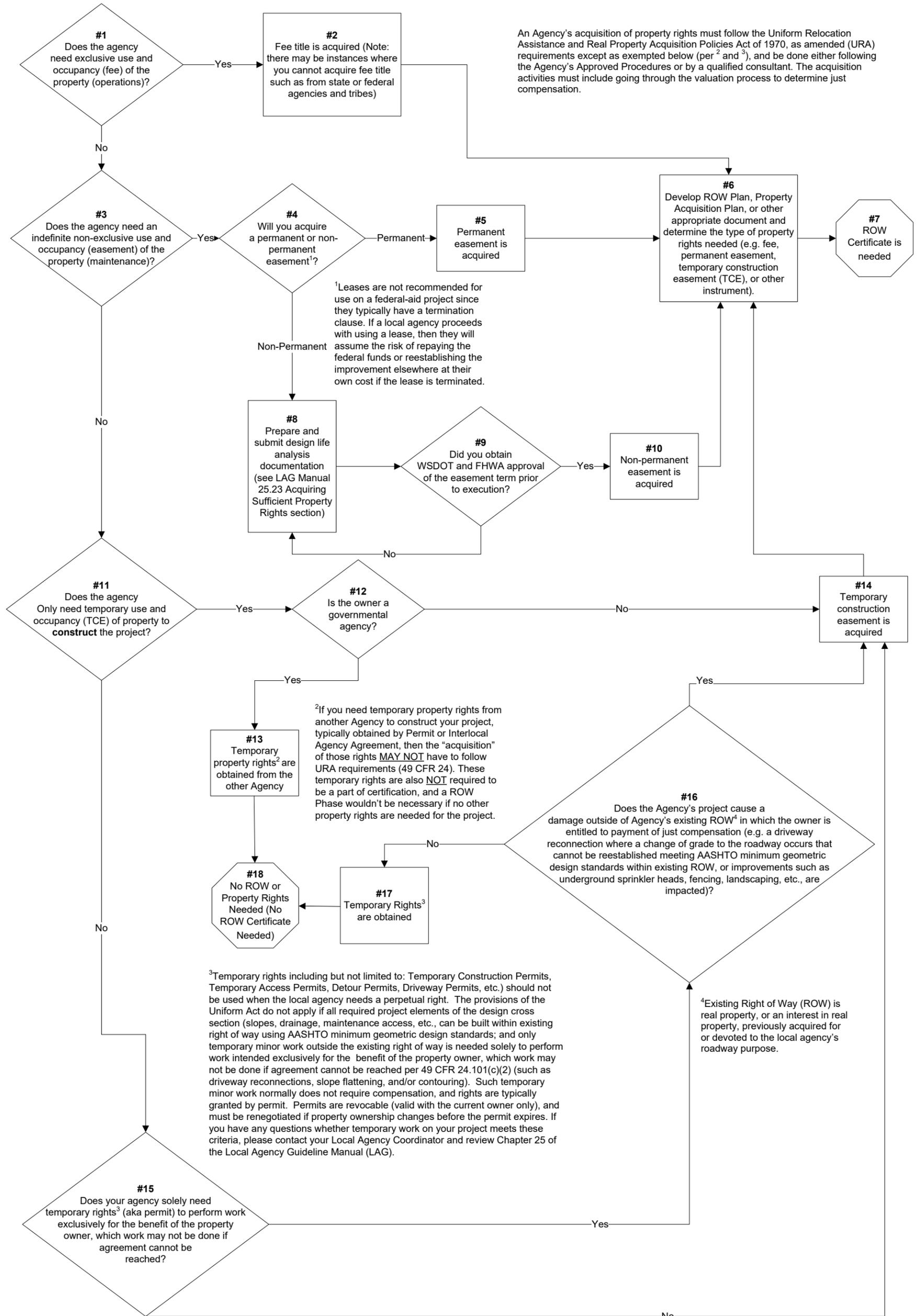
## Determining Whether Land or Property Rights or Interest are Needed



# Appendix 25.175 Determining the Type of Property Rights Necessary

## Determining the Type of Property Rights Necessary

You may have a parcel or multiple parcels that fits more than one of these situations.



**Appendix 25.176 Vacant (see form LPA-008)**

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## Appendix 25.177 FHWA Early/Advanced Acquisition Options and Requirements Chart

### Early Acquisition (EA) Options & Requirements (23 CFR 710.501)

Acquiring ROW Options	Notify LP ROW Prior to Starting Early Acquisition	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/Credits	Comply w/ Federal Law*	Eminent Domain Allowed (condemnation)	Requirements
<b>1) Local Agency Funded-NO Matching Credit or Reimbursement</b>  23 CFR 710.501(b) 23 USC 108(c)(1)	NO  However, local agency may choose to engage with their Local Agency Coordinator during acquisition to maintain eligibility for future federally funding on any part of their transportation project.	NO	NO  4F properties are <b>NOT</b> allowed if the local agency wishes to maintain eligibility for future federal funding on any part of their transportation project.	When legally permissible by State Law. Acquisition <b>MUST</b> be completed prior to NEPA approval to qualify as early acquisition.	Not Applicable-There is no federal reimbursement or credit under this option.	YES  In order to maintain federal eligibility the acquisition & relocation must comply with the URA.	YES  However, local agency would need to prove public use and necessity; which could be difficult if alternate project designs are available.	A local agency may carry out early acquisition entirely at its expense. However, a local agency may maintain eligibility for future federal funding on a project by following the requirements of 23 CFR 710.501(c)(1)-(5): <ul style="list-style-type: none"> <li>Property lawfully obtained by the local agency;</li> <li>Not 4F property;</li> <li>Acquisitions and relocations comply with the Uniform Act;</li> <li>Local agency complies with Title VI of the Civil Rights Act;</li> <li>FHWA concurs with the local agency that the Early Acquisition did not influence the NEPA decision for the proposed project including:                             <ul style="list-style-type: none"> <li>The need to construct,</li> <li>The consideration of alternatives, or</li> <li>The selection of design or location.</li> </ul> </li> </ul>
<b>2) Local Agency Funded WITH Matching Credit</b>  23 CFR 710.501(c)	YES  Local agency will need to notify and work with their Local Agency Coordinator for a pre-certification compliance.  Local Agency will need to complete Early Acquisition 2 Checklist (form LPA-318).	NO	NO  4F properties are <b>NOT</b> allowed.	When legally permissible by State law. Acquisition <b>MUST</b> be completed prior to NEPA approval to qualify for future credit.	Request for credit occurs after the property being utilized is incorporated into a federally funded (Title 23) project.  The credit amount is limited to the acquisition cost of the property only and excludes appraisal fees, relocation costs, and any other costs incurred beyond the acquisition price itself.  The credit will be applied against the project's non-federal share.	YES  In order to maintain federal eligibility the acquisition & relocation must comply with the URA.	YES  However, local agency would need to prove public use and necessity ; which could be difficult if alternate project designs are available.	<ul style="list-style-type: none"> <li>Property lawfully obtained by the local agency;</li> <li>Not 4F property;</li> <li>Acquisitions and relocations comply with the Uniform Act;</li> <li>Local agency complies with Title VI of the Civil Rights Act;</li> <li>FHWA concurs with the local agency that the Early Acquisition did not influence the NEPA decision for the proposed project including:                             <ul style="list-style-type: none"> <li>The need to construct,</li> <li>The consideration of alternatives, or</li> <li>The selection of design or location;</li> </ul> </li> <li>Property is incorporated in the project to which the credit will be applied; and</li> <li>The amount of the credit may be current fair market value <u>or</u> historic acquisition cost to acquire; however, this credit must be applied consistently within the project. 23 U.S.C. 323(b)(2).</li> </ul>
<b>3) Local Agency Funded WITH Reimbursement (to utilize the project must have a federal-funded ROW Phase)</b>  23 CFR 710.501(d) 23 USC 108©	YES  Local agency will need to notify and work with their Local Agency Coordinator for a pre-certification compliance.  Local Agency will need to complete Early Acquisition 3 Checklist (form LPA-319).	NO	NO  4F properties are <b>NOT</b> allowed.	When legally permissible by State law. Acquisition <b>MUST</b> be completed prior to NEPA approval to qualify for future reimbursement.	Request for reimbursement is after NEPA is completed and real property interests are incorporated into a federally funded (Title 23) project and all applicable requirements are met.  The reimbursement will be deducted from the project's federal funding and cannot exceed the Federal pro rata share. No additional funds for the early acquisition will be allocated.	YES  In order to maintain federal eligibility the acquisition & relocation must comply with the URA.	YES  However, local agency would need to prove public use and necessity ; which could be difficult if alternate project designs are available.	<ul style="list-style-type: none"> <li>Property lawfully obtained by the local agency;</li> <li>Not 4F property;</li> <li>Acquisitions and relocations comply with the Uniform Act;</li> <li>Local agency complies with Title VI of the Civil Rights Act;</li> <li>FHWA concurs with the local agency that the Early Acquisition did not influence the NEPA decision for the proposed project including:                             <ul style="list-style-type: none"> <li>The need to construct,</li> <li>The consideration of alternatives, or</li> <li>The selection of design or location;</li> </ul> </li> <li>State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State transportation planning process; <b>(Approved through Washington's Growth Management Act (GMA))</b></li> <li>The local agency selects the alternative for which the real property interest is acquired pursuant to NEPA;</li> <li>Prior to approval for Federal participation, NEPA is completed; and</li> <li>Reimbursement is based on the usual costs to acquire—23 CFR 710.203(b)(1).</li> </ul>

**Early Acquisition (EA) Options & Requirements**  
(23 CFR 710.501)

Acquiring ROW Options	Notify LP ROW Prior to Starting Early Acquisition	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/Credits	Comply w/ Federal Law*	Eminent Domain Allowed (condemnation)	Requirements
<p><b>4) Federally Funded (Stand-alone Project)</b></p> <p>23 CFR 710.501(e) 23 USC 108(d)</p>	<p align="center">YES</p> <p>Local agency will need to notify and work with their Local Agency Coordinator following the standard project spot check and certification review.</p>	<p align="center">YES</p> <p>NEPA decision is required for the early acquisition, stand- alone project only (not the transportation project). (Usually a CE)</p>	<p align="center">NO</p> <p>4F properties are NOT allowed.</p>	<p>After NEPA is complete for the Early Acquisition Project.</p>	<p>This is a reimbursable, stand-alone, Federal-aid Project based on FHWA authorization to proceed with acquisition</p>	<p align="center">YES</p> <p>In order to maintain federal eligibility the acquisition &amp; relocation must comply with the URA.</p>	<p align="center">NO</p>	<ul style="list-style-type: none"> <li>• Local agency certifies and FHWA concurs that the following requirements have been met: <ul style="list-style-type: none"> <li>- State has authority to acquire under State law;</li> <li>- Is for a Title 23 eligible transportation project and does not involve 4F properties;</li> <li>- Will not cause significant adverse environmental impacts as a result of the Early Acquisition project or from cumulative effects of multiple Early Acquisition projects;</li> <li>- Will not limit the choice or otherwise influence the NEPA decision of FHWA;</li> <li>- Will not prevent the lead agency from making an impartial decision as to alternatives;</li> <li>- Is consistent with the State transportation planning process under 23 U.S.C. 135;</li> <li>- Complies with other applicable Federal laws (including regulations);</li> <li>- Will be acquired through negotiation, without the threat or use of condemnation (eminent domain)</li> <li>- Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act;</li> <li>- The Early Acquisition project is in the Transportation Improvement Plan; and</li> <li>- NEPA for the Early Acquisition project is complete and approved by FHWA.</li> </ul> </li> <li>• Real property interests acquired cannot be developed in anticipation of the transportation project until a NEPA decision for that transportation project has been completed. No development activity related to demolition, site preparation, or construction that is not necessary to protect health or safety may be undertaken.</li> <li>• If reimbursement is made and the real property interests are not incorporated in a project within 20 years, FHWA must offset the amount against Federal-aid funds apportioned to the State.</li> <li>• Eligibility for Relocation Assistance—a person is considered displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest. Options to purchase and similar agreements do not create an immediate commitment and do not create eligibility.</li> </ul> <p><b>Note:</b> The “Option” to purchase the property at a later day allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings.</p>

**Concurrent Early Acquisition**

If early acquisition is after the start of NEPA but prior to its approval the same 4 Options outlined above may be utilized by the local agency with less risk since the property being acquired is already being evaluated under the overall NEPA report.

**Advance Acquisition (AA) Options & Requirements**  
(23 CFR 710.503)

Acquiring ROW Options	Notify LP ROW Prior to Starting Early Acquisition	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Credit or Reimbursement	Comply w/ Federal Law*	Eminent Domain Allowed (condemnation)	Requirements
<b>1) Protective Buying</b>  23 CFR 710.503	YES  Local agency will need to notify and work with their Local Agency Coordinator for a pre-certification compliance. FHWA ROW approval needed for protective buying.	YES**  Typically a Category Exclusion (CE). See 23 CFR 771.117(d) (12)	YES  If consultation is completed on 4F.	Usually during the NEPA process	After property is incorporated into a federally funded project.	YES	YES  If allowed by State law	Development of the property is imminent and would limit future transportation choices.
<b>2) Hardship Acquisition</b>  23 CFR 710.503	YES  Local agency will need to notify and work with their Local Agency Coordinator for a pre-certification compliance. FHWA ROW approval needed for Hardship Acquisition.	YES**  Typically a Category exclusion (CE). See 23 CFR 771.117(d) (12)	YES  If consultation is completed on 4F.	Usually during the NEPA process	After property is incorporated into a federally funded project.	YES	YES  If allowed by State law	A request for hardship acquisition based on a property owner's written submission that shows (1) remaining on the property poses an undue hardship compared to other property owners because of health, safety, or financial reasons, and (2) the owner has been unable to sell the property at fair market value because of the impending transportation project, within a time period that is typical for properties not impacted by the impending transportation project.  <b>Note:</b> While the local agency may condemn if a settlement cannot be reached on a hardship acquisition, great care should be taken to ensure that the decision is warranted both for the property owner and the local agency.

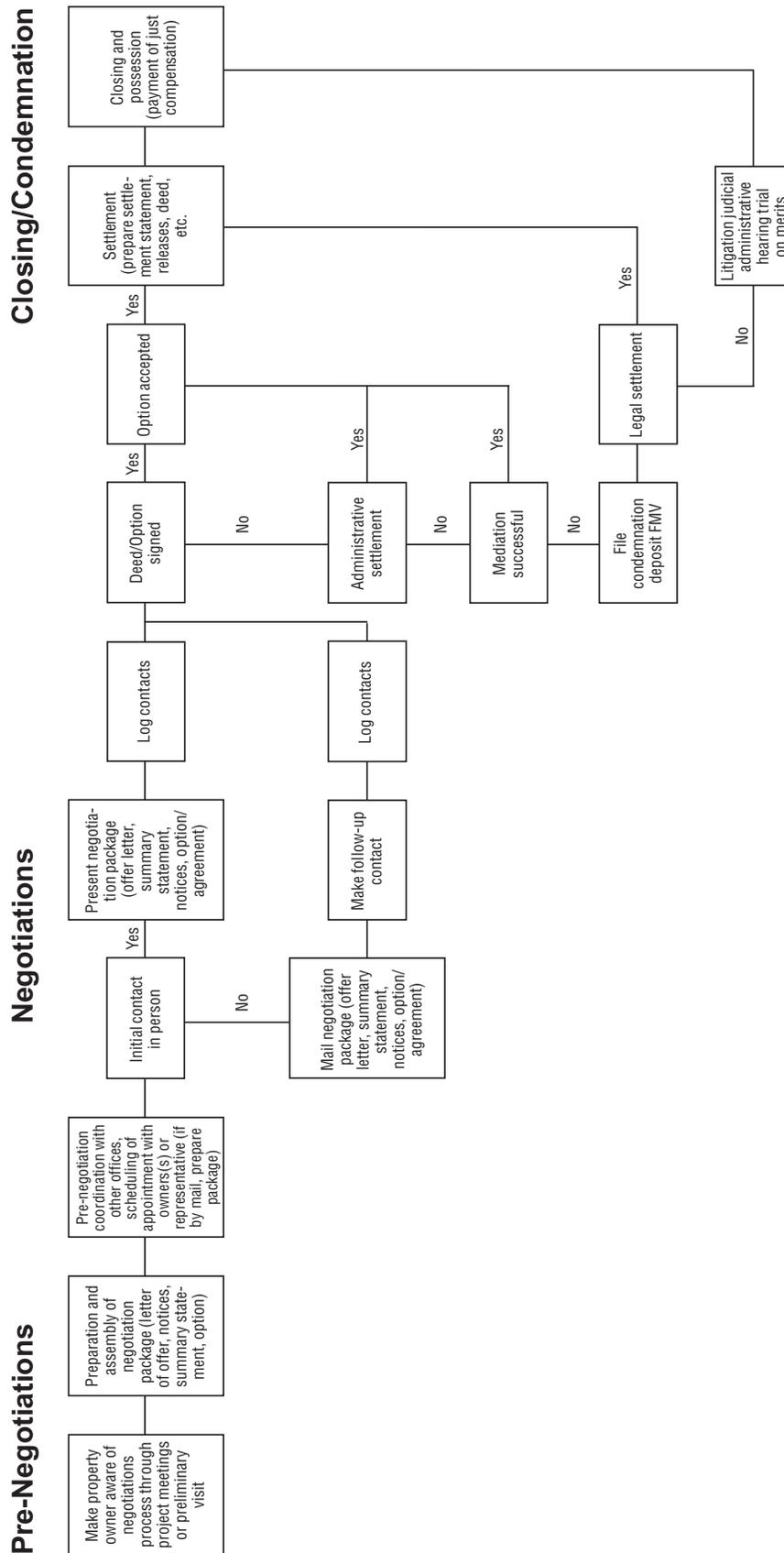
\* Relevant Federal Law includes the Uniform Act, Title VI Civil Rights Act, and Federal Regulations (primarily, 23 CFR Part 710).

\*\***Note:** Advanced Acquisitions usually occur during the transportation project's NEPA phase. However, prior to approval, NEPA clearance is necessary for the Advanced Acquisitions parcel. This requires the parcel to be carved out from the overall project so that NEPA clearance can be obtained, typically in the form of a CE. The parcel still will be included in the NEPA evaluation for the transportation project .

**Appendix 25.178 Vacant (see form LPA-007)**

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# Acquisition Process



**Appendix 25.180 Vacant**

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# ***Appendix 25.180a Vacant***

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**Appendix 25.181 Vacant**

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# ***Appendix 25.181a Vacant***

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**Appendix 25.182 Vacant**

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## ***Appendix 25.182a Vacant***

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