



Chapter 6

6. Project Certification

This chapter sets forth the requirements for preparing ROW project certifications in compliance with the Code of Federal Regulations, Revised Code of Washington, and the Washington Administrative Code to ensure that ROW has been acquired in accordance with the Uniform Act requirements and/or Federal Land Transfer processes.

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6.1 Chapter Overview

6.1.1 Project Certification Policy

The project certification (ROW Certification or Cert) informs the contractor of the ROW clearance status as required for proper coordination with the physical construction schedules. The statement certifies that the necessary ROW and/or access rights necessary for project construction, operation, and maintenance within the ROW or project limits have been acquired; all relocation notices and entitlements have been provided; the property has been vacated; and/or the necessary arrangements have been made for these requirements to be completed in coordination with project construction schedules.

For **design-bid-build projects**, the ROW certification statement is prepared prior to advertising for construction (Ad Date).

For **design-build projects**, the Preliminary ROW certification statement is prepared prior to soliciting a Request for Proposal (RFP), then each phase or segment is certified prior to Notice to Proceed (NTP) or Released for Construction (RFC) for physical construction depending on how the contract and phases are structured.

If there is a ROW Phase programmed, a ROW certification is required.

The certification must be sent to FHWA if:

- Federal funds are used in any phase of the project.
- If a federal nexus, such as a project interstate, exists.
- The project included a NEPA action.
- The project is a Risk Based Project of Interest (RBPI).

For federally funded projects, the certification date is the date the concurrence is received in the FHWA official mailbox.

For federally funded Conditional Certificate 3 projects, the date of certification is the date FHWA signs the letter to the agency.

For state-funded Conditional Certificate 3 projects, the date of certification is the date of Headquarters RES concurrence.

A ROW certification is not required if the final project definition indicates that no additional ROW is required to construct, operate, and maintain the project. If there is no ROW Phase in the final project definition, there is no ROW Certification. This should be confirmed with the project office. However, if the final project definition has a ROW phase but is later determined to be unnecessary, then a No ROW Certification is issued.

If the project scope changes after the final project definition and ROW or additional ROW is required as a result, then a ROW certification must be submitted.

Any encroachments allowed to remain in the ROW must be there legally under a lease or permit. Please see Chapter 7, Property Management, for requirements.

All access rights must be acquired prior to certification.

Properties (including donations) acquired in advance of final environmental documentation are identified in the certification by WSDOT parcel number, or a county tax ID and property address if parcel numbers are not assigned.

If ROW was acquired in a previous project, and those parcels were never certified, the ROW Certification for the current project must incorporate all parcels previously acquired if those parcels are needed for construction, operation, and maintenance of the current project. If not considered existing ROW, the agency will need to confirm that those parcels incorporated into the federal aid project are URA compliant.

If at any point it becomes apparent that the rights acquired (including the term of a temporary easement) are insufficient to construct, operate, and maintain the project, construction is not authorized until adequate rights are acquired, and protections provided to property owners or impacted occupants. If the ROW was previously certified, the certification must be rescinded, and an updated certification issued. If the ROW was not previously certified, a new ROW certification is required prior to physical construction proceeding on the project.

If physical construction activities are underway and it is determined that insufficient property rights were obtained or additional property rights are needed, construction may be suspended for the entire project or parcel(s) where no rights have been acquired depending on the circumstance and size of the project. The project must be recertified subject to the rights being acquired before construction may continue for the project.

See Section 6.3.3.2.1, Excepted Parcel Certification, for more information.



[23 CFR 635.309](#)

6.1.2 Temporary Relocation and Certification

In the case of a temporary relocation, there may be instances where the occupants or their personal property may not need to move from the acquired area until after the Ad Date or Notice to Proceed to construction dates. In such cases, a Certificate 1 certifying the parcel but not clearing the parcel for construction may be issued under the following circumstances:

- The TE has been acquired with specific dates the occupant will be required to be vacated noted in the TE document.
- Notice of Eligibility and Entitlements has been provided and at least one comparable housing option provided to a temporarily displaced residential occupant.
- 90-day assurance has been provided.
- 30-day notice to vacate will be provided.
- Ongoing advisory services by the relocation agent and coordination with the contractor will occur.
- Details must be in the certification letter and noted on the certification spreadsheet. (e.g., parcel certified, but not clear for construction due to temporary relocations.)

6.1.3 Certification Authority, Roles, and Responsibilities

6.1.3.1 Authority

WSDOT's project certification actions conform with the legal authorities listed below:

- 23 CFR §1.23—Rights-of-way
- 23 CFR §635.309—Authorization
- 23 CFR Part 636—Design Build Contracting
- 23 CFR §710.201—Grantee and subgrantee responsibilities, paragraph (e)
- 23 CFR §710.307—Construction advertising
- 23 CFR §710.309—Design-build projects
- 23 CFR §710.501—Early acquisition
- 23 CFR §710.601—Federal land transfers
- 23 CFR §771.113—Timing of Administration activities
- 49 CFR Part 24—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs
- RCW Chapter 8.26—Relocation Assistance
- WAC 468-100 (G)—Uniform Relocation Assistance and Real Property Acquisition

6.1.3.2 Roles and Responsibilities

The agency is responsible for:

- Preparing the ROW certificate for all projects that require ROW acquisition.
- Ensuring that necessary property rights, as shown on the Project Specifications and Estimates (PS&E), are acquired to construct, operate, and maintain the facility. This includes parcels and/or rights needed for construction purposes only, such as staging areas, temporary easement, or permits.
- Ensuring property owners are paid the full amount of just compensation, or the amount deposited into court for their benefit before the agency takes possession of the property.
- Ensuring that the entire ROW is clear of encroachments.
- Ensuring the ROW has been acquired in accordance with the Uniform Act requirements and/or Federal Land Transfer processes.
- Relocating all individuals and families displaced to decent, safe, and sanitary housing and making comparable replacement housing available to displaced persons, in accordance with the provisions of the 49 CFR Part 24.



49 CFR Part 24

6.2 Project Delivery Methods and Certification Timelines

Projects may be delivered through different delivery methods, each of which has distinct certification requirements and timing. It is important to confirm the delivery method and project schedule with the Project Office to adequately certify the project in a timely manner.

For more information on different types of project delivery methods, see the WSDOT Design Manual M22-01.23.



[M22-01.23 Design Manual](#)

The different types of certifications the agency may issue are covered later in this chapter.

6.2.1 Design-Bid-Build Certifications

A ROW certification must be issued prior to the ad date for a project using the Design-Bid-Build delivery method. For WSDOT Projects, WSDOT Headquarters' Ad and Award Office requires the approved certification to be submitted no later than 30 days before advertising for construction. Due to this requirement, project schedules should allow for completion of ROW activities and all property acquisitions and relocations completed at least 60 days prior to advertising for construction to allow adequate time to prepare, approve, and request FHWA concurrence, if required.

For WSDOT projects, certification requiring FHWA concurrence should be submitted to HQ RES 60 days prior to the Ad date.



[23 CFR 635.309](#)

6.2.2 Design-Build Certifications

Construction of design-build projects is not authorized to commence until the ROW and/or access rights necessary for the project have been acquired, all relocation notices and entitlements have been provided, and the property has been vacated for any phase or segment being certified.

There are two certifications required for design-build projects: the Preliminary Certification Statement and the ROW Certification 1, 2, or 3:

- A Preliminary Certification Statement must be prepared and submitted at least 30 days prior to soliciting Request for Proposals (RFPs) for a design-build contractor. The Preliminary Certification Statement certifies the design-build contract will include the necessary arrangements for ROW clearance work and informs the contractor that a ROW Certification 1, 2, or 3 must be completed and approved prior to Notice to Proceed (NTP) on any phase or segment of the project.

Once final design is approved, and prior to any phase or segment being Released for Construction (RFC), an updated ROW certification must be issued. Parcels the agency anticipates acquiring in each phase or segment of the project must be identified early in the process. Early coordination with the agency project engineer and design-builder is required.

- The **ROW Certification 1, 2, or 3** must be prepared in accordance with this chapter, submitted at least 60 days prior to physical construction, and include the status of the ROW contained within the specific construction phase or segment being certified. Each phase or segment requires its own updated ROW Certification 1, 2, or 3.

WSDOT may permit construction to be phased or segmented to allow completion of ROW activities on individual properties or a group of properties. The decision to advance a ROW phase or segment to the construction stage must not impair the safety or be in any way coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent phases or segments of the project ROW.

CFR → [49 CFR 24.102\(h\)](#)

When WSDOT permits phased or segmented construction, the individual phases or segments will only be certified once all property rights for that phase or segment have been acquired, the property owner has been paid, and the agency has physical possession of the property for construction.

When relocation of displaced persons from their dwellings has not been completed, and a conditional certification is authorized by FHWA (which is only considered in rare instances), the design-builder must establish a hold-off zone around all occupied properties to ensure compliance with ROW procedures prior to starting construction activities in affected areas. WSDOT establishes the limits of this zone prior to the design-build contractor entering the property.

No construction-related activity may be performed within the hold-off zone until the property is vacated. The design-build contractor must have written notification of vacancy from WSDOT prior to entering the hold-off zone.

CFR → [23 CFR 635.309 \(p\)](#)

[23 CFR 710.309](#)

6.3 Types of Certifications

The Right of Way Certification is a statement certifying that all individuals and families have been relocated to decent, safe, and sanitary (DSS) housing or that the agency has made adequate replacement housing available to displaced persons in accordance with the URA. It also states that all permanent and temporary property rights necessary for construction, operation, and maintenance of the facility were acquired.

There are different types of right of way certifications, each with separate requirements.

6.3.1 Certificate 1—All ROW Acquired

A Certificate 1 is prepared when all rights have been acquired. Trial or appeal of some parcels may be pending in court, but legal possession and use has been obtained in the form of a Negotiated Possession and Use Agreement or a Stipulated Possession and Use Agreement.

All occupants must have vacated the ROW. The agency has the right to remove any remaining improvements, except those that may legally remain in the ROW by lease or permit.



23 [CFR 635.309\(c\)\(1\)](#)

6.3.2 Certificate 2—Right to Occupy All ROW Acquired

A Certificate 2 is prepared when the right to occupy and use all ROW has been acquired. A Certificate 2 is most often used for projects involving acquisitions from state and federal agencies, railroads, and other government entities. Typically, a right of entry (ROE) will have been issued because procedures for these types of government acquisitions may differ or take an extended period of time to secure the permanent rights.

To issue a Certificate 2, all occupants must have vacated the ROW. The agency has the right to remove any remaining improvements, except those that may legally remain in the ROW by lease or permit.

When all permanent rights have been acquired, an updated ROW certification must be submitted to receive a Certification 1.



23 [CFR 635.309\(c\)\(2\)](#)

6.3.3 Certificate 3—All ROW Not Acquired

A Certificate 3 is a conditional certification and is prepared when the acquisition of a few remaining parcels is not complete.

Occupants may remain on the affected parcels but comparable and DSS replacement housing has been made available to them.



23 [CFR 635.309\(c\)\(3\)](#)

It is recommended to move or defer the construction Ad date (for design-bid-build projects) or the NTP/RFC date (for design-build projects) in these situations. However, these types of certifications may be used if the agency can adequately explain why certification should take place before acquisition is complete and why it is in the public's interest to do so.

Federal regulations provide for a single type of certificate when there are still some parcels to be acquired and/or displaced persons to be relocated. However, there are two distinct situations that can require different types of Certifications 3:

6.3.3.1 Time-Based Certificate 3

The Time-Based Certificate 3 is appropriate for design-bid-build projects only and in situations where acquisition and/or occupant relocation are not complete prior to the Ad, but the ROW will be cleared prior to bid opening.

A Time-Based Certificate 3 can be used if agreements have been reached on all parcels and there is a reasonable expectation that payment will be received, and occupants will be vacated prior to bid opening. In rare cases, the Acquisition Program Manager can approve the extension of the Time-Base Certificate 3 from bid opening to contract award.

When issuing a Time-Based Certificate 3, the certificate must clearly indicate why it is in the public's interest for the project to go to Ad prior to having all parcels acquired. For example, a Time-Based Certificate 3 might be in the public's interest if there is an agreement in place with the property owner, so it is not cost-effective to delay advertisement when the ROW is expected to be cleared prior to bid opening.

The Time-Based Certificate 3 must list the outstanding parcels, the date the offer was made to the property owners, the status of negotiations, and a realistic estimated clear date. It must also indicate the Ad date, the anticipated bid opening date, and include a statement that bids are not to be opened prior to submittal of a certificate that has been upgraded to a Certificate 1 or 2.

Projects on the National Highway System (NHS)/Interstate require approval from FHWA to proceed to Ad on a Time-Based Certificate 3.

6.3.3.2 Excepted Parcel Certificate 3

In extraordinary and very unusual situations, where the ROW may not be cleared prior to bid opening (for design-bid-build projects) or issuance of NTP/RFC (for design-build projects), or the start of physical construction, the agency can request approval of an Excepted Parcel Certificate 3, where certain parcels are excepted out of the certification because the ROW has not been cleared. No work can be completed on any of the parcels excepted out of the certification.

6.3.3.2.1 Excepted Parcel Certificate 3 Requirements

The following actions must be taken to request approval of an Excepted Parcel Certificate 3:

- Project delivery schedules must include adequate time for the ROW phase. Adequate time is defined as one year between the date of final approved ROW Plans (or other approved plan) for the affected parcels and the Ad date (for design-bid-build projects) or NTP/RFC date (for design-build projects). FHWA will not approve an Excepted Parcel Certificate 3 without adequate time in the schedule.

- The project construction bid documents must include appropriate notification identifying all locations where acquisition is not complete, to ensure that property owners and occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the ROW are protected against unnecessary inconvenience, disproportionate injury, or any action coercive in nature.
- The project construction documents must include an established hold-off zone around all occupied properties adjacent to the construction area to ensure compliance with ROW procedures. No construction activity will be allowed in or adjacent to the hold-off zone.

The Excepted Parcel Certificate 3 Letter must contain the following:

- The letter must clearly indicate why it is in the public's interest to proceed to ad, award, or NTP prior to having all parcels acquired. For example, an Excepted Parcel Certificate 3 might be in the public's interest if there is work that must be completed within an environmental window that otherwise might be missed, or the project schedule is such that the remaining parcels will not be required until a much later date or even into a new construction season.
- Typically, no work is allowed within existing ROW adjacent to any excepted parcels. If existing ROW is needed, the letter must include an explanation of this need and why it would not be coercive and not cause disproportionate injury or unnecessary inconvenience to nearby parcels.
- The letter must identify the unacquired parcels and include an explanation of why the properties are not acquired, the date of the offer, how and when they will be acquired, and a realistic date of acquisition and relocation completion.
- A ROW plan shall be submitted with the certification indicating parcels being certified, parcels being excepted out, and the restricted limits of construction.

Federally funded projects or projects on the NHS (Interstate) require approval from FHWA to proceed with an Excepted Parcel Certificate 3.

6.3.4 No Right of Way Certification

If the final project definition indicates that ROW is required to complete the project, but ultimately the final design does not require acquisition of additional property or property rights, a No Right of Way Certificate is prepared.

6.4 Certification Approval

For WSDOT projects, the project is certified when the appropriate approving authority signs or approves the certification statement. For federally funded projects, the certification date is the date the concurrence is received in the FHWA official mailbox. For conditional certificate 3s, the date of certification is the date FHWA signs the letter to the agency.

The project certification approval authority varies by certification and funding type:

Type	Description	Approval Authority		
		State Funded	Federally Funded	Federal Nexus
Certification 1	<ul style="list-style-type: none"> All rights acquired Occupants vacated * 	Region or Program	RES Headquarters Concurrence	RES Headquarters Concurrence
Certification 2	<ul style="list-style-type: none"> Not all rights acquired Right of entry or possession only Occupants vacated Right to remove improvements 	Region or Program	RES Headquarters Concurrence	RES Headquarters Concurrence
Certification 3 Time-Based	<ul style="list-style-type: none"> Not all rights acquired Agreement has been reached Occupants will be vacated and payment and possession will occur prior to Bid Opening 	Region or Program	FHWA Approval Letter	FHWA Approval Letter (Interstate only)
Certification 3 Excepted Parcel* <i>extraordinary circumstances only</i>	<ul style="list-style-type: none"> Not all rights acquired Occupants remain Right of way will not be clear prior to construction (for DB, Prior to construction for each phase or segment) Prior approval of HQ and/or FHWA is required 	RES Headquarters Concurrence	FHWA Approval Letter	FHWA Approval Letter
Preliminary Design Build Certification	<ul style="list-style-type: none"> Issued prior to RFP for design-build projects Right of way may or may not be acquired at this time A cert 1,2,3 is required prior to physical construction 	RES Headquarters Concurrence	RES Headquarters Concurrence	RES Headquarters Concurrence

*Exemption for TE, see section 6.1.2

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