



**Washington State  
Department of Transportation**

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# **Right of Way Manual**

M 26-01.26

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**Development Division**

Real Estate Services



## Title VI Requirements

Washington State Department of Transportation (WSDOT) Real Estate Services (RES) ensures that no person impacted by the Agency's Right of Way program will be denied the benefits to which the person is entitled or be otherwise subject to discrimination on the grounds of race, color, or national origin, pursuant to Title VI of the Civil Rights Act of 1964 and Title 49, Part 21 of the Code of Federal Regulations.

### Data Collection and Reporting

WSDOT RES maintains Title VI records as required by the Title VI internal liaison group and the Office of Equity & Civil Rights (OECR) to demonstrate compliance with federal guidelines and annual reporting requirements.

As part of our Title VI requirements, RES must continually collect, analyze, and document demographic data to determine Limited English Proficiency (LEP) populations of those that are affected by our programs, services, and activities.

### Real Estate Services Survey

WSDOT ensures that individuals impacted by state transportation programs have the opportunity to participate in a voluntary survey to compile data for OECR reporting requirements related to Title VI of the Civil Rights Act of 1964.

To avoid duplication of survey participation, every household will be provided one survey as follows:

- RES's Acquisition section will provide the survey to the parcel owners at the date of initiation of negotiation.
- RES's Relocation section will provide the survey to ONLY tenant occupants with the Notice of Eligibility.

The completed survey is then returned to WSDOT in person or mailed directly to the address provided on the survey. Surveys sent to HQ will be routed to the appropriate region for retention and reporting. Completed surveys are maintained in the project file. The data must also be analyzed and tracked for the Title VI accomplishments report and provided to the OECR office annually. Each region is required to report individually. The reporting period is the Federal Fiscal Year (FFY), which is October 1st through September 30th.

Survey results are analyzed for any disproportionate impact/injury. Results may be analyzed by several metrics, including but not limited to:

- Total number of offers made during reporting period.
- An analysis of parcel owner demographic information from the survey forms returned.
- Total number of displaced persons during the reporting period.
- An analysis of displaced persons' demographic information from the survey forms returned.

## Complaints

Any complaints received by WSDOT in English must be forwarded directly to OECR in a timely manner. Complaints received in a language other than English must be translated prior to being sent to OECR. The Department of Enterprise Services (DES) maintains a list of companies on contract with state agencies for translation services.

## Limited English Proficiency and Translation Services

Title VI of the Civil Rights Act of 1964 requires recipients of federal financial assistance to take reasonable steps to make their programs, services, and activities accessible by eligible persons with LEP.

Limited English Proficiency is a term used in the United States that refers to a person who does not speak English as their primary language and have a limited ability to read, speak, write or understand English. WSDOT must provide appropriate interpreter services to individuals with LEP unable to read and understand written notices in their primary language.

In order to identify the language of the LEP individual, use WSDOT's [Language Access Card](#) or contact one of the Department of Enterprise Services (DES)-approved vendors to assist with identifying their primary language.

Once their primary language has been identified, a certified translator must be used for those documents needing translation. Similarly, a certified interpreter must be used for individuals with LEP. Using a minor, family member or acquaintance is not acceptable.

Department of Enterprise Services (DES) has approved vendors on contract for both written translation and spoken word interpreters.

WSDOT must offer translation and interpreter services and document responses regarding these services in the Right of Way Diary.

Refer to OECR's [Providing Translation Services flyer](#) on how to receive translation services.

Contact HQ for additional assistance/guidance for translation services.

## Translation Services Notice

### English

#### Translation Services

If you have difficulty understanding English, you may, free of charge, request language assistance services by calling 855-362-4ADA(4232) or email us at: [wslotada@wslot.wa.gov](mailto:wslotada@wslot.wa.gov).

### Español - Spanish

#### servicios de traducción

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 855-362-4ADA(4232), o envíe un mensaje de correo electrónico a: [wslotada@wslot.wa.gov](mailto:wslotada@wslot.wa.gov).

### 中文 - Chinese

#### 翻译服务

如果您难以理解英文，则请致电：855-362-4ADA(4232)，或给我们发送电子邮件：[wslotada@wslot.wa.gov](mailto:wslotada@wslot.wa.gov)，请求获取免费语言援助服务。

### tiếng Việt-Vietnamese

#### các dịch vụ dịch thuật

Nếu quý vị không hiểu tiếng Anh, quý vị có thể yêu cầu dịch vụ trợ giúp ngôn ngữ, miễn phí, bằng cách gọi số 855-362-4ADA(4232) hoặc email cho chúng tôi tại: [wslotada@wslot.wa.gov](mailto:wslotada@wslot.wa.gov).

### 한국어-Korean

#### 번역 서비스

영어로 소통하는 것이 불편하시다면, 855-362-4ADA(4232)으로 전화하시거나 다음 이메일로 연락하셔서 무료 언어 지원 서비스를 요청하실 수 있습니다: [wslotada@wslot.wa.gov](mailto:wslotada@wslot.wa.gov).

### Af-soomaaliga - Somali

#### Adeegyada Turjumaada

Haddii ay kugu adag tahay inaad fahamtid Ingiriisida, waxaad, bilaash, ku codsan kartaa adeegyada caawimada luuqada adoo wacaaya 855-362-4ADA(4232) ama iimayl noogu soo dir: [wslotada@wslot.wa.gov](mailto:wslotada@wslot.wa.gov).

### русский-Russian

#### Услуги перевода

Если вам трудно понимать английский язык, вы можете запросить бесплатные языковые услуги, позвонив по телефону 855-362-4ADA(4232) или написав нам на электронную почту: [wslotada@wslot.wa.gov](mailto:wslotada@wslot.wa.gov).

### خدمات الترجمة

إذا كنت تجد صعوبة في فهم اللغة الإنجليزية، فيمكنك مجاناً طلب خدمات المساعدة اللغوية عن طريق الاتصال بالرقم

855-362-4ADA(4232)، أو مراسلتنا عبر البريد الإلكتروني: [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov).

## Relocation Assistance

WSDOT ensures that replacement housing resources are open to all races and sexes without discrimination. This is determined at the time WSDOT is searching for available replacement housing.

Upon receipt of a fair housing discrimination complaint, WSDOT refers the displaced person to the Division of Equal Opportunity and Fair Housing, Department of Housing and Urban Development, or to the nearest area office of the Washington State Human Rights Commission.

WSDOT, to the extent possible, assists displaced persons against discriminatory practices in the purchase and rental of residential units on the basis of race, color, religion, sex, or national origin.

## Title VI and ADA Notices

### Title VI Notice to Public

It is the Washington State Department of Transportation's (WSDOT) policy to ensure that no person shall, on the grounds of race, color, national origin, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with WSDOT's Office of Equity and Civil Rights (OECR). For additional information regarding Title VI complaint procedures and/or information regarding our non-discrimination obligations, please contact OECR's Title VI Coordinator at (360) 705-7090.

### Americans with Disabilities Act (ADA) Information

This material can be made available in an alternate format by emailing the Office of Equity and Civil Rights at [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov) or by calling toll free, 855-362-4ADA(4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay at 711.

## Español

### Notificación de Título VI al Público

La política del Departamento de Transporte del Estado de Washington (Washington State Department of Transportation, WSDOT) es garantizar que ninguna persona, por motivos de raza, color u origen nacional, según lo dispuesto en el Título VI de la Ley de Derechos Civiles de 1964, sea excluida de la participación, se le nieguen los beneficios o se le discrimine de otro modo en cualquiera de sus programas y actividades. Cualquier persona que considere que se ha violado su protección del Título VI puede presentar una queja ante la Oficina de Equidad y Derechos Civiles (Office of Equity and Civil Rights, OECR) del WSDOT. Para obtener más información sobre los procedimientos de queja del Título VI o información sobre nuestras obligaciones contra la discriminación, comuníquese con el coordinador del Título VI de la OECR al (360) 705-7090.

### Información de la Ley sobre Estadounidenses con Discapacidades (ADA, por sus siglas en inglés)

Este material puede estar disponible en un formato alternativo al enviar un correo electrónico a la Oficina de Equidad y Derechos Civiles a [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov) o llamando a la línea sin cargo 855-362-4ADA(4232). Personas sordas o con discapacidad auditiva pueden solicitar la misma información llamando al Washington State Relay al 711.

## 한국어-Korean

### 제6조 관련 공지사항

워싱턴 주 교통부(WSDOT)는 1964년 민권법 타이틀 VI 규정에 따라, 누구도 인종, 피부색 또는 출신 국가를 근거로 본 부서의 모든 프로그램 및 활동에 대한 참여가 배제되거나 혜택이 거부되거나, 또는 달리 차별받지 않도록 하는 것을 정책으로 하고 있습니다. 타이틀 VI에 따른 그/그녀에 대한 보호 조항이 위반되었다고 생각된다면 누구든지 WSDOT의 평등 및 민권 사무국(OECR)에 민원을 제기할 수 있습니다. 타이틀 VI에 따른 민원 처리 절차에 관한 보다 자세한 정보 및/또는 본 부서의 차별금지 의무에 관한 정보를 원하신다면, (360) 705-7090으로 OECR의 타이틀 VI 담당자에게 연락해주시요.

### 미국 장애인법(ADA) 정보

본 자료는 또한 평등 및 민권 사무국에 이메일 [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov) 을 보내시거나 무료 전화 855-362-4ADA(4232)로 연락하셔서 대체 형식으로 받아보실 수 있습니다. 청각장애인은 워싱턴주 중계 711로 전화하여 요청하실 수 있습니다.

## русский-Russian

### Раздел VI Общественное заявление

Политика Департамента транспорта штата Вашингтон (WSDOT) заключается в том, чтобы исключить любые случаи дискриминации по признаку расы, цвета кожи или национального происхождения, как это предусмотрено Разделом VI Закона о гражданских правах 1964 года, а также случаи недопущения участия, лишения льгот или другие формы дискриминации в рамках любой из своих программ и мероприятий. Любое лицо, которое считает, что его средства защиты в рамках раздела VI были нарушены, может подать жалобу в Ведомство по вопросам равенства и гражданских прав WSDOT (OECR). Для дополнительной информации о процедуре подачи жалобы на несоблюдение требований раздела VI, а также получения информации о наших обязательствах по борьбе с дискриминацией, пожалуйста, свяжитесь с координатором OECR по разделу VI по телефону (360) 705-7090.

### Закон США о защите прав граждан с ограниченными возможностями (ADA)

Эту информацию можно получить в альтернативном формате, отправив электронное письмо в Ведомство по вопросам равенства и гражданских прав по адресу [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov) или позвонив по бесплатному телефону 855-362-4ADA(4232). Глухие и слабослышащие лица могут сделать запрос, позвонив в специальную диспетчерскую службу штата Вашингтон по номеру 711.

## tiếng Việt-Vietnamese

### Thông báo Khoản VI dành cho công chúng

Chính sách của Sở Giao Thông Vận Tải Tiểu Bang Washington (WSDOT) là bảo đảm không để cho ai bị loại khỏi sự tham gia, bị từ khước quyền lợi, hoặc bị kỳ thị trong bất cứ chương trình hay hoạt động nào vì lý do chủng tộc, màu da, hoặc nguồn gốc quốc gia, theo như quy định trong Mục VI của Đạo Luật Dân Quyền năm 1964. Bất cứ ai tin rằng quyền bảo vệ trong Mục VI của họ bị vi phạm, đều có thể nộp đơn khiếu nại cho Văn Phòng Bảo Vệ Dân Quyền và Bình Đẳng (OECR) của WSDOT. Muốn biết thêm chi tiết liên quan đến thủ tục khiếu nại Mục VI và/hoặc chi tiết liên quan đến trách nhiệm không kỳ thị của chúng tôi, xin liên lạc với Phối Trí Viên Mục VI của OECR số (360) 705-7090.

### Thông tin về Đạo luật Người Mỹ tàn tật (Americans with Disabilities Act, ADA)

Tài liệu này có thể thực hiện bằng một hình thức khác bằng cách email cho Văn Phòng Bảo Vệ Dân Quyền và Bình Đẳng [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov) hoặc gọi điện thoại miễn phí số, 855-362-4ADA(4232). Người điếc hoặc khiếm thính có thể yêu cầu bằng cách gọi cho Dịch vụ Tiếp âm Tiểu bang Washington theo số 711.

## العربية - Arabic

## العنوان 6 إشعار للجمهور

تتمثل سياسة وزارة النقل في ولاية واشنطن (WSDOT) في ضمان عدم استبعاد أي شخص، على أساس العرق أو اللون أو الأصل القومي من المشاركة في أي من برامجها وأنشطتها أو الحرمان من الفوائد المتاحة بموجبها أو التعرض للتمييز فيها بخلاف ذلك، كما هو منصوص عليه في الباب السادس من قانون الحقوق المدنية لعام 1964. ويمكن لأي شخص يعتقد أنه تم انتهاك حقوقه التي يكفلها الباب السادس تقديم شكوى إلى مكتب المساواة والحقوق المدنية (OECR) التابع لوزارة النقل في ولاية واشنطن. للحصول على معلومات إضافية بشأن إجراءات الشكاوى و/أو بشأن التزاماتنا بعدم التمييز بموجب الباب السادس، يرجى الاتصال بمنسق الباب السادس في مكتب المساواة والحقوق المدنية على الرقم 705-7090 (360).

## معلومات قانون الأمريكيين ذوي الإعاقة (ADA)

يمكن توفير هذه المواد في تنسيق بديل عن طريق إرسال رسالة بريد إلكتروني إلى مكتب المساواة والحقوق المدنية على [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov) أو عن طريق الاتصال بالرقم المجاني: (4232) 855-362-4ADA. يمكن للأشخاص الصم أو ضعاف السمع تقديم طلب عن طريق الاتصال بخدمة Washington State Relay على الرقم 711.

## 中文 – Chinese

## 《权利法案》 Title VI公告

<華盛頓州交通部(WSDOT)政策規定，按照《1964年民權法案》第六篇規定，確保無人因種族、膚色或國籍而被排除在WSDOT任何計畫和活動之外，被剝奪相關權益或以其他方式遭到歧視。如任何人認為其第六篇保護權益遭到侵犯，則可向WSDOT的公平和民權辦公室(OECR)提交投訴。如需關於第六篇投訴程式的更多資訊和/或關於我們非歧視義務的資訊，請聯絡OECR的第六篇協調員，電話(360) 705-7090。

## 《美国残疾人法案》(ADA)信息

可向公平和民權辦公室發送電子郵件[wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov)或撥打免費電話855-362-4ADA(4232)，以其他格式獲取此資料。听力丧失或听觉障碍人士可拨打711联系Washington州转接站。

## Af-soomaaliga – Somali

## Ciwaanka VI Ogeysiiska Dadweynaha

Waa siyaasada Waaxda Gaadiidka Gobolka Washington (WSDOT) in la xaqiijiyo in aan qofna, ayadoo la cuskanaayo sababo la xariira isir, midab, ama wadanku kasoo jeedo, sida ku qoran Title VI (Qodobka VI) ee Sharciga Xaquuqda Madaniga ah ah oo soo baxay 1964, laga saarin ka qaybgalka, loo diidin faa'iidooyinka, ama si kale loogu takoorin barnaamijyadeeda iyo shaqooyinkeeda. Qof kasta oo aaminsan in difaaciisa Title VI la jebiyay, ayaa cabasho u gudbin kara Xafiiska Sinaanta iyo Xaquuqda Madaniga ah (OECR) ee WSDOT. Si aad u hesho xog dheeraad ah oo ku saabsan hanaannada cabashada Title VI iyo/ama xogta la xariirta waajibbaadkeena ka caagan takoorka, fadlan la xariir Iskuduwaha Title VI ee OECR oo aad ka wacayso (360) 705-7090.

### Macluumaadka Xeerka Naafada Marykanka (ADA)

Agabkaan ayaad ku heli kartaa qaab kale adoo iimeel u diraya Xafiiska Sinaanta iyo Xaquuqda Madaniga ah oo aad ka helayso [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov) ama adoo wacaaya laynka bilaashka ah, 855-362-4ADA(4232). Dadka naafada maqalka ama maqalku ku adag yahay waxay ku codsan karaan wicitaanka Adeega Gudbinta Gobolka Washington 711.

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# Chapter 1

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## 1. Manual Introduction and Overview

This chapter sets forth the purpose and use of the Washington State Department of Transportation (WSDOT)'s Right of Way Manual M 26.01, its compliance with applicable federal and state laws and regulations, available supporting resources, and a comprehensive glossary of terms and acronyms used throughout the document.

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## 1.1 Purpose

This *Right of Way Manual* M 26.01 guides Washington State Department of Transportation (WSDOT) right of way (ROW) personnel, local agency personnel, consultants, and contractors on statewide policies, procedures, and standards for real estate transactions.

This manual also guides the relationship between the Federal Highway Administration (FHWA) and WSDOT.

This manual, and WSDOT's policies, procedures, and standards, support compliance with all applicable federal and state laws, regulations, policies, and standards that control the process for acquiring property rights for public purposes and for the management and disposition of property rights.

Any deviation from the procedures outlined in this manual requires submitting a request to the appropriate Headquarters discipline Program Manager or Local Program Manager in the case of local projects. The request should contain sufficient documentation as to why any procedure cannot be followed and propose an alternative solution. A deviation request may require an approved waiver from FHWA. Any part of 49 CFR Part 24 not required by law can be waived if FHWA determines that such a waiver does not reduce any assistance or protections provided to an owner or displaced person.

**CAUTION:** Any deviation from procedures without approval could jeopardize federal funding.

WSDOT certifies that it complies with 49 CFR Part 24; 23 CFR Parts 635, 710, and 810; RCW Chapter 8.26; and WAC Chapters 468-100 and 468-30 in connection with the acquisition of real property interests for, and relocation of persons displaced by, a program or project of the agency and the management of real property interests. Agencies are responsible for complying with current FHWA requirements, whether or not they are reflected in this Right of Way Manual.

This manual also serves as a beneficial and informational resource about WSDOT's ROW program and policies for other state and Local Public Agencies (LPAs) involved in federal aid projects, and other persons who have the authority to acquire property by eminent domain under state law, resulting in greater accuracy and efficiency.

## 1.2 How to Use this Manual

This manual includes information about WSDOT's policies and standards necessary to ensure compliance with all applicable federal and state laws, regulations, policies, and standards for real estate transactions.

- **Chapter 1** provides information about the purpose and use of this manual; a list of the applicable federal and state laws, regulations, policies, and standards to which WSDOT real estate transactions must adhere; a list of additional supporting resources that may be helpful to WSDOT ROW personnel, local agency personnel, consultants, and contractors; and a comprehensive glossary of terms and acronyms used in this manual.
- **Chapter 2** provides an overview of WSDOT's Right of Way Program, including its organizational structure, responsibility, authority, and process.
- **Chapters 3 through 8** provide information about the work of each WSDOT Real Estate Services section throughout the ROW process, including Valuation, Acquisition, Relocation Assistance, Project Certification, Property Management, and Use of Consultants.
- Each chapter includes an overview of content addressed in the chapter; a summary of applicable policies, authorities, roles, and responsibilities; and detail about the actions and procedures necessary to support compliance with all applicable federal and state laws.
- Within each chapter, references and links to the applicable federal and state laws, regulations, policies, and standards are provided in alignment with chapter content to support easy reference.

 [49 CFR Part 24](#)

 [RCW 8.26](#)

 [WAC 468-100](#)

Additional details regarding specific WSDOT roles, responsibilities, procedures, and processes can be found in the WSDOT Real Estate Services' Desk Manual.

Updating the *Right of Way Manual* M 26.01 is an ongoing process. Interim policy and guidance memos are issued as needed in the form of Supplemental Memos. Interim policy memos can be found on our public facing website and are incorporated into the manual on an annual basis. All updates must be approved by FHWA prior to being implemented. In addition, every five years, the Right of Way Manual is reviewed, updated as necessary, and certified that it conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State laws and regulations.

This manual is an **electronic only** document and can be accessed through the [Engineering and Standards—Manuals](#) web page or the [Real Estate Services](#) web page. No printed copies are provided.

Comments, questions, and suggestions for improving the manual are welcome and can be submitted via email to J. Kevin Workman, Real Estate Services Program Administrator, at [Jkevin.workman@wsdot.wa.gov](mailto:Jkevin.workman@wsdot.wa.gov).

## 1.3 Compliance with Federal and State Laws and Regulations

### 1.3.1 Federal Laws and Regulations

WSDOT carries out its right of way activities in compliance with federal requirements for all projects, whether they are state or federally funded, or contain a federal nexus, to preserve eligibility for future federal funding. A federal nexus project or program, for example, may be federally funded, located on interstate, result from a NEPA action, or may be a Risk Based Project of Interest (RBPI). Public Law 91-646, also known as, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly called the Uniform Act, is the primary law for acquisition and relocation activities on federal or federally assisted projects and programs.



[Public Law 91-646](#)

Federal real estate acquisition statutes and regulations include:

#### United States Code (U.S.C.)

- [Title VI](#) of the Civil Rights Act of 1964 (42 USC § 2000d et. seq.)
- [Title 23](#)—Highways
- [Title 42, Chapter 61](#), Sections 4601-4665 (42 USC §§ 4601-4665)—The Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs
- [Title 49](#)—Transportation

#### Code of Federal Regulations (CFR)

- [23 CFR Part 1](#)—General § 1.23 Rights-of-way
- [23 CFR Part 450](#)—Planning Assistance and Standards
- [23 CFR Part 630.106](#) (a)(3) and (a)(4)—Authorization to Proceed (Cost Estimates)
- [23 CFR Part 635](#)—Construction and Maintenance—ROW Certification
- [23 CFR Part 636](#)—Design Build Contracting
- [23 CFR Part 668](#)—Emergency Relief Program
- [23 CFR Part 710](#)—Right-of-Way and Real Estate
- [23 CFR Part 752](#)—Landscape and Roadside Development—Rest Areas
- [23 CFR Part 771](#)—Environmental Impact and Related Procedures
- [23 CFR Part 774](#)—Parks, recreation areas, wildlife and waterfowl refuges, and historic sites (Section 4(F))
- [23 CFR Part 810](#)—Mass Transit and Special Use Highway Projects—Park and Ride Lots
- [25 CFR Part 169](#)—Rights-of-Way Over Indian Land
- [40 CFR § 312.20](#)—All appropriate inquiries
- [49 CFR Part 24](#)—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs
- [49 CFR Part 42.1](#)—Applicable Rules

Unless specifically noted (e.g., “On non-federal aid projects . . .”) all operating regulations and procedures in this manual are intended to comply with applicable federal laws and regulations.

## 1.3.2 State Laws

WSDOT is additionally guided by state laws, known as the Revised Code of Washington (RCW), control appraisal, acquisition, condemnation, relocation, and property management processes for real estate transactions. The intent of these laws is to ensure fair and equitable treatment of displaced persons, encourage and expedite acquisitions by negotiations, and provide direction on properly managing properties once acquired by the agency.

### Revised Code of Washington (RCW)

- [Chapter 1.80](#)—Uniform Electronic Transactions Act
- [Chapter 8.04](#)—Eminent domain by state
- [Chapter 8.25](#)—Additional Provisions Applicable to Eminent Domain Proceedings
- [Chapter 8.26](#)—Relocation Assistance
- [Chapter 17.10](#)—Noxious Weeds—Control Boards
- [Chapter 26.18.055](#)—Child Support Enforcement, Child Support Liens
- [Chapter 36.75](#)—Roads and bridges—General provisions
- [Chapter 39.33](#)—Intergovernmental Disposition of Property
- [Chapter 42.45](#)—Revised Uniform Law on Notarial Acts
- [Chapter 42.52](#)—Ethics in public service
- [Chapter 43.88.160](#)—Fiscal management—Powers and duties of officers and agencies
- [Chapter 47.01.170](#)—Right of entry
- [Chapter 47.04](#)—Public Highways and Transportation General Provisions
- [Chapter 47.12](#)—Acquisition and disposition of state highway property
- [Chapter 47.14](#)—Right-of-Way Donations
- [Chapter 47.24](#)—City streets as part of state highways
- [Chapter 47.32](#)—Obstructions on right-of-way
- [Chapter 47.50](#)—Highway access management.
- [Chapter 47.52](#)—Public Highways and Transportation—Limited Access Facilities
- [Chapter 64.04](#)—Conveyances
- [Chapter 65.08](#)—Recording
- [Chapter 70A.305](#)—Hazardous Waste Cleanup—Model Toxics Control Act
- [Chapter 82.45](#)—Excise Tax on Real Estate Sales
- [Chapter 87.03](#)—Irrigation Districts Generally
- [Chapter 90.03](#)—Water Code

### 1.3.3 State Regulations

The Washington Administrative Code (WAC) contains the administrative regulations pertaining to appraisal, acquisition, condemnation, relocation, and property management processes. WSDOT promulgates these regulations to ensure implementation of the RCWs.

**Washington Administrative Code (WAC), including but not limited to:**

- [Chapter 240-15](#)—Office of the Governor— Log export restrictions
- [Chapter 458](#)—Department of Revenue
- [Chapter 458-29A](#)—Leasehold Excise Tax
- [Chapter 458-30](#)—Open Space Taxation Rules
- [Chapter 458-40](#)—Taxation of forest land and timber.
- [Chapter 458-61A](#)—Real Estate Excise Tax
- [Chapter 468-18](#)—City/County Project Coordination
- [Chapter 468-30](#)—Highway Property
- [Chapter 468-100](#)—Uniform Relocation Assistance and Real Property Acquisition

## 1.4 Supporting Resources

The following resources provide additional information about applicable federal and state laws, regulations, policies, and standards for real estate transactions as well as information about other processes related to federally assisted and WSDOT-administered ROW projects.

### 1.4.1 Federal Highway Administration

**Uniform Act Frequently Asked Questions:**

[https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/uafaqs.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm)

**Right of Way Frequently Asked Questions:**

[https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/qa710.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/qa710.cfm)

**Non-Regulatory Supplements:**

[https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/non\\_regulatory\\_supplement/](https://www.fhwa.dot.gov/real_estate/policy_guidance/non_regulatory_supplement/)

### 1.4.2 Washington State Manuals

**Purchasing and Contracts Manual M 72-80:**

<https://des.wa.gov/sites/default/files/2022-06/Washington-Purchasing-Manual.pdf>

### 1.4.3 WSDOT Manuals

**Plans Preparation Manual M 22-31:**

<https://www.wsdot.wa.gov/publications/manuals/fulltext/M22-31/PlansPreparation.pdf>

**Environmental Manual M 31-11:**

<https://www.wsdot.wa.gov/publications/manuals/fulltext/M31-11/em.pdf>

**Design Manual M 22-01:**

<https://www.wsdot.wa.gov/publications/manuals/fulltext/M22-01/design.pdf>

**Consultant Services Manual M 27-50.07:**

<https://www.wsdot.wa.gov/publications/manuals/fulltext/M27-50/ConsultantServiceManual.pdf>

**Local Agency Guidelines Manual M 36-63:**

<https://www.wsdot.wa.gov/publications/manuals/fulltext/M36-63/LAG.pdf>

**Design-Build Manual M 31-26:**

<https://wsdot.wa.gov/engineering-standards/all-manuals-and-standards/manuals/design-build-manual>

**Utilities Manual M 22-87**

<https://wsdot.wa.gov/engineering-standards/all-manuals-and-standards/manuals/utilities-manual>

## 1.5 Glossary

### 1.5.1 Definitions

This glossary defines terms that are used in WSDOT Real Estate Services (RES) activities. Terms that are defined by a standard dictionary are not included. In correspondence outside RES, it may be necessary to explain these terms.

**Access Control** – The limiting and regulating of public and private access to Washington State’s highways as required by state law.

**Access Rights** – The right of ingress to and egress from a property to a public way.

**Acquired** – Interest in and possession of the real property has been obtained. “Payment available date” is considered the possession date. WSDOT does not require property owners to give up physical possession prior to the payment available date.

**Administrative Settlement** – A negotiated settlement, which is reasonable, prudent, and in the public interest.

**Airspace** – That space located above, at, or below the highway’s established grade line lying within the approved right of way limits.

**Appraisal** – The act or process of developing an opinion of value; a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

**Business** – Defined in 49 CFR Part 24.2(a) and WAC 468-100-002.



[49 CFR Part 24.2\(a\)](#)



[WAC 468-100-002](#)

**Carve Out** – The method for computing the Replacement Housing Payment (RHP) for property occupied by a residential owner of 90 days or more, on a site larger than typical, or with a major exterior attribute that cannot be located in the comparable, or if the site is occupied by or used for other purposes.

**Certification** – A statement required to advertise or proceed with physical construction. The statement certifies that right of way has been acquired or will be acquired, and relocation of displaced persons is carried out in accordance with 49 CFR Part 24, 49 CFR Part 710, RCW 8.26, and WAC 468-100.



[49 CFR Part 24](#)

[49 CFR Part 710](#)



[RCW 8.26](#)



[WAC 468-100](#)

**Condemnation** – Condemnation is the exercise of the government’s authority to acquire property for public use through eminent domain.

**Displaced Person** – Any eligible person or entity who moves from the real property or moves their personal property from the real property.

**Disposal** - The process of the trade, exchange, direct sale, or auction of real property owned or under WSDOT jurisdiction that is no longer required for transportation purposes and has been deemed surplus to WSDOT’s needs.

**Easement** – An interest in real property that conveys a right to use or control a portion of an owner’s property or a portion of an owner’s rights in the property either temporarily or permanently.

**Eminent Domain** – The right of the government or its agents to expropriate private property for public use, with payment of just compensation.

**Encroachment** – Any installation, device, object, or occupancy that is located at, above, or below the grade line of the highway and within the right of way limits, and that is not installed as part of the highway facility, and which has not been authorized by the execution of a permit, lease, or other appropriate document.

**Encumbrance** – A third party’s right to or interest in a property. It may impact the transferability of the property and restrict its use.

**Fair Market Value** – The amount in cash, or in terms equivalent to cash, which a well-informed buyer, willing but not obligated to buy the property, would pay, and which a well-informed seller, willing but not obligated to sell it, would accept, taking into consideration all uses to which the property is adapted or may be reasonably adaptable. (WPI 150.08)

**Fair Market Rent** – The amount in cash, or in terms equivalent to cash, that a property would be leased for, under the specific terms and conditions of the lease given a reasonable exposure to a competitive market under conditions required for a fair leasing opportunity, which a well-informed lessee and a well-informed lessor, both willing but not obligated to participate in the lease, would agree to. Also known as “economic rent.”

**Highway Engineers Station (HES)** – A precisely located survey point on a State Highway Line Survey measured in increments of 100 feet. When noted on the map these usually have the station ID plus a distance from that station, for example 63 + 34.21(50' RT). These are specific to WSDOT.

**Inventory Control Number (ICN)** – An identification number assigned to each parcel of real property and each real property interest owned or controlled by WSDOT.

**Limited Access Highway** – All highways listed as “Established L/A” on the Master Plan for Limited Access Highways only where the rights of direct access to or from abutting lands have been acquired from the abutting landowners. Levels of limited access include the following:

- **Full Access Control:** This most restrictive level of limited access provides access, using interchanges, for selected public roads/streets only, and prohibits highway intersections at grade.
- **Partial Access Control:** The second most restrictive level of limited access. At grade intersections with selected public roads are allowed, and there may be some crossings and some driveway approaches at grade. Direct commercial access is not allowed.
- **Modified Access Control:** The least restrictive level of limited access. Characteristics are the same as for partial access control except that direct commercial access is allowed.

**Managed Access Highways** – Any highway not listed as “Established L/A” on the Master Plan for Limited Access Highways and any highway or portion of a highway designated on the Master Plan as “Established L/A” until such time as the limited access rights are acquired. Under managed access legislation, the property owner’s access rights are regulated through an access connection permitting process.

**Multi-Modal Transportation** – Public transportation, rail and waterways, bicycle and pedestrian. Multimodal access supports the needs of all users whether they choose to walk, bike, use transit, or drive.

**Non-Residential** – A business operation, farm operation, or nonprofit organization.

**Notice to Proceed (NTP)** – The date issued to the contractor or subcontractor to commence the work. This can be preliminary work or physical construction, depending on the contract or project.

**Payment Available Date** – The estimated date on which the owner receives the state’s payment, the date is receipted into court or the date payment is made out of an escrow closing per the closing statement.

**Permit** - Consent to enter or perform a specified activity, revocable by the property owner at any time, for any reason, and non-transferable. A permit is not a property right.

**Personal Property Only (PPO)** – A move of personal property from the acquired, rehabilitated, and/or demolished property for project purposes where there is not a need for a full relocation of a residence and/or a non-residential displacement.

**Possession and Use** - The agreement in which the State and the property owner agree that, upon payment of the offered amount, the State is entitled to immediate possession and use of the property and that the final settlement will be decided at a later date.

**Project Identification Number (PIN)** –The number used by RES program management to identify the construction project with the ROW project. This number can be found in the Work Order Authorization (WOA) and the Statewide Transportation Improvement Project (STIP).

**Project/Plan Title:**

- **Construction Project Title** – The generic description of the route and termini of a construction project. The specific wording is shown in the title block of the Plans, Specifications and Estimates. Engineering and fiscal considerations often result in a single right of way project being divided into several construction projects. Therefore, it is possible for a parcel to be associated with several construction projects. Referenced in the Statewide Transportation Improvement Plan (STIP) and the RW work order authorization.
- **Right of Way Plan Title** – The generic description of the route and termini of a right of way project. The specific wording is shown in the title block of the right of way plan and is exactly duplicated whenever used to identify the project.
- **Sundry Site Plan Title** – Projects involving sundry sites are identified by the name of the county. A materials site for use on a roadway project is identified by two titles: (1) The Sundry Site Plan name and site number; (2) The words “For use on” followed by the official name of the related ROW project, e.g., “Thurston County Sundry Sites, Pit Site No. PS-J-100. For use on SR 5, Lewis County Line to Tumwater.”

**Real Estate Maps** – Right of Way plans adopted and notated to capture all property rights acquired and disposed of by WSDOT.

**Replacement Housing Payment (RHP)** – An eligible relocation payment(s) authorized to be paid to eligible displaced residential owners or residential tenants to assist in obtaining replacement housing.

**Residential Relocation** –Displacement of individuals and families from a primary dwelling.

**Right of Entry** – A personal right that gives the right to perform certain tasks or work defined within the document. If a right of entry is proposed for construction activities, it should only be used in emergency situations (e.g., slides, floods, culverts) or when the property is owned by another state or local agency and additional time is needed to get through their process.

WSDOT Property Management may grant rights of entry for access to WSDOT-owned property granting a non-exclusive right of reasonable access to the property of a specific purpose. These purposes include but are not limited to inspection and surveying, to identify archaeological and environmental conditions. A right of entry agreement is valid for no more than 90 days; the rights granted are not assignable.

**Right of Way** - A general term denoting ownership or interests in property, which is usually a linear corridor or strip of land, associated with transportation, utility, or related purposes. Real property and rights therein used for the construction, operation, or maintenance, or mitigation of a transportation, or related facility.

**Right of Way Plans** - The official state documents used as the basis to acquire and dispose of real estate and other property rights. The plans are referred to in legal instruments and are permanently filed for public record at the Transportation Headquarters Building. Further details on Right of Way plans can be found in the [Plans Preparation Manual M 22-31](#).

**State Highway System** - All roads, streets, and highways designated as state routes in compliance with Chapter 47.17 RCW.

 [RCW 47.17](#)

**State Route Mile Post** - A linear referencing system measurement value used to assign a logical number to a given point along a state route.

**Statewide Transportation Improvement Program (STIP)** - A four year prioritized multimodal transportation program compiled of state, local, tribal, and public transportation projects.

**Sundry Site** - Any site under WSDOT authority that is used, or is intended for use, for pit, quarry, stockpile, common borrow, riprap, maintenance, park and ride, ferry terminals, airports, etc. Sundry Sites are typically sites outside the operating right of way.

**Surplus Property** - Any real property owned and under the jurisdiction of WSDOT that is no longer required for transportation purposes.

**Title** - When referring to real property, title defines who has legal ownership and a right to use a piece of property.

**Turnback** - Property used during the construction phase and is returned to the local agency after work is complete under the terms of a Turnback Agreement.

**Uneconomic Remnant** - 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 agency has determined has little or no value or utility to the owner.

 [49 CFR Part 24.2\(27\)](#)

**Value Memorandum** - The valuation process used as a basis for establishing fair market value on low-value, uncomplicated property disposals and leases of WSDOT-owned property.

**Washington Pattern Jury Instructions (WPI)** - The collection of instructions that are given to a jury by the judge for deliberation during a trial. The instructions are based on case law resulting from civil lawsuits. WSDOT uses this resource for guidance on Eminent Domain issues.

 [Washington Civil Jury Instructions \(westlaw.com\)](#)

**Waiver Valuation** – The valuation process used to establish fair market value as a basis for offers on low-value, uncomplicated acquisitions. Previously called an administrative offer summary (AOS). Waiver valuation are not appraisals as defined by 49 CFR Part 24.



[49 CFR Part 24](#)

**WSDOT Parcel Number** – A number assigned to a designated parcel for acquisition of property and/or property rights. Parcel numbers have a region code (1-6) and then a dash followed by a five-digit number.

## 1.5.2 Acronyms

The following standard abbreviations may be used within the Real Estate Services Office (RES) without further explanation. Do not use abbreviations in correspondence outside RES.

When using an abbreviation other than those given below, the abbreviation is defined by showing it in parentheses at the first opportunity in the text, e.g., right of way (ROW).

AAG	Assistant Attorney General
AG	Attorney General
AGO	Attorney General's Office
AASHTO	American Association of State Highway and Transportation Officials
AI	Appraisal Institute
ALJ	Administrative Law Judge
ALTA	American Land Title Association
BLM	Bureau of Land Management
CE	Categorical Exclusion
CFR	Code of Federal Regulations
DES >	Department of Enterprise Services
DNR	Department of Natural Resources
DSS	Decent, Safe, and Sanitary
DV	Determination of Value
DLT	Direct Loss of Tangibles (Personal Property)
EA	Environmental Assessment
ECS	Environmental Classification Summary (WSDOT CE NEPA document)
EIS	Environmental Impact Statement
Established L/A	Established Limited Access
FA No./FA	Federal Aid Project Number
FAA	Federal Aviation Administration
FHA	Federal Housing Administration
FHWA	Federal Highways Administration
FONSI	Finding of No Significant Impact

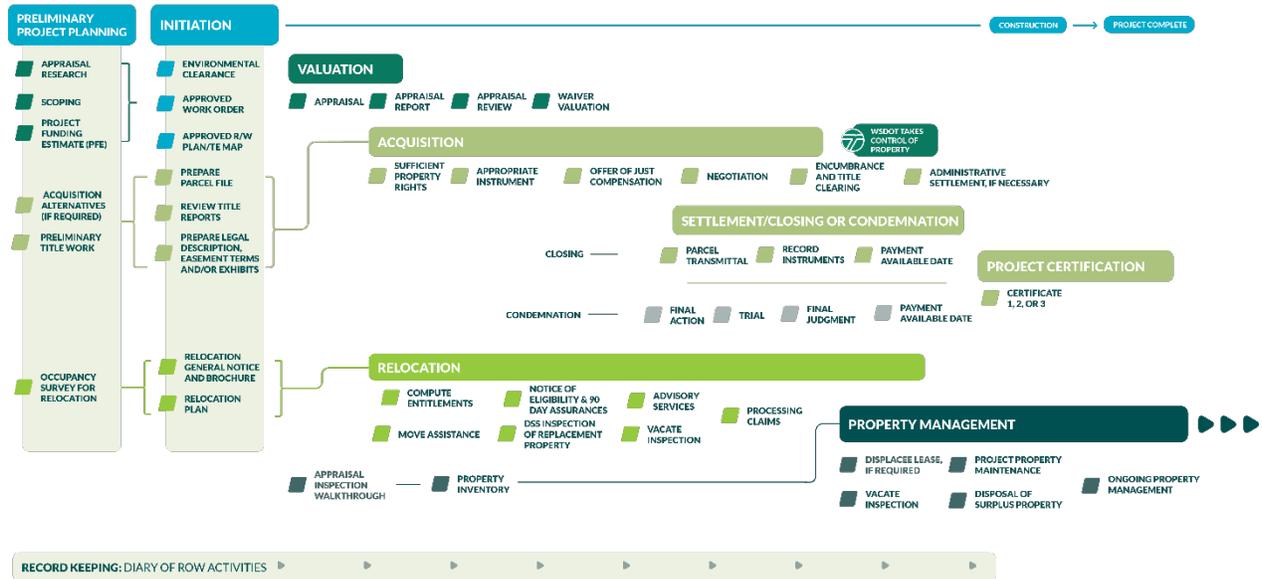
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FRA	Federal Railroad Administration
FTA	Federal Transit Authority
FMR	Fair Market Rent
FMV	Fair Market Value
HES	Highway Engineer's Station
HQ	Headquarters
HUD	Department of Housing and Urban Development
I.C. No./ICN	Inventory Control Number
IRIS	Integrated Realty Information System
IRWA	International Right of Way Association
J&D	Judgment and Decree of Appropriation
LEP	Limited English Proficiency
LET	Leasehold Excise Tax
LID	Local Improvement District
LLC	Limited Liability Company
LPA	Local Public Agency
MARAD	Maritime Administration
MIDP	Mortgage Interest Differential Payment
NEPA	National Environmental Policy Act
NPO	Nonprofit Organization
OAH	Office of Administrative Hearings
OAPU	Order Adjudicating Public Use and Necessity
OECR	Office of Equity and Civil Rights
OFR	Oversight Feedback Review
OIPU	Order of Immediate Possession and Use
PAS	Property and Acquisition Specialist
P&U	Possession and Use Agreement
PC	Preliminary Commitment for Title Insurance

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PFE	Project Funding Estimate
PIF	Public Interest Finding
PIR	Property Inspection Report
PRM	Partial Release of Mortgage
PM	Property Management
PPO	Personal Property Only
PPS	Public Purpose Statement
PS&E	Plans, Specifications, and Estimates
QCD	Quitclaim Deed
RA	Regional Administrator
RAMP	Real Estate Acquisition Management Plan
RAT	Rental Agreement Transmittal
RCW	Revised Code of Washington
REC	Real Estate Contract
RES	Real Estate Services
RESM	Region Real Estate Services Manager
RESPA	Real Estate Services Program Administrator
ROD	Record of Decision
ROE	Right of Entry
RHP	Replacement Housing Payment
RVI	Replacement Value Insurance
ROW	Right of Way
ROW No.	Right of Way Job Number
ROW Project No.	Right of Way Project Number
SEA	Statutory Evaluation Allowance
SEPA	State Environmental Policy Act
SR	State Route
STIP	Statewide Transportation Improvement Program

SPP	Substitute Personal Property
STR	Supplemental Title Report
SWD	Statutory Warranty Deed
TIB	Transportation Improvement Board
TE	Temporary Easement
UCC	Uniform Commercial Code
URA, Uniform Act of 1970, as amended	Uniform Relocation Assistance and Real Property Acquisition Policies Act
USC	United States Code
USFS	United States Forest Service
UST	Underground storage tank
UTC	Utilities and Transportation Commission
WAC	Washington Administrative Code
WASHTO	Western Association of State Highway and Transportation Officials
WD	Warranty Deed
WOA	Work Order Authorization
WFSE	Washington State Federation of State Employees
WLTA	Washington Land Title Association
WMS	Washington Management Service
WPI	Washington Pattern Jury Instructions
WSDOT	Washington State Department of Transportation



# Chapter 2

## 2. Real Estate Services Program Overview

This chapter contains a description of WSDOT’s Real Estate Services (RES) Program, including its organizational structure and program processes, promulgated in some cases by other authority.

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## 2.1 Program Summary

WSDOT Real Estate Services (RES) acquires, manages, and disposes of real property and property rights required to construct, operate, and maintain Washington State's transportation system.

WSDOT's RES Program policies, procedures, and standards are intended to:

- Ensure compliance with federal and state laws and regulations.
- Ensure owners of real property to be acquired are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in land acquisition programs.
- Ensure consistent, fair, and equitable treatment of property owners and displaced persons impacted by federal, state, and local projects, and projects with federal assistance, that such persons do not suffer disproportionate injuries as a result of transportation programs designed for the benefit of the public.
- Minimize the hardship on persons displaced by WSDOT-administered transportation programs and projects.



[49 CFR Part 24.1](#)

[23 CFR Part 710](#)

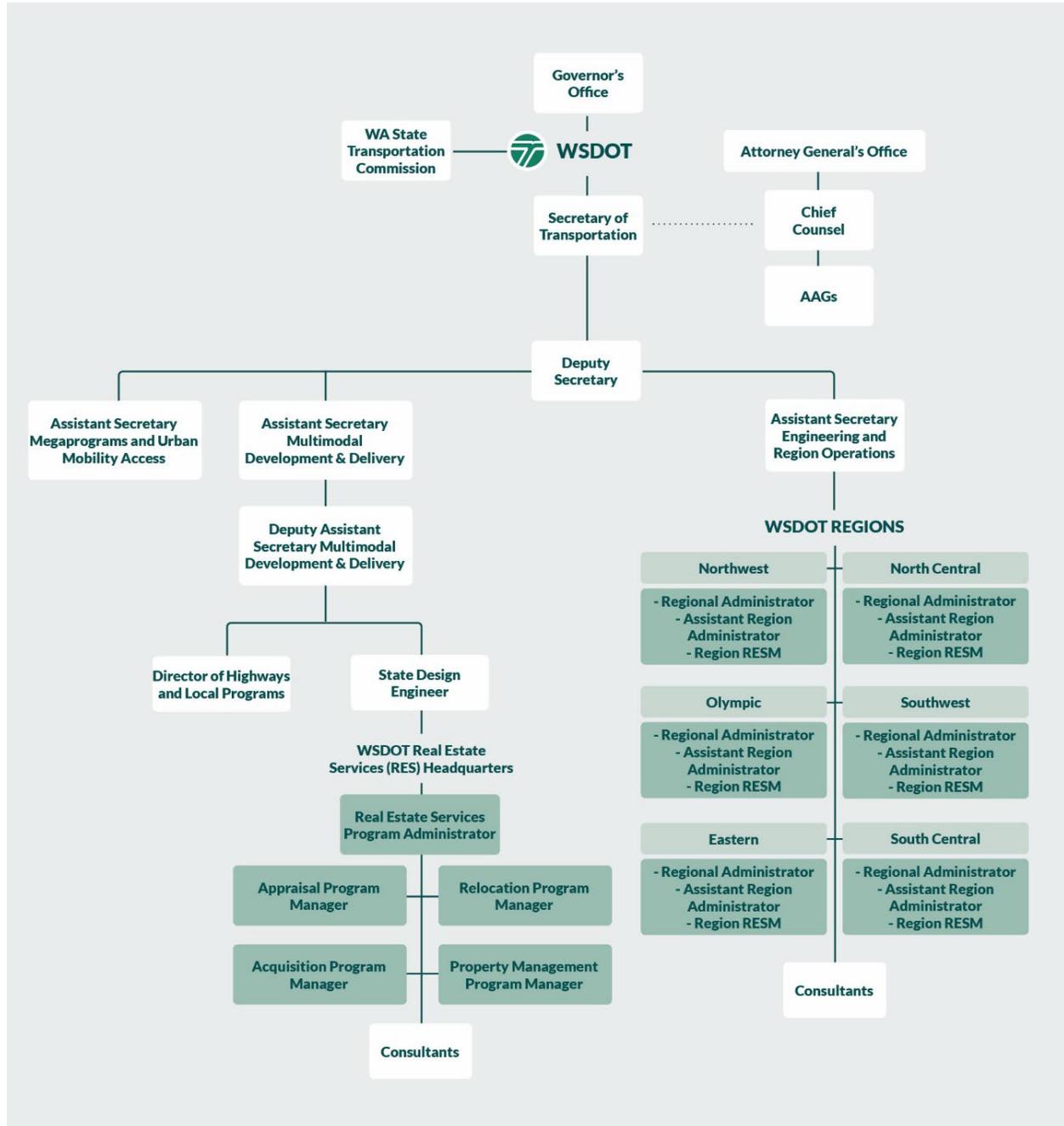
[23 CFR Part 635](#)



[RCW 8.26.010](#)

## 2.2 Program Structure and Responsibilities

The following outlines the organizational structure and responsibilities of key personnel involved in WSDOT's RES Program.



Statements regarding areas of authority and responsibility outside of RES are included to provide continuity but do not constitute an assignment of authority or responsibility.

**Washington State Transportation Commission:** The Washington State Transportation Commission provides an open public forum for transportation policy development. It reviews and assesses how the entire transportation system works across the state.



[www.wstc.wa.gov](http://www.wstc.wa.gov)

#### **WSDOT Executive Officers:**

- The **Secretary of Transportation** is appointed by the Governor and is WSDOT's Chief Executive Officer.
- The **Deputy Secretary** is WSDOT's Chief Operating Officer and assists the Secretary with high-level issues.

**Attorney General's Office (AGO):** The Office of the Attorney General provides legal services to state agencies, including WSDOT.

#### **WSDOT Real Estate Services Headquarters**

**Real Estate Services Program Administrator (RESPA):** The Real Estate Services Program Administrator administers the statewide Real Estate Services program and manages the Headquarters Real Estate Services Office, which is the repository of the official records of all real property functions. The RESPA is the chief branch policymaker on all agency real estate matters in coordination with the FHWA, AGO, other Headquarters' offices, other federal and state government offices.

RESPA has principal duties consisting of:

- Maintaining a policy and procedural manual with current state and federal laws and regulations for compliance by all RES personnel.
- Facilitating state and federal audits of RES performance.

**Appraisal Program Manager:** The Appraisal Program Manager manages the headquarters Valuation Program. This position reports to the RESPA.

The Appraisal Program Manager's principal duties consist of:

- Audits of region appraisals and reviews for consistency with current acceptable appraisal standards and compliance with state and federal laws and regulations.
- Issuing operating policies and procedures that implement current state and federal laws and regulations.
- Providing technical advice and guidance on valuation matters.
- Developing and implementing discipline-specific training.

**Acquisition Program Manager:** The Acquisition Program Manager manages Headquarters Acquisition and Title Review functions, which include Special Acquisition, Right of Way Certification, and Condemnation. This position also manages RES records. This position reports to the RESPA.

The Acquisition Program Manager's principal duties consist of:

- Audits of region acquisition files for consistency with current policies, and state and federal laws and regulations.
- Final processing and retention of all real property acquisition and damage claim files.
- Issuing operating policies and procedures that implement current state and federal laws and regulations.
- Reviewing and approving policy and procedure deviations concerning real property title and document processing functions.
- Preparing affidavits and/or testifying in court as WSDOT's expert witness in real estate matters involving acquisition, titles and legal descriptions.
- Reviewing and providing concurrence on WSDOT Right of Way Certification for all federally funded projects and only state-funded projects submitted with exceptions.
- Monitoring and ensuring recertification of projects certified with exceptions, maintaining compliance with program requirements.
- Reviewing and approving applications for Early and Advanced acquisitions.
- Developing and implementing discipline-specific training.
- Developing and implementing records management procedures.
- HQ Lead for Public Disclosure Requests.
- Supervising and managing the Special Acquisitions from State, Federal, and railroad properties.

**Relocation Program Manager:** The Relocation Program Manager manages headquarters Relocation and Relocation Review functions. This position reports to the RESPA.

The Relocation Program Manager's principal duties consist of:

- Audits of region relocation files for consistency with current WSDOT Policies, and state and federal laws and regulations.
- Issuing operating policies and procedures that implement current state and federal law and regulations.
- Coordinating and scheduling reconsideration/appeal of determinations and benefits, when necessary.
- Providing technical advice and guidance on relocation matters.
- Reviewing and approving of statewide relocation claims.
- Developing and implementing discipline-specific training.

**Property Management Program Manager:** The Property Management Program Manager manages the headquarters Property Management Program. This position reports to RESPA.

The Property Management Program Manager's principal duties consist of:

- Documenting the inventory of all real property assets and property rights.
- Facilitating the surplus property program.
- Facilitating the leasing program.
- Providing technical advice on property management matters.
- Developing and implementing discipline-specific training.
- Performing final review of surplus property conveyance documents.

### **Regions**

WSDOT's principal satellite offices are known as "region offices." Each region office is responsible for executing RES activities within a geographic boundary. If the limits of a particular highway project extend across the boundaries of a region, the responsibilities are assigned to either of the two regions by a working agreement based on a case evaluation.

**Regional Administrator/Mega Program Administrator:** The Administrator reports to the Assistant Secretary of Engineering and Regional Operations (Chief Engineer). This position has final authority in the region for decisions on highway matters within the framework established by WSDOT operating regulations in the form of Secretary Executive Orders, Directives, Policy Statements, Instructional Letters, and department manuals.

The Regional Administrator supervises Region RES Office administration and management, which includes providing the facilities, supplies, and staffing required for the effective implementation of the real estate program and its related activities. This position may review and approve transactions or may make recommendations for further actions within the scope of WSDOT's operating regulations. This activity may be subdelegated to the RESM but may not be further subdelegated. The Regional Administrator is delegated by the Secretary of Transportation to approve condemnation actions; this may not be further delegated.

**Region Real Estate Services Manager (RESM):** The RESM is responsible for the oversight and management of the Region RES Office and coordinating with other staff in the region to ensure compliance with state and federal laws and regulations and WSDOT's policies.

The RESM's principal duties consist of:

- Ensuring that the ROW for projects is certified in accordance with the requirements in Chapter 6, Certification.
- Providing technical supervision and training in all Region RES program disciplines.
- Directing the management of the Relocation Assistance Program for persons displaced by transportation projects.
- Directing the management of property and/or property rights acquired.
- Directing, reviewing, processing, and approving real property acquisition (excluding condemnation files) and damage claim files for their specific region.
- Ensuring legal sufficiency and compliance with federal and state laws and regulations and WSDOT's policies.

- Ensuring adequate time allocations for right of way activities in lead time and schedule planning.
- Obtaining technical advice from the RESPA (or designee) relative to technical problems relating to any of Real Estate Services' disciplines, training of personnel, and compliance with guidelines on real estate matters.
- Ensuring Compliance Audits are reviewed and shared with personnel or consultants completing the activities. Ensures action items are followed through in a timely manner and documented in the official file.
- Identifies training needs as a result of Compliance Audits.
- Managing consultants hired for region right of way projects.
- Providing for real estate services participation in interdisciplinary team efforts and project field inspections as required by the Regional Administrator.
- Providing data and/or personnel required to explain the acquisition, relocation assistance, and other related programs at public hearings.
- Providing reports and systematic records on the anticipated costs of proposed right of way acquisitions and related costs.
- Ensuring receipt of an appropriate Right of Way Plan and appropriate Work Order Accounting Plan prior to obligating funds on a project.
- Monitoring proposed expenditures to ensure their necessity and to ensure accurate account coding.
- Reporting on the causes and amounts for fund adjustments relative to a Work Order Accounting Plan.
- Providing appraisal evidence of the legally compensable fair market value amount lost to each separate fee and/or tenant ownership due to acquisition or highway project factors.
- Performing the "Project Inspection and Parcel Assignment" and ensuring that all property and/or property rights required for a project are either acquired or are referred for condemnation.
- Ensuring accuracy of record-keeping and digital input of project/parcel status information concurrent with parcel acquisition progress.
- Reporting on the annual Title VI reporting requirements of the Office of Equity and Civil Rights.
- Assisting in the preparation of right of way plans as required.
- Taking actions for early and advanced acquisition authorization.
- Identifying opportunities for functional replacement of publicly owned real property and ensuring compliance with the special requirements for functional replacement.

**Consultants:** WSDOT uses consultant services to accomplish real estate services tasks when WSDOT has insufficient staff availability or expertise. See Chapter 8, Use of Consultants, for more information, including minimum qualifications for hiring qualified consultants.

Please also see WSDOT's Consultant Services Manual M 27-50 for the policies and procedures for procuring and managing professional services contracts.



[Consultant Services Manual M 27-50](#)

### Local Programs

**Local Agency Projects:** Federally funded project activities of a local agency, such as a county, city, or town, are monitored by Local Programs as identified in the Local Agency Guidelines M 36-63. Local Agency Coordinators oversee ROW acquisition and certification for compliance with state and federal requirements.



[Local Agency Guidelines M 36-63](#)

## 2.2.1 Staff Minimum Qualifications

WSDOT Headquarters and Regions are responsible for hiring qualified staff and consultants. The Washington State Office of Financial Management (OFM) manages statewide human resource policy functions, including classification, compensation, workforce data, recruitment and other policy functions. OFM's job classifications set the minimum qualifications for all state employees, including the Property & Acquisition Specialist job series that WSDOT uses for Real Estate Services staff.

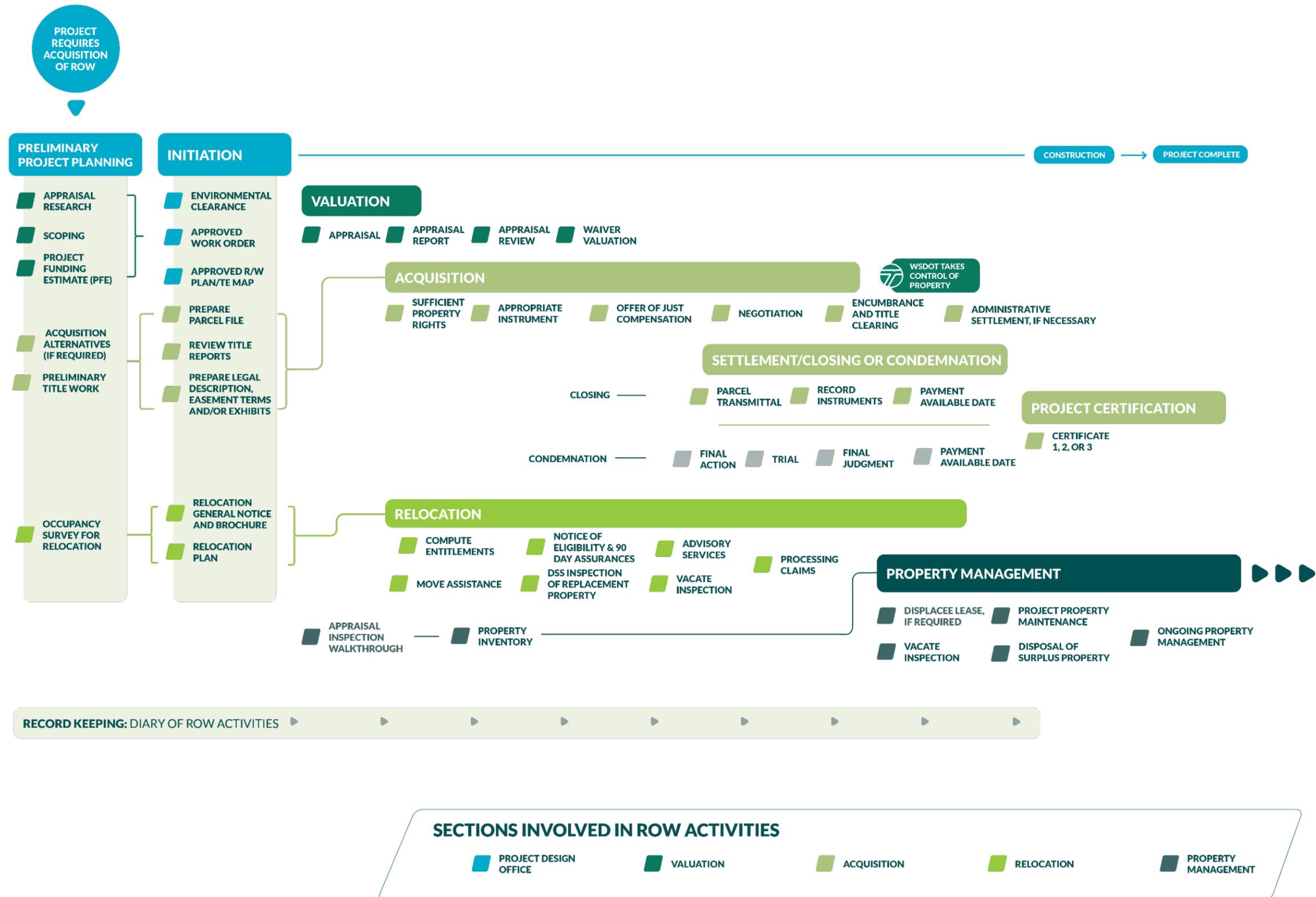
Positions in this job series perform a variety of specialized activities in real or personal property that include, but are not limited to:

- Real or personal property appraisals and/or audits.
- Property management, negotiations, relocation, title examination, acquisition, leasing, valuation, and/or project management.

Some positions administer a statewide program, such as a senior tax deferral or public utility district privilege tax. Other positions serve as a technical expert in developing and implementing various state and/or federal programs.

When hiring staff, the hiring manager has some discretion in supplementing these minimum qualifications based on current needs and subject to the review and approval of WSDOT's Human Resources group.

## 2.3 Real Estate Services Program Process



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### 2.3.1 Preliminary Project Planning

- **Project Scoping** – RES participates in interdisciplinary teams to identify ownership and participate in analyses of various routes.
- **Cost Estimates** – RES prepares the scoping level cost estimate.
- **Acquisition Alternatives** – If required, RES initiates acquisition alternatives, such as early or advance acquisition.
- **Preliminary Title Work** – Preliminary title reports are ordered.
- **Preliminary Relocation Planning** –
  - **NEPA/SEPA Planning** – RES assists the Environmental Office in meeting federal/state requirements.
  - **Occupancy Survey for Relocation** – An Occupancy Survey is completed to assist in the development of the project’s preliminary relocation planning.

### 2.3.2 Project Initiation

- **Required Documents from Project Team** - The following end-products must be received before the agency is authorized to begin acquisition of specified real property needed for transportation purposes:
  - Approved right of way plan that may vary in name depending upon the scope of the authorized work.
  - Work order accounting plan that states the scope of the authorized work and provides information concerning funds to pay for the work.
  - Environmental clearance (ROD, FONSI, ECS approval).
- **Parcel File** – Parcel data is gathered and diary of right of way activities is started.
- **Title Reports** – Title reports are reviewed, this may include coordination with the appraisal team, project office and utilities office to determine property impacts, encumbrances, etc.
- **Legal Description, Easement Terms, and/or Exhibits** – Plans are reviewed, legal descriptions written, legal instruments prepared, and easement terms identified.
- **Relocation General Notice and Relocation Brochure** – When displacements are identified, relocation advisory services are initiated by providing the General Notice and appropriate Relocation brochure to occupants.
- **Relocation Plan** – The Relocation Plan is created.
- **Pre-Acquisition Activities** – Contact with property owners is initiated, the parties in interest and/or possession and their status are identified, Relocation Services are engaged, as needed, and Environmental Service Office (ESO) is engaged, if needed, for toxic/hazardous waste situations.

### 2.3.3 Valuation

After the project has been initiated, valuations are performed for each parcel where the acquisition of property rights will occur. Valuations are done either by appraisal and appraisal review or by waiver valuation, depending on the complexity of the valuation problem and compensation thresholds detailed in Chapter 3.

- **Appraisals** – Appraisals are conducted for acquisition, donation, condemnation, and surplus property, as well as special situations such as mobile homes and contaminated properties, and leased properties, when required. Relocation and Property Management representatives may participate in the appraisal inspection walkthrough.
- **Appraisal Report** – A written appraisal.
- **Appraisal Review** - The appraisal report is reviewed to ensure it complies with regulations, contains or references sufficient information to support conclusions and that fair market value is appropriately identified.
- **Waiver Valuation** – When an appraisal can be waived, a waiver valuation is prepared.

### 2.3.4 Acquisitions

- **Sufficient Property Rights** – When the approved Appraisal Review or Waiver Valuation is available, acquisition procedures are initiated by identifying and acquiring sufficient property rights, such as fee title, access only, easements, right of entry, etc.
- **Instruments** – The appropriate instruments are prepared for acquisition of the type of property rights required.
- **Encumbrance and Title Clearing** – Encumbrances are researched and cleared - such as assessments, deeds of trust and mortgages, liens, judgements, utilities, water rights, and vacated or prescriptive streets and roads.
- **Offer of Just Compensation** – The offer of just compensation is presented orally and in writing to property owners or their representative.
- **Negotiation** – Negotiation is initiated with the property owner to achieve a settlement of just compensation for the needed property and property rights. Various negotiation situations may arise, such as a revised offer, fixtures and improvements, uneconomic remnants, etc. Upon conclusion of satisfactory negotiations, the negotiator obtains execution of necessary instruments and vouchers by all interested parties and transmits the file for processing.
- **Administrative Settlement** - If reasonable efforts to negotiate an agreement for just compensation do not result in a negotiated settlement, a justified settlement may be authorized by the appropriate approving authority, exceeding the just compensation amount.

### 2.3.5 Closing or Condemnation

Once a settlement agreement has been reached with a property owner, the transaction can be closed.

- **Closing** – The payment becomes available to the property owner by mailing the payment to the property owner, Electronic Funds Transfer to the property owner, closure in escrow, or payment to the registry of the court. A parcel transmittal package is prepared and instruments recorded. Possession is taken of the acquired property and property management is initiated on the payment available date.
- **Condemnation** – It may be necessary to condemn the parcel to acquire the property through the courts. A condemnation data package, including names and addresses of all interested parties, is transferred to legal counsel to initiate eminent domain proceedings.

### 2.3.6 Relocation

When acquisition, rehabilitation, or demolition due to the project requires someone to move or move their personal property, relocation assistance is necessary.

- **Compute entitlements** – Residential, non-residential, and PPO displaced persons may be entitled to payments for replacement housing, moving costs, and/or reestablishment expenses, in addition to advisory services. Entitlements are computed based on actual, reasonable, and necessary standards determined by the agency.
- **Notice of Eligibility & 90-Day Assurances** – Displaced person(s) are provided the required Notice of Relocation Eligibility, Entitlements, and 90-Day Assurance, which advises the displaced person(s) of their eligibility for relocation assistance and entitlements, an available DSS comparable dwelling (for residential occupants), and ensures them that they will not be required to move for at least 90 days.
- **Advisory Services** – Advisory services are provided to ensure displaced persons maximize their benefits and relocate successfully.
- **Move Assistance** – Reasonable and necessary moving costs for reimbursement are determined by the agency.
  - **Vacate Inspection** – The acquired property is inspected to ensure all displaced persons and their personal property has been removed.
- **Processing Claims** – Claims are processed for replacement housing payments, move payments, reestablishment payments, and related moving expenses.

## 2.3.7 Certification

The next step in the process is to certify the project as clear for construction.

**Certification** – The project must be certified that the ROW has been cleared for construction prior to advertising for construction (design-bid-build project) or soliciting Requests for Proposal (RFP) (design-build projects). When all parcels on the project have been acquired, the project can be certified as clear for construction with FHWA approval, if necessary.

There may be a case where a project requires a conditional certification to be issued with exceptions; certifications with exceptions should be rare and require advanced approval. Certifications with exceptions must be followed by a “clear” certification when all acquisitions are complete.

## 2.3.8 Property Management

Effective management and security are provided for all agency-owned and operated properties.

- **Property inventory** – Data records are maintained for all interests acquired and held.
- **Displacee Lease** – A lease is used when an occupied property is acquired, whether residential or commercial, and the displaced person remains in tenancy until relocation is completed.
- **Vacate Inspection** - agency-owned properties are inspected to guard against encroachments, theft, pest control, dumping of debris, and hazardous materials. Improvements are inspected to develop a strategy for continued use or demolition.
- **Project Property Maintenance** – Property management is not completed until the property is handed over to the contractor. The property should be secured to guard against theft, pest control, dumping of debris, and hazardous materials until construction is complete.
- **Ongoing Management** – To the greatest extent practicable, hazards and public nuisances originating on, or caused by, agency-owned land or improvements are eliminated. Encroachments are subject to removal if they interfere with the safe operation, maintenance, and use of the right of way.
  - **Leasing** - Lands, improvements, or air space above or below any lands that are held for highway purposes but not presently needed may be leased. Fair market rent is received from leases.
  - **Surplus Property Disposals** - Real property that is no longer required for transportation purposes may be disposed when it is in the public interest to do so. Fair market value is received from sales.

## 2.3.9 Record Keeping

Adequate records of real estate transaction activities must be maintained and retained in sufficient detail to demonstrate compliance with state and federal statutes, laws, policies, and regulations.

Records are the property of WSDOT. They must be maintained in WSDOT's possession and the final records submitted to Headquarters RES for retention according to the Real Estate Services Records Retention Schedule.

**CFR →** [49 CFR 24.9](#)

**WAC →** [WAC 468-100-009](#)

### 2.3.9.1 Diaries: All Disciplines

Diaries need to provide a complete record of the ROW transaction, as they are often the only written documentation that demonstrates compliance with the Uniform Act and 49 CFR Part 24. If it is not in the diary, it is difficult to prove it happened.

**CFR →** [49 CFR Part 24](#)

Diaries need to be well organized and factual, and they should be written for someone unfamiliar with the transaction. They must reference any appropriate documents provided to property owners/tenants, such as brochures and forms, or estimates obtained to support an administrative record.

Diary entries should contain all the essential and factual information discussed and/or obtained during each contact, any decisions made or additional actions to be taken, and other such information sufficient to inform the user and/or reviewer of the diary of the purpose of the contact and/or diary entry.

Upon completion of entries, the agent signs and dates the diary.

Diary entries must be limited to a recitation of the facts. Information contained in diary entries related to the property owner, displaced person, or any other party must be factual, non-judgmental, and not contain opinion statements. The diary is subject to the rights of discovery by all parties in any court proceedings. For example, it is important to note if there are items on the property that might require special consideration, such as animals, swing sets, etc.; however, the agent should not include opinions relating to the condition of the property except as they relate to valuation and/or relocation activities.

### 2.3.9.2 Appraisal Record Keeping Requirements

Work files for appraisals and appraisal reviews must comply with the current version of USPAP's Record Keeping Rule as well as with agency file retention policies. WSDOT must ensure work file access for staff appraisers and appraisal reviewers to comply with USPAP and Washington State Department of Licensing requirements.

### 2.3.9.3 Maps

WSDOT maintains Real Estate Services Maps including entry of new right of way plans, entry and reposting of plan revisions; Real Estate Services Sundry Site Maps including pit and stockpile record books and maps; and advises and assists others on matters involving right of way acquisitions, ownership, inventory and plans including, but not limited to, retrieval of data from archives and interpretation of evidence.

### 2.3.9.4 Inventory Control Numbers

Any property right acquired shall be assigned an Inventory Control Number (ICN). Even if no parcel number has been assigned, an ICN must be assigned if WSDOT has acquired a property right. This also includes all right of way obtained from local agencies. A separate ICN shall be assigned to each type of property right acquired for the parcel (e.g., fee, easement, temporary right more than one year, etc.)

## 2.4 Federal Projects

### 2.4.1 Title 23 Funding and Reimbursement

Except as provided for in Chapter 4 - Early Acquisition, an agency may only acquire real property, including mitigation property, if the following conditions are satisfied:

- The project is identified in the STIP
- The agency has executed a project agreement or Federal-Aid Project Agreement (FAFA) reflecting the Federal funding terms and conditions of the project.
- Only the following preliminary acquisition activities may be advanced prior to completion of the NEPA review: title search, appraisal, appraisal review and waiver valuation preparation, preliminary property map preparation and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services.
- Costs have been incurred in conformance with State and Federal requirements.

Federal funding participation may be sought for direct costs that are identified specifically as an authorized acquisition activity such as real property acquisition cost, relocation assistance and payments, damages, property management, labor expenses, and access rights, and certain other general costs.



[23 CFR 710.203](#)

## 2.4.2 Project Authorization

For WSDOT projects, A Federal-Aid Project Agreement (FAFA) is required, as condition under title 23, if a project will use federal funding. The FAFA is the document which constitutes FHWA's obligation to reimburse WSDOT for the federal share of eligible project costs based on an agreed upon scope of work. The dollar amount of federal funds approved is known as the obligation of federal funds. 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 noted above.

The FAFA is prepared by Capital Program Development and Management (CPDM) and approved by FHWA. A ROW work order typically will not be issued until FHWA approves the FAFA.



[23 CFR 710.303](#)



[WSDOT Program Management Manual M 3005.02](#)

As a condition of the federal funds obligated, the agency must stipulate that in the event actual construction of a road on the federally obligated right-of-way is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the project is authorized, the agency will repay to the FHWA the sum or sums of Federal funds paid to the transportation department under the terms of the agreement. The State may request a time extension beyond the 20-year limit with no repayment of Federal funds, and the FHWA may approve this request if it is considered reasonable.



[23 CFR 630.112](#)

## 2.4.3 Reporting Requirements

WSDOT and Local Programs are required to provide an annual summary report by November 15<sup>th</sup> of each year describing the real property acquisitions, displacements, and related activities conducted by the agency. This report is known as the Annual Statistics Report. The reporting period is on a federal fiscal year basis, i.e. October 1<sup>st</sup> through September 30<sup>th</sup>. FHWA supplies a form for inputting the required data.



[49 CFR 24.9\(c\)](#)

## 2.5 Electronic Signature of Documents

By Executive Order E-1066 and the passage of the Uniform Electronic Transaction Act, electronic signatures are considered acceptable forms of signatures on all documents. Electronic signature is defined as a symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Different electronic signature types are acceptable on different types of documents, based on risk level and ROW discipline. Please refer to the appropriate desk manual for specific requirements. A higher level of signature is always allowed. If you have any questions regarding the level of signature required, contact HQ Real Estate Services.

There are different categories of electronic signature types:

- Non-Authenticated:
  - Typed, electronically handwritten, or Self-certified -These are approved for low-risk documents and used for internal documents, letters, and memos.
- Authenticated:
  - Certified Signature - These are for medium risk documents and used for both internal and external documents needing approval or concurrence such as documents obligating the agency to act or pay monies. (i.e., Vouchers, Final Diary, setting just compensation)
  - Third-Party Authentication - for higher risk documents requiring an audit trail (i.e., Legal Documents and Conveyances, Receipt of notices and offer).
  - Notarized – Remote Online Notarization is approved for use for documents requiring notarization.

**NOTE:** A property owner or displaced person must request and voluntarily elect to receive electronic communication and provide electronic signatures. All relevant procedures are outlined in Chapter 4 and Chapter 5.



[49 CFR 24.5](#)



[RCW 1.80](#)

## 2.6 Expeditious Payments

Expeditious payments to property owners and displaced persons must comply with the Uniform Act. The Offer Letter states payment will be made within 45 days from the acceptance of the offer and signed documents. Property owners and displaced persons should not have to wait for an unreasonable amount of time for payment.

Vouchers must be processed and sent to AFS within one business day of signing, depending on receipt of the (Statewide Vendor Number) SWV number.

Even though WSDOT does not take physical possession of the property until the “Payment Available Date”, payment must be made simultaneously, and no later than two business days, from recording.



[49 CFR 24.207](#)



[WAC 468-100-207\(1\) & \(2\)](#)

## 2.7 Oversight and Compliance

### 2.7.1 FHWA Stewardship and Oversight Agreement

The following chart reflects agency responsibilities in accordance with the FHWA/WSDOT Stewardship and Oversight Agreement.

Action	Agency Responsible NHS	Agency Responsible Non-NHS
Completion of ROW clearance, utility, and railroad work concurrently with construction: Make feasibility/practicability determination for allowing authorization to advertise for bids or to proceed with force account construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)]	STATE	STATE
Approve non-highway use and occupancy of real property interests [23 CFR 1.23(c), 710.405]	FHWA for Interstate; STATE for Non-Interstate NHS	STATE
Approve disposal at fair market value of real property interests acquired with Federal-aid assistance, including disposals of access control [23 CFR 710.403(e), 710.409]	FHWA for Interstate; STATE for Non-Interstate NHS	STATE
Approve disposal at less than fair market value of real property interests acquired with Federal-aid assistance, including disposals of access control [23 U.S.C. 156; 23 CFR 710.403(e)]	FHWA	FHWA
Approve advertisement for bids based on a conditional ROW certification, unless it is not in the public interest to proceed. [23 CFR 635.309(c)(3)(i)]	FHWA for Interstate; STATE for Non-Interstate NHS	STATE
Approve physical construction under a contract or through force account work based on a conditional ROW certification, only if there are exceptional circumstances that make it in the public interest to proceed. [23 CFR 635.309(c)(3)(ii)]	FHWA	FHWA
Approve hardship and protective buying [23 CFR 710.503]	FHWA	FHWA
Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project [23 U.S.C. 323; 23 CFR 710.507]	FHWA	FHWA
Federal land transfers [23 CFR part 710, subpart F]	FHWA	FHWA
Functional replacement of property [23 CFR 710.509]	FHWA	FHWA
Waiver of the policy of the availability of comparable replacement dwelling before displacement under specified circumstances [49 CFR 24.204(b)]	FHWA	FHWA

As part of the Stewardship and Oversight Agreement, WSDOT and Local Programs report annually on the stewardship indicators noted above. This report is based on the activities for the prior calendar year and provided to FHWA. The stewardship indicators provide a glance of the overall health of the program and indicate how several of the responsibilities FHWA has delegated to WSDOT are performing.

## 2.7.2 Region Oversight Responsibilities

Regions are responsible for oversight of all real estate activities in their region to ensure compliance with state and federal laws and regulations. “Oversight” is defined as the responsibility and accountability for managing, supervising, directing, and controlling the employees and processes under the region’s authority. The HQ Acquisition Program Manager shall approve requests for all early acquisitions, protective buying acquisitions, hardship acquisitions, and corridor preservation acquisitions to ensure eligibility for future federal funding.

To qualify for and maintain our accountability for federal funding, WSDOT is required to “...be adequately staffed, equipped, and organized to discharge (our) real property related responsibilities.”

**CFR →** [23 CFR 710.201\(a\)](#)

In limited circumstances, Headquarters RES may be required to oversee the work performed by other public land organizations (e.g., local agencies) and private consultants.

**CFR →** [23 CFR 710.201\(h\)](#)

## 2.7.3 Headquarters Compliance Audit

WSDOT is responsible to FHWA to ensure “...that acquisitions and disposals by a state agency are made in compliance with legal requirements of state and federal laws and regulations,” and this manual. Failure to comply with state and federal laws and regulations can result in a variety of sanctions, including but not limited to loss of federal funds on a parcel or project and/or withdrawal of federal participation from future projects.

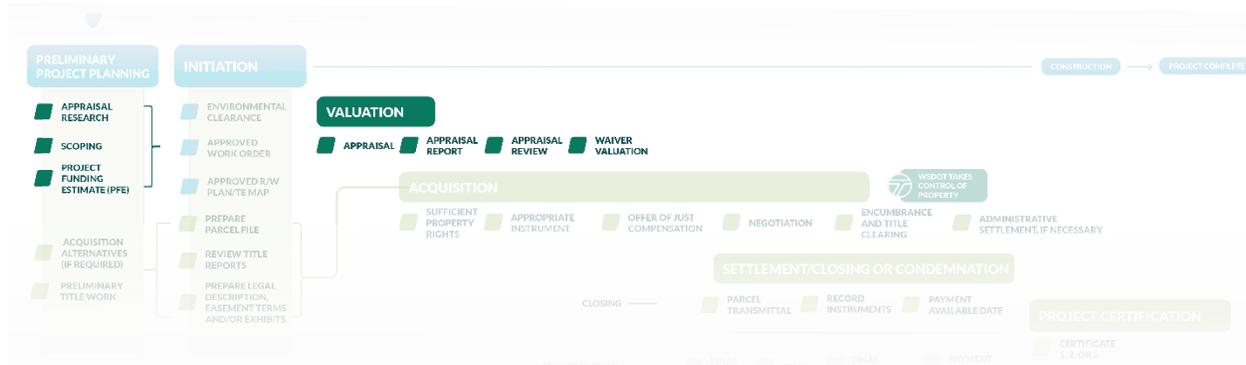
**CFR →** [23 CFR 710.201\(b\)](#)

To assist regions in their oversight responsibility, Headquarters RES provides compliance audits of a representative sample of files and documents.

Compliance audits help confirm that region real estate activities are carried out in full compliance with federal and state laws, regulations, policies, and procedures.

Compliance audits must provide feedback on the quality and performance of RES activities to ensure proper region oversight. The format for this feedback will typically include a reviewer's findings report, identification of successful practices and a listing of any deficiencies or possible noncompliance issues. If necessary, the feedback will include an action plan and/or list of options to address deficiencies and noncompliance issues and will identify the Headquarters RES technical specialists who may be contacted for assistance and training in addressing these issues.

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# Chapter 3

## 3. Valuation

This chapter sets forth the requirements for acquisition valuations for real property or property rights for transportation projects as well as the requirements for disposal and leasing valuations for properties that are surplus to the agency's needs.

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## 3.1 Chapter Overview

### 3.1.1 Valuation Policies

The U.S. Constitution, Fifth Amendment, and the Washington State Constitution, Amendment 9, Article 1, Section 16, Eminent Domain, requires that “no private property shall be taken, or damaged for public or private use without just compensation having been first made, or paid into court for the owner...”



<https://leg.wa.gov/state-laws-and-rules/washington-state-constitution/?section=ARTICLE%20I#SECTION-16>

The valuation policies in this chapter are designed to carry out this requirement for payment of just compensation.

The public bears the burden of public projects designed to safeguard and protect the private property of all. These policies ensure the public that compensation offered and awarded to property owners is just, and approximate to what it can reasonably be assumed the property would bring in cash in an open market exchange to a willing seller and under normal bargaining procedures.

**Minimum Payment** – An acquisition offer of just compensation will not be prepared for less than \$1,000 for real property except in situations of special benefits, in which case the minimum amount of the offer of just compensation may be \$0. WSDOT’s minimum payment policy is not applicable to local agencies; however, a local agency can create a policy if desired.

### 3.1.2 Valuation Authority, Roles, and Responsibilities

#### 3.1.2.1 Authority

The agency’s appraisal and appraisal review actions conform with the legal authorities and standards listed below:

- Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.).
- 49 CFR Part 24—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs
- 23 CFR 630.106(a)(3) and (a)(4)—Authorization to Proceed (Cost Estimates)
- 23 CFR 710.203(b)—Funding and Reimbursement, Direct Eligible Costs
- 23 CFR 710.305(a)—Acquisition, Appraisal Requirement
- 23 CFR 710.403(e)—Management
- RCW Title 8—Eminent Domain
- RCW 70A.305—Hazardous Waste Cleanup—Model Toxics Control Act
- Uniform Standards of Professional Appraisal Practice (USPAP)
- Uniform Appraisal Standards for Federal Land Acquisition (UASFLA)
- Washington Pattern Jury Instruction (WPI) Part X-A. Eminent Domain

### 3.1.2.2 Roles and Responsibilities

The agency is responsible for assuring the valuation problem is documented prior to ordering the appraisal, the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted federal and federally assisted program appraisal practice, and, at a minimum, comply with the definition of appraisal set forth in 49 CFR Part 24.2(a) and the requirements in 49 CFR Part 24.103(a)-(c).



[49 CFR Part 24.2\(a\)](#)

[49 CFR Par 24.103\(a\)-\(c\)](#)

The appraisal, appraisal review, and negotiations for a parcel are typically performed by three different people, which separates functions to maintain the integrity of real estate transactions. Appraisals, completed by an appraiser, are reviewed by a qualified review appraiser, prior to initiation of negotiations by the negotiator.

No one may intercede in or alter any valuation conclusions or reports. If an issue arises, it should be addressed directly with the preparer of the document.

The WSDOT Appraisal Program Manager's responsibilities include interpreting the intent and meaning of valuation requirements when questions arise.

### 3.1.3 Qualifications

WSDOT has established minimum qualifications and competencies for appraisers and review appraisers in accordance with WAC 468-100-102(4) and 468-100-103. WSDOT must use qualified internal staff, when available, before contracting consultants.



[WAC 468-100-102\(4\)](#)

[WAC 468-100-103](#)

All appraisers and reviewers must have technical valuation competence and knowledge of applicable eminent domain law and valuation principles, such as outlined in the legal authorities and standards listed in Section 3.1.2.1 of this chapter.

### 3.1.3.1 Minimum Qualifications for Appraisal and Appraisal Review Consultants

All consultants qualified to perform appraisals and/or appraisal reviews must meet the following minimum qualification requirements:

- Successful completion of an eminent domain valuation course within the past five years.
- Successful completion of a partial acquisition valuation course within the past five years.
- Successful completion of a UASFLA course.
  - If a new version of UASFLA is released, an update course must be taken within 18 months of the release.
- Be a State-certified residential real estate appraiser or a State-certified general real estate appraiser through the Washington State Department of Licensing.



Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.)

**NOTE:** 200 hours of eminent domain experience in any US state or territory may be substituted for the education requirements above. Refer to eminent domain experience hour limits in WAC 308-125-075 for guidance on this option.



WAC 308-125-075

### 3.1.3.2 Additional Minimum Qualifications for Appraisal Review Consultants

Reviewers must meet the minimum appraisal qualifications as well as the following requirements:

- Successful completion of an appraisal review course within the past five years.
- At least 400 hours of eminent domain appraisal experience in any US state or territory or at least 100 hours of eminent domain appraisal review in Washington State. Refer to eminent domain experience hour limits in WAC 308-125-075.



WAC 308-125-075

For each appraisal or appraisal review assignment, the valuer may need to meet further requirements relevant to the assignment and may need to provide proof to the contracting entity that they have the experience, education, and training to competently complete the assignment. Proof may include course completion certificates, an experience log, and/or resume or CV.

### 3.1.3.3 Minimum Qualifications for Waiver Valuation Preparers

The person preparing the waiver valuation and overseeing the waiver valuation process must have sufficient understanding of the local real estate market to be qualified to perform or oversee the waiver valuation. They must also have a foundational knowledge of valuation principles and applicable eminent domain law.



49 CFR 24.102(c)(2)

49 CFR 24.103(d)(1)

49 CFR 24.103(d)(2)

### 3.1.4 Conflict of Interest

Appraisal/valuation must be independent and free of inappropriate influence. The overall objective of the conflict of interest provision is to minimize the risk of fraud while allowing agencies to operate as efficiently as possible.

**CFR →** [49 CFR 24.102\(n\)](#)

The appraiser, review appraiser, or person performing the waiver valuation must not have any interest, direct or indirect, in the real property being valued for the project.

Except in extraordinary circumstances, the consultant appraiser and reviewer may not work for the same firm.

Compensation paid to the appraiser for making an appraisal, appraisal review, or waiver valuation is not based on the amount of the valuation estimate.

No person may attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, appraisal review, or waiver valuation.

Persons functioning as negotiators may not supervise or formally evaluate the performance of any waiver valuation preparer, appraiser or review appraiser performing valuation work. The intent is to ensure appraisal and/or waiver valuation independence and to prevent inappropriate influence.

The same person may perform a waiver valuation, appraisal, or appraisal review and negotiate the acquisition only in cases where the amount of the purchase offer is \$15,000 or less.

### 3.1.5 Updating a Valuation

If a significant delay has occurred since the time of the appraisal of the property, the agency shall have the appraisal or waiver valuation updated or obtain a new appraisal and review or waiver valuation. A significant delay is generally anything over nine months. If the latest appraisal or waiver valuation information indicates that a change in the purchase offer is warranted, the agency shall promptly reestablish just compensation and offer that amount to the owner in accordance with Chapter 4.

**CFR →** [49 CFR 24.102\(g\)](#)

## 3.2 Pre-Appraisal Estimates

### 3.2.1 Project Funding Estimates/Cost Estimate

A Project Funding Estimate (PFE) is a parcel-by-parcel estimate of total expected right of way phase costs used to obtain authorization and funding for the project. A PFE or cost estimate for every project is prepared in which right of way will be acquired. Inspection of the project and viewing of the individual parcels is essential in determining the effects of the acquisition. The PFE includes all relevant costs detailed in 23 CFR 710.203(b) and those costs must have documented support by research contained within the project file. The PFE is updated as needed.

**NOTE:** The project needs to be included in the STIP/TIP based on the cost estimate.



[23 CFR 710.203\(b\)](#)

[23 CFR 630.106\(a\)\(3\)](#)

[23 CFR 630.106\(a\)\(4\)](#)

### 3.2.2 Scoping

The agency has a legitimate role and takes responsibility in contributing to the appraisal process, especially in developing the scope of work/scope of assignment and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem. The person responsible for these tasks, typically a Senior Appraiser, must have sufficient understanding of appraisal theory and valuation issues to properly scope the assignment or must engage someone with this knowledge to assist in the process. The valuation professionals retained to complete the assignment must be adequately experienced and competent to perform the valuation.

Care should be taken in the scoping process to ensure that proper direction is given to the appraiser regarding issues such as contamination, improvements, and damages. Contamination should be considered in all valuations. Likewise, all improvements that may be impacted by an acquisition should be addressed in all valuations. For the valuation of an easement, whether temporary or permanent, a copy of the draft conveyance document must be provided to the valuer at the time the valuation assignment is made. For temporary easements, the conveyance document must include the purpose and duration of the temporary easement as well as the termination date. If the specific dates are unknown, the valuation should be deferred until the agency provides this information to the valuer.



[49 CFR 24.103\(a\)\(1\)](#)

During scoping activities, or subsequently during the valuation, if it becomes clear that there may be an uneconomic remnant, a “before and after” analysis (Federal Rule) is required instead of a “strip take” analysis (State Rule).

## 3.3 Appraisals

Appraisals are the estimate of fair market value. The appraisal format and level of documentation depends on the complexity of the appraisal problem.

An appraisal is required when:

- The valuation problem is complicated, regardless of the indicated property value.
- The valuation problem is uncomplicated, and the just compensation indicated for an acquisition is greater than \$15,000, but less than \$35,000, and an appraisal is requested by the property owner.
- The valuation problem is uncomplicated, and the just compensation indicated for an acquisition is greater than \$35,000 for an acquisition.
- The property being acquired includes a temporary easement with an extension option.
- The annual fair market rental value is greater than \$25,000 for lease transactions of agency-owned property.
- The fair market value is greater than \$100,000 for disposal transactions of agency-owned property.

### 3.3.1 Acquisition Appraisals

Appraisals are completed on all properties affected by the agency's transportation projects prior to negotiations for purchase of property rights required for transportation purposes, except as provided in 49 CFR Part 24.102(c)(2) and RCW 8.26.180(2) when acquired by donation and the donor waives it in writing or when using a waiver valuation when the valuation problem is uncomplicated and the just compensation estimate is \$35,000 or less, including cost-to-cure items.

 [49 CFR Part 24.102\(c\)\(2\)](#)

 [RCW 8.26.180\(2\)](#)

Evaluation in both the before and after instances is based on “fair market value” and not “value in use.”

In the Federal Rule, the mathematical difference between the two market values (“before” minus “after”) is the just compensation after adjusting for items that are not compensable under the law.

#### ***Before - After = Compensation***

The “after value” is based on the value of the remainder property, assuming that the actual construction of the proposed project will not be completed until an estimated future date.

Any temporary inconvenience during or caused by the actual construction of the project is not considered in the appraisal.

Authorization of acquisition appraisals normally occurs after the corridor hearing has been held, the final environmental approval has been obtained, and the right of way plan, or other approved map, showing the parcels to be appraised, has been submitted.



[M22-01.21 Design Manual, Chapter 210: Community Engagement and Public Hearings](#)

Special approvals may be authorized on a parcel-by-parcel basis under the provisions of early acquisition. Each parcel to be acquired by negotiation must have at least one appraisal, except when the criteria for a waiver valuation are met. See Section 3.3 for more information.

Additional appraisals may be required due to the complexity of the appraisal problem. The review appraiser or the senior appraiser is responsible for determining if more than one appraisal will be required and should make this determination early in the acquisition process, preferably during the PFE/Cost Estimation phase.

The appraisal must include the report requirements detailed in 49 CFR 24.103(a)(2)(i) through (v), including a statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.



[49 CFR 24.103\(a\)\(2\)\(i\)-\(v\)](#)

### 3.3.1.1 Joint Inspection With Owner

The property owner, or the owner's designated representative, has the legal right to accompany the appraiser during the appraiser's inspection of the property. The appraiser under contract to complete and sign the appraisal must be at the joint inspection; other appraisers may accompany the primary appraiser. Significant efforts must be made to ensure that the property owner has been extended this opportunity.

When possible, contact attempts with the owner will be made by direct phone call, direct email, and/or in-person communication. A certified letter may also be sent if other contact methods fail. Each contact attempt must be documented in the Report of Owner Contact and must include date/time, method, conversation summaries, and outcomes. This includes documentation of the site inspection. The Report of Owner Contact form must be included in the appraisal report.

Other professionals may be invited to the joint inspection, including the appraisal reviewer, the relocation agent, the negotiator, and others from the project team. For all properties where more than nominal improvements will be impacted, the review appraiser and a relocation agent are required to attend the appraiser's joint inspection with the property owner and tenant. All attendees shall be noted on the Report of Owner Contact form. See Section 3.5.1 for additional attendee requirements.



[49 CFR 24.102\(c\)\(1\)](#)

### 3.3.1.2 Personal Property Determinations

For all properties where improvements will be impacted, the review appraiser and a relocation agent are required to attend the appraiser's joint inspection with the property owner and tenant, if any, to clarify and identify realty versus personalty items as well as to ascertain ownership rights. A Realty/Personalty report must be included in the appraisal to identify buildings, structures, and other improvements (including removable building equipment and trade fixtures) as well as identifying ownership interests. Items of personalty are excluded from the determination of fair market value.

It is important that the appraiser work closely with the appraisal reviewer and the relocation agent in making the determinations of realty versus personalty. Additional information may be found in Section 3.3.2.1 Mobile Homes and Section 3.3.2.2 Other Structures.

 [49CFR 24.103\(a\)\(2\)\(i\)](#)

### 3.3.1.3 Project Influence

The appraiser disregards any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

 [49 CFR 24.103\(b\)](#)

### 3.3.1.4 HAZMAT Contamination/Toxic/Hazardous Waste Situations

This section is relevant to WSDOT projects only. Project offices must complete environmental due diligence.

 [40 CFR 312.20](#)

 [RCW 70A.305.040](#)

Valuing and purchasing contaminated properties can be complicated and any possible remaining liability to the property owner is often nuanced. The Region RESM is responsible for ensuring that the results of any environmental due diligence are considered as part of the appraisal before an offer is made to a property owner. The Region RESM must also adequately consult with the project team, the Environmental Services office, and the Headquarters RES office whenever contamination is indicated to ensure appropriate measures are taken to protect the agency and treat the property owner fairly. There is no universal approach to dealing with contaminated properties and it may also require consultation with the Attorney General's Office depending on the circumstances.

Environmental site assessments are required in advance of property acquisition. These assessments are described in M31-11.29 Environmental Manual Chapter 447.

 [M31-11.29 Environmental Manual Chapter 447](#)

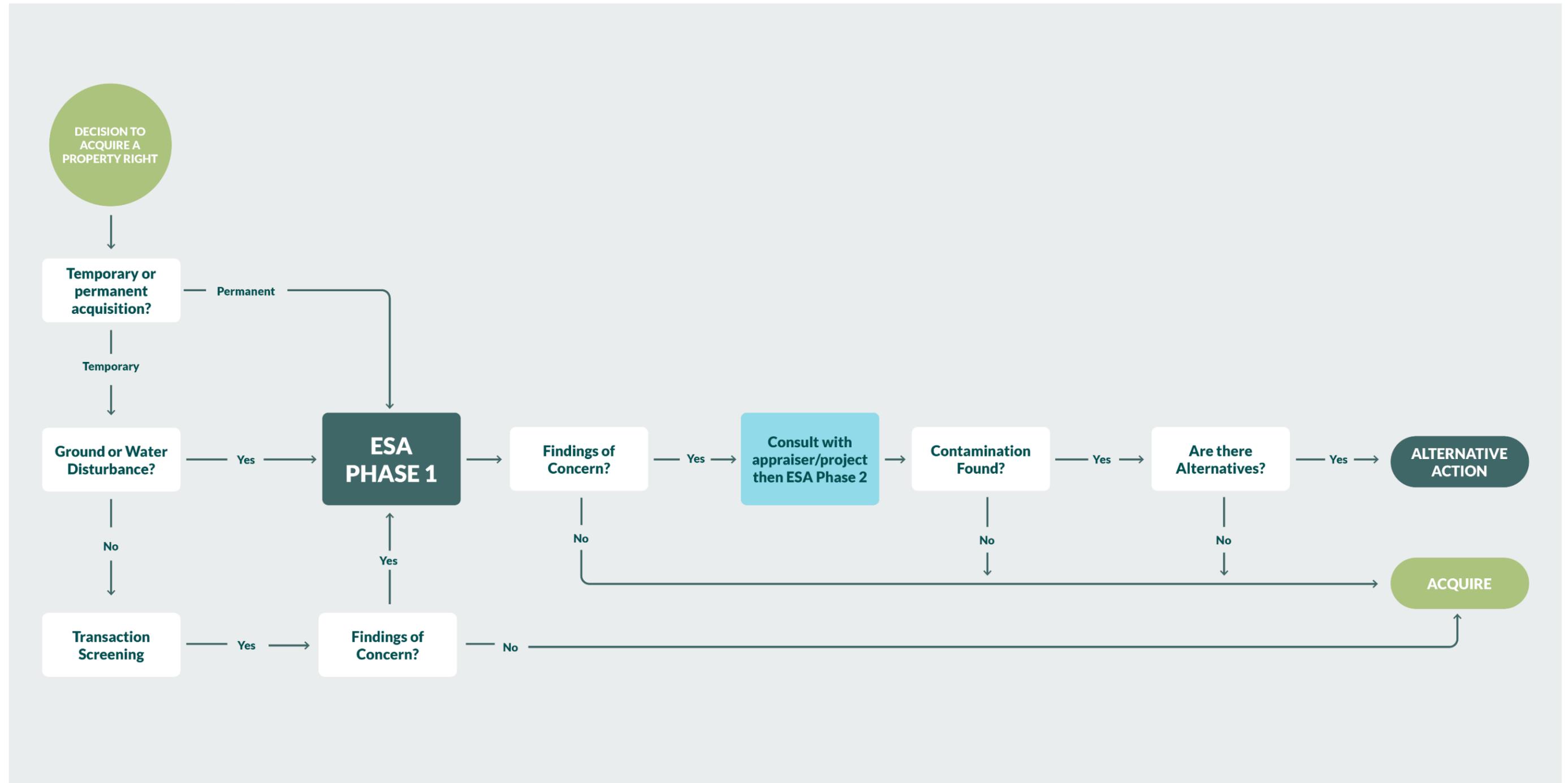
The project design team initiates the process by determining whether it is likely that the project requires permanent or temporary rights from all, or a portion, of a parcel. Environmental due diligence assessments occur in different scales and levels of detail based on this determination:

- **Transaction Screening:** Lowest level of detail, used in the case of a temporary acquisition where there is no ground or water disturbance anticipated as a result of project related actions.
- **Phase I Environmental Site Assessment:** Used in the case of a permanent acquisition (or temporary acquisitions where there is ground and/or water disturbance) to determine whether there will be a finding of concern or used if a Transaction Screening results in a finding of concern.
- **Phase II Environmental Site Assessment:** Highest level of detail, used if a Phase I assessment results in a finding of concern.

The sequence and timing of these assessments are related to the type of acquisition and project activities envisioned, and state of progress in design. At a minimum, a project footprint or defined area needs to be established to estimate the scope of acquisitions that are involved. An evaluation may proceed at an earlier stage as part of a formal or otherwise well-reasoned risk analysis process.

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3.3.1.5 Environmental Due Diligence Process



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If an assessment does not result in a finding of concern, then the project may proceed to acquisition. If an assessment does result in a finding of concern, then the project team will perform the next level of Environmental Site Assessment (either Phase I or Phase II).

When a Phase II Environmental Site Assessment is performed, and one of the results is that contamination is found, the project team will consult with the appropriate environmental and real estate representatives to do a risk assessment to fully understand the impact and consequences to the project from acquiring the property and evaluate available alternatives.

The Environmental Services Office and Real Estate Services Office will consult with the Acquisition Program Manager and the Attorney General's Office as needed. Any decision to acquire after contamination is found is made by the Assistant Region Administrator or a higher authority.

If the environmental investigations do not indicate the presence of contaminants, but the agent or the appraiser discovers evidence of possible contamination during a site visit, the agent or appraiser shall notify the Region RESM. The Region RESM consults with the Environmental Service Office (ESO) and the project to address the concern, which may include further investigations.

Environmental due diligence specifically relating to the discovery of hazardous waste contamination is part of a well-defined and graduated assessment process. Other environmental and non-environmental issues that represent project risk may be included as part of this early due diligence process. In such cases, the agency engages subject matter experts in these areas and follows a similar assessment process to determine the likelihood of risk occurrence to formulate a project-specific strategy for detection and documentation.

### 3.3.1.6 Donation Appraisals

An appraisal is unnecessary for any parcel to be acquired by donation if the donor waives it in writing and is informed of their right to receive just compensation based on an appraisal of the real property.



[49 CFR 24.102\(c\)\(2\)\(i\)](#)

### 3.3.1.7 Condemnation Appraisals

The entire valuation report is transmitted for any parcel submitted for condemnation.

For appraised properties, this includes the entire appraisal report with addenda, the appraisal review, and any specialist reports.

For properties valued by waiver valuation, this includes the waiver valuation with exhibits and the data package.

In the case where multiple valuations have been completed, all versions must be submitted.

## 3.3.2 Special Appraisal Situations

### 3.3.2.1 Mobile Homes

Mobile homes are either real property or personal property. The determination of whether a mobile home is real property or personal property is in accordance with RCW 65.20, the Manufactured Home Real Property Act.



[RCW 65.20](#)

In making the determination, which is included in the appraisal report, an appraiser may consult with the review appraiser, the relocation agent, or others. Legal advice may be required in some cases. Some considerations in making the decision include:

- **Real Property** – A structure which has had a title elimination completed and has been permanently attached to the land or real estate upon which it sets. Not licensed by Washington Department of Licensing, Motor Vehicle division or similar agency in another state. A structure or dwelling not typically licensed by a Department of Licensing or Motor Vehicle Department. A structure subject to real estate assessments and taxes.
- **Personal Property** – A structure that is not permanently attached to the land or real estate upon which it sets. Title is licensed by Washington Department of Licensing, Motor Vehicle division or similar agency in another state. A structure typically subject to personal property assessments and taxes. A structure not typically subject to real estate assessments and taxes.

Procedures for valuation, acquisition, relocation, and property management will differ based on this determination.

### 3.3.2.2 Other Structures

Other structures, including floating homes, houseboats, tiny homes, container structures, sheds and others, are either personal property or real property. The determination of whether a structure is real property or personal property is made by the appraiser and included in the appraisal report. The appraiser may need to consult with the review appraiser, the relocation agent, or others. Legal advice may be required in some cases. Some considerations in making the decision include:

- **Real Property** – A structure or dwelling not typically licensed by the Department of Licensing, Motor Vehicle division, or similar agency in another state. A structure subject to real estate assessments and taxes. A structure that has been permanently attached to the land or real estate upon which it sets.
- **Personal Property** – Title is licensed by the Department of Licensing, Motor Vehicle division, or similar agency in another state. A structure that is not permanently attached to the land or real estate upon which it sets. A structure typically subject to personal property assessments and taxes, and not typically subject to real estate assessments and taxes.

Procedures for valuation, acquisition, relocation, and property management will differ based on this determination. Personal property is handled through relocation and is not condemnable.

### 3.3.2.3 Temporary Easements

Temporary easements shall be valued in accordance with WPI 150.06.02 Just Compensation – Temporary Occupancy.



[WPI 150.06.02 Just Compensation – Temporary Occupancy](#)

At the time the valuation assignment is made, the draft temporary easement conveyance document must be provided to the valuation professional to ensure the clear communication of the rights being valued. The document must include a purpose statement that clearly identifies the activities and use within the easement and must specify the duration of the temporary easement with an explicit termination date. The valuation must state the terms of the temporary easement including specific dates and include a copy of the draft conveyance document in the Addenda.

In the case of a temporary easement with an extension option, an appraisal and appraisal review are required. The valuation must include consideration for both the option to extend and compensation on the extension if it is exercised prior to expiration.

### 3.3.2.4 Contaminated Properties

If toxic/hazardous waste is present in the project alignment as noted in the project environmental impact statement and/or the project design report, it should be tested and mitigation costs estimated prior to the PFE.

Any positive testing and mitigation cost estimates are forwarded to the valuers for consideration during the project funding and/or appraisal processes.

Lacking definite information on hazardous/toxic waste contamination from the project design report or the EIS, the appraiser shall exercise vigilance during parcel field inspections or owner contacts for indications of possible contamination, such as:

- Evidence of spillage.
- Odd odors or soil colors.
- Evidence of burial.
- Discolored, missing, or dead vegetation.
- Dead animals or birds.
- Suspicious drums, tanks, or containers.
- Any above ground or underground storage tanks.

If toxic/hazardous waste is found, properties are appraised “as is.” Cleanup costs reported by the environmental unit are considered by the appraiser during the appraisal process; however, market reaction is used in the valuation, rather than simply deducting cleanup costs.

### 3.3.2.5 Tenant-Owned Improvements

Any tenant owned improvements that will be acquired for the project need to be addressed in the valuation. The agency must consider an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This must include any improvement owned by a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term. Any building, structure, or other improvement, which would be considered real property if owned by the owner of the real property on which it is located, must be considered to be real property for purposes of tenant-owned improvements.

The appraisal must address tenant-owned improvements by analyzing the improvement's contributory value and its salvage value. Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. Salvage value is defined in [WAC 468-100-002\(23\)](#). A specialty report may be required to determine the salvage value of some tenant-owned improvements.

**CFR →** [49 CFR 24.105\(c\)](#)

### 3.3.2.6 Acquisition with a Displaced Persons Lease

If a former owner or tenant will occupy the real property after acquisition for a short term, or a period subject to termination by the agency on short notice, the appraisal must contain a conclusion of fair market rental value for such short-term occupancy. The rental rate charged to the lessee must not exceed this amount.

**CFR →** [49 CFR 24.102\(m\)](#)

[49 CFR Appendix-A-to-Part-24 "Section 24.102\(m\) Fair rental"](#)

## 3.3.3 Surplus Property Appraisals

All surplus real property and/or real property rights with an estimated value more than \$100,000 must have at least one appraisal prior to disposal by sale or trade. Additional appraisals may be required due to the complexity of the appraisal problem.

All surplus real property and/or real property rights that are uncomplicated valuations with an estimated value of \$100,000 or less can be reported as such using a Value Memo.

## 3.4 Waiver Valuation

WSDOT has established criteria to determine instances in which an appraisal is not required and instead a waiver valuation may be used to estimate fair market value. For Uniform Act-compliant assignments, a waiver valuation is not an appraisal and is precluded from complying with Standards Rules 1, 2, 3, and 4 of USPAP.

**CFR →** [49 CFR 24.102\(c\)\(2\)](#)

[49 CFR Appendix-A-to-Part-24 "Section 24.102\(c\)\(2\) Appraisal, waiver thereof, and invitation to owner"](#).

An appraisal is not required if the agency determines an appraisal is unnecessary because the valuation problem is uncomplicated and the just compensation estimate is \$35,000 or less based on a review of available data, including cost-to-cure items.

**CFR →** [49 CFR 24.102\(c\)\(2\)\(ii\)](#)

An “uncomplicated” valuation problem means that:

- There is no change in the property’s highest and best use.
- There are only minor damages.
- There are no improvements.
- The cost or income approaches to value are not necessary.
- An appraiser’s expertise and analysis are not needed to credibly estimate fair market value.

Special care should be taken in the preparation of the waiver valuation. Because no review is mandated, the preparer needs to ensure that all impacts to the property are addressed, fair market value is identified, and that all the calculations are correct. The person performing the waiver valuation and overseeing the waiver valuation process must have sufficient understanding of the local real estate market and basic valuation principles to be qualified to perform or oversee the waiver valuation. In situations where a temporary easement is being acquired, the waiver valuation must state the terms of the temporary easement including specific dates and include a copy of the draft conveyance document in the Addenda.

The waiver valuation preparer recommends just compensation for the needed property and property rights. The just compensation recommendation shall not be less than fair market value of the property including any damages or costs to cure. An agency official must establish just compensation.

- Tier 1 may be utilized when the agency determines that the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$15,000 or less, in compliance with 49 CFR 24.102 (c)(2)(ii).
- Tier 2 may be utilized when the agency determines that the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated between \$15,001 and \$35,000, only if the agency offers the property owner the option of having the agency appraise the property, and in compliance with 49 CFR 24.102 (c)(2)(ii).
- Tier 3 is not approved for use.

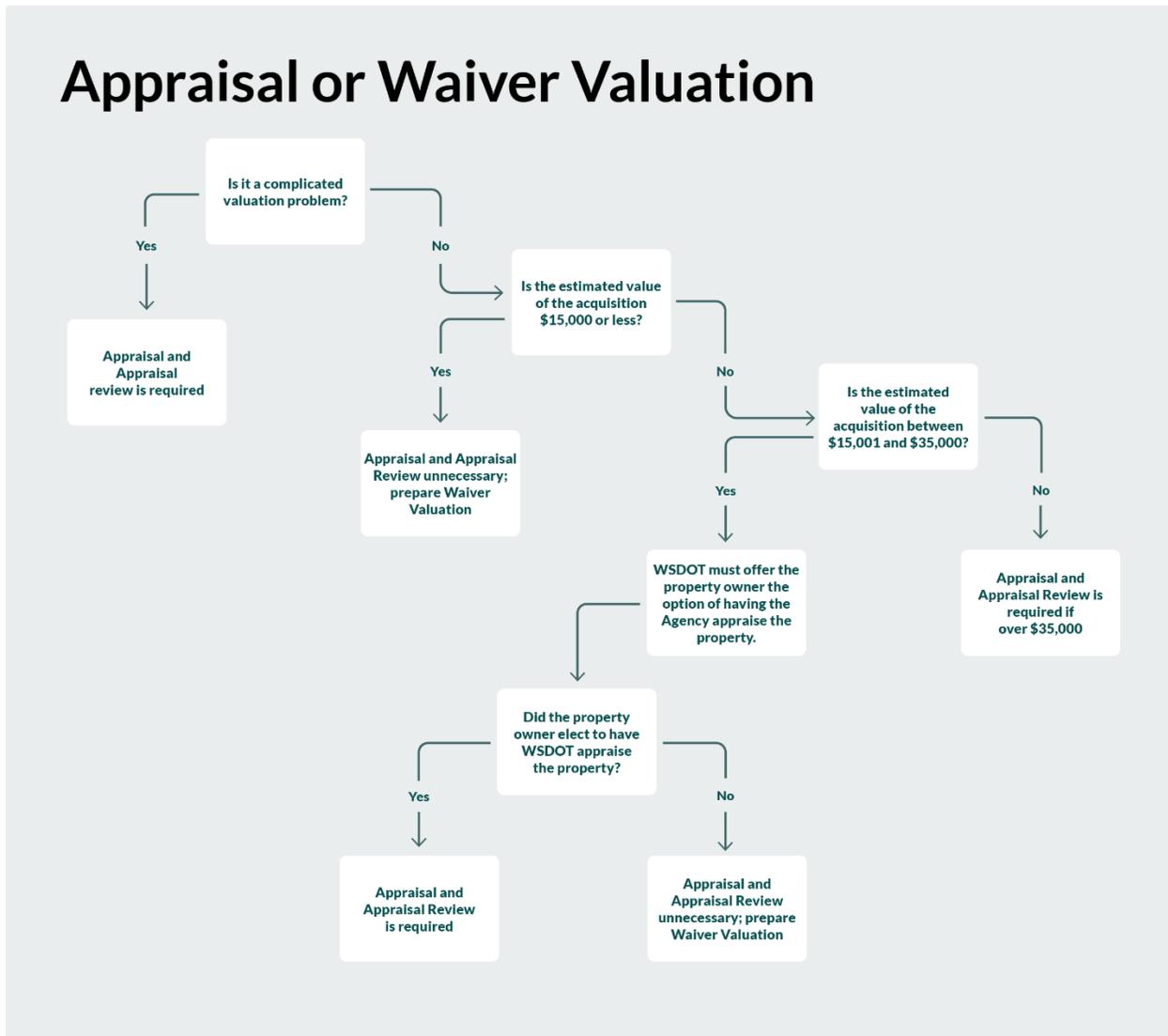
	Uncomplicated	Estimated Value	Requires Offer of Appraisal	Requires FHWA Pre-Approval
Tier 1	X	\$0 - \$15,000		
Tier 2	X	\$15,001 - \$35,000	X	
Tier 3		Not allowed		

**CFR →**

49 CFR 24.102(c)(2)(ii)

49 CFR 24.102(c)(2)(ii)(B)

### 3.4.1 Appraisal vs. Waiver Valuation



## 3.5 Appraisal Report

An acceptable appraisal report must fulfill all the requirements for an appraisal found in 49 CFR 24.103(a)(2)(i) - (v) and contain factual support and sound reasoning for conclusions drawn.

 [49 CFR 24.103\(a\)\(2\)](#)

An appraisal may fulfill all requirements of these sections and still not be acceptable because of inadequate investigation or interpretation of market facts and/or unreasonable judgment of such facts. An appraiser should work with the reviewer throughout the appraisal process, including discussions on methodologies and the potential for an uneconomic remnant.

 [49 CFR 24.103\(a\)](#)

### 3.5.1 Damage Items Not Compensable

There are certain items that are not compensable under the law. Approved just compensation and appraisal reports exclude compensation for damage items not compensable under State law. Washington Pattern Jury Instructions Part X-A. Eminent Domain should be consulted when a question arises.

 [Washington Pattern Jury Instructions, Part X-A.](#)

Non-compensable items include, but are not limited to, the following:

- Annoyance and inconvenience suffered by the public in common.
- Injury to business, generally including loss of profits due to necessity of removing the business to some other location and loss of profits due to interruption of business by reason of and during the course of construction of the public improvement. However, where the type of business is an integral part of, or closely related to, the land itself, the nature and amount of business and the income therefrom may be admissible as bearing directly upon the value of the land.

 [WPI 151.05](#)

- Relocation entitlement payments are not part of just compensation and are not to be considered during the appraisal process.

 [RCW 8.26](#)

- Expenses for moving private and business personal property or for damages arising from the owner's inability to locate an acceptable substitute location are not a part of just compensation (27 Am. Jur. 2d Eminent Domain Sec. 293).
- An abutting owner has a right of reasonable ingress and egress, the loss of which will be compensated where there is either a physical injury to the property or impairment of the access. An abutting owner will not be compensated when the State installs traffic control devices by proper exercise of its police power and the result reroutes or diverts traffic, decreases the amount of traffic on the highway, and/or creates a divided highway that circuits or impairs travel.
- In general, any potential, speculative, and/or remote damages are not considered.

### 3.5.2 Value Memo or Surplus Property Appraisal Report

Simple disposals with an estimated value less than \$100,000 may be handled with a Value Memorandum citing the rationale and evidence obtained for the conclusion of value. This memorandum is generally prepared by the property management agent rather than an appraiser.

Complex surplus parcels are appraised using a narrative appraisal report to determine fair market value of the property. In surplus transactions, there are a few approaches to estimating the market value of surplus property. The Senior Appraiser will develop a scope of assignment that results in a valuation assignment that is useful to the agency in divesting surplus property recognizing the need to receive fair market value for the property. In some cases, multiple valuation scenarios will be part of the valuation assignment.

Approaches to value include:

- **Fair Market Value of the property standing alone in the marketplace.** This approach may be used for determining a minimum bid for properties to be sold at public auction or anytime a parcel is being sold on the open market where the buyer/lessee didn't initiate the transaction. This approach may be used for selling developable properties to a public agency.
- **Value to adjoining property owner using an "across the fence" approach.** This approach involves an appraisal of the area being disposed of using values similar to the value of the adjoining property. This method is applied for each adjoining property when there is more than one abutter and there is no value enhancement to any abutter. This is often the preferred value for corridors, especially when the buyer/lessee approaches the agency with interest.
- **Value enhancement to the adjoining owner.** This approach is a reverse "before" and "after" when an assemblage of agency property allows an abutting property to gain a benefit. The difference between the two values is the enhancement. Changes in limited access automatically fall into this category. Another example is a development density gain that is disproportionate to the size of the surplus. Where the adjoining owner initiates a request to buy excess property, the enhancement method should be the starting point for negotiations.

### 3.5.3 Salvage Valuation

The agency is responsible for salvage valuation and sales for improvements, including timber and crops, that may be sold as salvage.

If the owner of a real property improvement is permitted to retain the improvement for removal from the project site, the amount to be offered for the interest in the real property to be acquired must not be less than the difference between the amount determined to be just compensation for the owner's interest in the real property and the salvage value of the retained improvement.



[49 CFR 24.2](#)

[49 CFR 24.103\(c\)](#)

### 3.5.4 Property Owner's Appraisal

If the property owner presents an appraisal, or new valuation information, to the agency, the acquisition agent shall read and consider the owner's valuation, regardless of its formatting or preparer, and decide whether there is information contained within it that deserves further consideration by the appraisal team. If so, the agent will send a request to the Senior Appraiser that includes a copy of the appraisal and a summary of the requested action. The Senior Appraiser will consider whether any new information indicates the need for a new appraisal and will assign the work accordingly.



[49 CFR 24.102\(g\)](#)

## 3.6 Appraisal Review

Appraisals are reviewed to ensure that appraisal reports contain or reference sufficient information (e.g., studies or other appraisals) to support the conclusions of the report, and/or conform to established appraisal practices and state and federal requirements. Appraisals are also reviewed to ensure that they are reasonable, impartial, and just.



[49 CFR 24.104](#)  
Appendix A Section 24.104(a)(b)(c)



[RCW 8.26](#)

### 3.6.1 Acquisition Appraisal Reviews

All acquisition appraisals must be reviewed via written technical review in order to ensure that:

- The appraisal report contains or references sufficient information (e.g., research, studies or other resources) to support the conclusions of the report.
- The appraisal report conforms to established appraisal practices and relevant requirements.
- The appraisal is equitable.
- Fair market value is identified for the acquisition in accordance with the Real Property Acquisition Act (Chapter 8.26 RCW), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and current eminent domain law.

An appraisal review may be completed by either a qualified staff reviewer or a qualified consultant (fee) reviewer. Appraisal reviewers are often involved in early project development, devising the scope of work considerations, determining types of appraisal reports necessary to complete a project, making preliminary determinations about valuation problems including identifying particularly complicated valuation problems that may need additional valuation specialties, and participating in making appraisal assignments to consultant and/or staff appraisers. They are also mentors and technical advisors, especially on agency policy and requirements, to appraisers, and should maintain an open line of communication throughout the appraisal process.

When an acquisition includes more than nominal improvements, the review appraiser and a relocation agent are required to attend the appraiser's joint inspection with the property owner and tenant, if any. This is for the purpose of clarifying and identifying realty vs. personalty items as well as to ascertain ownership rights. The agency may require an in-person inspection by the reviewer in other cases.

If a Review Appraiser identifies an appraisal report as accepted but not recommended, or as not accepted, then the agency may elect to either get a new appraisal report and have that report reviewed, or the Review Appraiser may, as part of their review, present and analyze market information in conformance with 49 CFR 24.103 to conclude a recommended value.



[49 CFR 24.103](#)

If a substantive change is made to the acquisition, new information is gained about the property, a change to the subject property, or a significant delay has occurred since the time of the appraisal (generally over nine months) then a new appraisal is necessary, and that report must be reviewed. It is not appropriate to have substantive changes addressed by the appraisal review.



[49 CFR 24.102\(n\)](#)

[49 CFR 24.104\(a\)\(b\)\(c\)](#)

The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value.

### 3.6.1.1 Staff Review Appraiser Responsibilities:

A staff Review Appraiser identifies each appraisal report as one of the following:

- Recommended and approved (as the basis for the establishment of the amount believed to be just compensation).
- Accepted (meets all requirements but not selected as recommended).
- Not accepted.

They develop, prepare, and report an appraisal review that establishes the fair market value of the acquisition. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance of an appraisal report, seek necessary corrections or revisions. The review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's performance of an acceptable appraisal.

The reviewer may **establish** just compensation to be paid to the property owner for the needed property and property rights. The just compensation established may not be less than the approved appraisal of fair market value of the property and includes amounts for the value of the lands and improvements acquired for the project, damages, and deductions for special benefits.

If applicable, the staff Review Appraiser will identify and establish the existence of an uneconomic remnant.

### 3.6.1.2 Consultant/Fee Review Appraiser Responsibilities:

A consultant/fee Review Appraiser identifies each appraisal report as one of the following:

- Recommended (as the basis for the establishment of the amount believed to be just compensation).
- Accepted (meets all requirements but not selected as recommended).
- Not accepted.

They develop, prepare, and report an appraisal review that establishes fair market value of the acquisition. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance of an appraisal report, seek necessary corrections or revisions. The review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's performance of an acceptable appraisal.

A consultant/fee reviewer may **recommend** just compensation for the needed property and property rights. The just compensation recommendation may not be less than the approved appraisal of fair market value of the property and includes amounts for the value of the lands and improvements acquired for the project, damages, and deductions for special benefits. If applicable, the consultant/fee Review Appraiser may identify and recommend the existence of an uneconomic remnant.

An appraisal review prepared by a consultant/fee Review Appraiser cannot authorize just compensation or declare an uneconomic remnant. Only an agency staff member can perform these functions.

### 3.6.2 Uneconomic Remnant

If the acquisition of a portion of a property would leave the owner with an interest after the partial acquisition that has been determined to have little or no value or utility to the owner, the agency must offer to acquire this “uneconomic remnant” along with the portion of the property needed for the project. Even though a parcel may be considered to have little or no value or utility to the owner in the “before” situation, when the acquisition leaves a remainder, that remainder should be identified as an uneconomic remnant. The agency will determine whether a remainder (or any part thereof) qualifies as an uneconomic remnant.

**CFR →** [49 CFR 24.102\(k\)](#)

**RCW →** [RCW 8.26.180 \(9\)](#)

The appraisal reviewer must ensure that the appraisal of a property with an uneconomic remnant utilizes a “before and after” analysis rather than a “strip take” analysis.

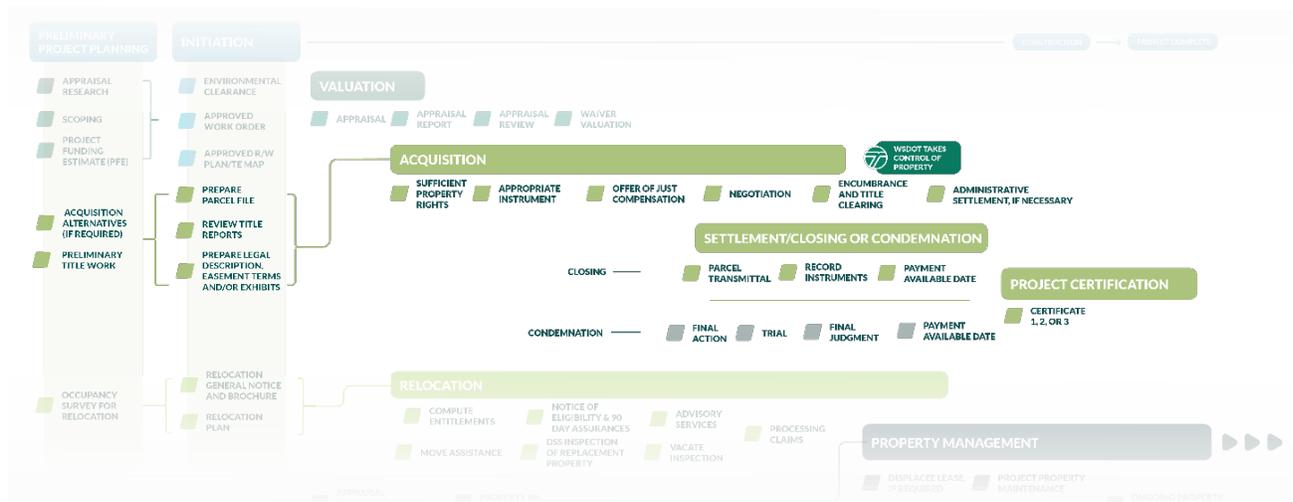
The appraisal review must contain a paragraph underlined or typed in italics that clearly identifies the uneconomic remnant, supports its declaration as an uneconomic remnant, and states its value.

A consultant/fee Review Appraiser cannot declare an uneconomic remnant; however, they may recommend that the agency declare a remnant uneconomic.

The appraisal review is the acquisition agent’s authority to offer to purchase an uneconomic remnant.

### 3.6.3 Property Management Appraisal Review

Appraisals completed for disposal and leasing purposes may be subject to an appraisal review on a case-by-case basis. There is no requirement for these valuations to be reviewed.



# Chapter 4

## 4. Acquisition

This chapter sets forth the requirements for acquiring real property and property rights for federally assisted and WSDOT-administered highway projects, including acquisition types and methods, requirements for securing title, clearing encumbrances, use of proper instruments of conveyance, and settlements. This chapter also sets forth the requirements for condemnation, should WSDOT-administered projects not be able to acquire title to property or property rights needed for transportation purposes by negotiation.

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## 4.1 Chapter Overview

### 4.1.1 Acquisition Policies

The following documentation must be completed prior to making an offer to acquire any parcel:

- Final Environmental document (ROD, FONSI, ECS). identifying the date of approval and any right of way mitigation requirements.
- Approved Relocation Plan, and subsequent amendments.
- An approved plan applicable to the acquisition. (i.e., Right of Way Plan, Parcel Acquisition Plan (PAP), Temporary Easement Exhibit Map, or Exhibit Map per the Plans Preparation Manual M22-31.11).



[M22-31.11 Plans Preparation Manual](#)

- An approved Appraisal Review or Waiver Valuation setting just compensation.
- Work order authorization indicating start of ROW phase (Work Order Authorization).

The agency is authorized to proceed with the specified acquisitions upon receipt of these end products.

Prior to initiating negotiations for real property and/or property rights, the agency establishes an amount that it believes to be just compensation. The offer of just compensation will not be less than the agency's approved appraisal of the fair market value of the property.

The determination of just compensation will not include any decrease or increase in the fair market value of the real property caused by project influence, that is, the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement.

The agency makes every reasonable effort to acquire real property expeditiously by negotiation.

The agency makes reasonable efforts to contact the property owner or the owner's representative and discuss its offer to purchase the property in person, including the basis for the offer of just compensation, and explain its acquisition policies and procedures, including payment of incidental expenses.

No action coercive in nature will be taken to compel an agreement on the price to be paid for the property.



[49 CFR 24.102](#)

[49 CFR 24.106](#)



[RCW 8.26.180 \(3\)](#)

## 4.1.2 Acquisition Authority, Roles, and Responsibilities

### 4.1.2.1 Authority

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

- [42 USC Chapter 61](#), Sections 4601-4655 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended
- [Title VI of the Civil Rights Act of 1964](#) 42 USC § 2000d et. Seq
- [23 U.S.C. 108](#)—Advance acquisition of real property
- [23 CFR §1.23](#)—Rights-of-Way
- [23 CFR Part 450](#)—Planning Assistance and Standards
- [23 CFR Part 668](#)—Emergency Relief Program
- [23 CFR §710.105](#)—Definitions
- [23 CFR §710.201](#)—Grantee and subgrantee responsibilities
- [23 CFR § 710.203](#)—Title 23 funding and reimbursement
- [23 CFR §710.501](#)—Early Acquisition
- [23 CFR § 710.503](#)—Protective buying and hardship acquisition
- [23 CFR § 710.509](#)—Functional replacement of real property in public ownership.
- [23 CFR § 710.601](#) – Federal Land Transfers
- [23 CFR § 710.603](#)—Direct Federal Acquisition
- [23 CFR Part 771](#)—Environmental Impact and Related Procedures
- [23 CFR Part 774](#)—Parks, recreation areas, wildlife and waterfowl refuges, and historic sites (Section 4(F))
- [25 CFR Part 169](#)—Rights-of-Way over Indian Land
- [40 CFR § 312.20](#)—All appropriate inquiries
- [49 CFR Part 24, Subpart B](#)—Real Property Acquisition
- [RCW 8.04](#)—Eminent domain by state
- [RCW 8.25](#)—Additional Provisions Applicable to Eminent Domain Proceedings
- [RCW 8.26](#)—Eminent Domain
- [RCW 26.18.055](#)—Child Support Enforcement, Child Support Liens
- [RCW 36.75](#)—Roads and bridges—General provisions
- [RCW 42.45](#)—Revised Uniform Law on Notarial Acts
- [RCW 42.52](#)—Ethics in public service
- [RCW 47.01.170](#)—Right of entry
- [RCW 47.12](#)—Acquisition and disposition of State highway property
- [RCW 47.14](#)—Right-of-Way Donations
- [RCW 47.24](#)—City streets as part of State highways
- [RCW 47.50](#)—Highway access management.
- [RCW 47.52](#)—Public Highways and Transportation—Limited Access Facilities
- [RCW 64.04](#)—Conveyances
- [RCW 65.08](#)—Recording
- [RCW 70A.305](#)—Hazardous Waste Cleanup—Model Toxics Control Act
- [RCW 82.45](#)—Excise Tax on Real Estate Sales
- [RCW 87.03](#)—Irrigation Districts Generally
- [RCW 90.3](#)—Water Code

- [WAC 458](#)—Department of Revenue
- [WAC 458-61A](#)—Real Estate Excise Tax
- [WAC 468-100](#)—Uniform relocation assistance and real property acquisition

#### 4.1.2.2 Roles and Responsibilities

The agency ensures property and/or property rights are acquired according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and any amendments thereto (Uniform Act). This chapter refers to the acquisition of fee title and lesser property rights required for the construction, operation or maintenance of the project. The acquisition requirements are the same, therefore, all reference to “property rights” in this chapter refers to the acquisition of both fee title and lesser property rights such as an easement or temporary easement.

The agency must certify that sufficient property rights are being acquired to meet the agency’s project needs. Title reports, plans, surveys, and other necessary project documentation are reviewed to determine sufficient property rights are being acquired.

Title to the property rights being acquired must be clear from encumbrances prior to agency possession. If title issues cannot be cleared, acceptable title risk must be approved and documented in the parcel file.

If property rights needed for the project are unable to be acquired or all encumbrances are unable to be cleared when acquiring the property rights through negotiation, WSDOT has the authority to acquire property rights by eminent domain under Washington State law to ensure the fair and equitable treatment of all persons and property owners impacted by public projects. WSDOT coordinates with the Assistant Attorney General for any necessary legal opinions, and anytime a federal condemnation proceeding may be required. Local agencies should consult Chapter 25 of the Local Agency Guidelines (LAG) Manual M36-63.43.



[M36-63.11 Local Agency Guidelines](#)

The agency is responsible for preparing final instruments and documents for the property owner or other parties to sign, completing the parcel transmittal, issuing payment, and verifying receipt of payment.

No legal occupant of the property rights to be acquired will be required to surrender occupancy of real property before the agreed purchase price is paid or funds are deposited with a court having jurisdiction over such property, for the benefit of parties in interest, in an amount not less than the agency’s approved just compensation amount of the property, or the court’s award of compensation.

### 4.1.2.3 Conflict of Interest

The acquisition negotiators may not work on the acquisition of a property rights if:

- The negotiator is personally acquainted with or related to the property owner, where such an acquaintance or relationship might influence or prevent acting in an unbiased and professional manner.
- The negotiator has any interest, direct or indirect, in the real property being acquired by the agency.
- Acceptance would result in a violation of RCW 42.52.020, *Activities incompatible with public duties*.

[RCW →](#) [RCW 42.52.020](#)

- The negotiator prepared or assisted with preparing an appraisal, determination of value, or waiver valuation resulting in an offer of just compensation greater than \$15,000.
- The negotiator supervises or formally evaluates the performance of any appraiser, waiver valuation preparer, or review appraiser performing appraisal or appraisal review work for the parcel.

**NOTE:** For a program or project receiving federal financial assistance, the federal funding agency may waive conflict of interest requirements if it determines that it would create a hardship for the agency. A distinct quality control process must be in place and FHWA approval in writing is required.

[CFR →](#) [49 CFR 24.102\(n\)\(2\)](#)

### 4.1.2.4 Relocation

If an acquisition displaces persons or personal property from the parcel, whether permanent or temporary, relocation assistance must be provided in accordance with both state and federal law. See Chapter 5, Relocation, for more details.

[CFR →](#) [49 CFR 24, Subpart C](#)

[RCW →](#) [RCW 8.26.010](#)

[WAC →](#) [WAC 468-100-201](#)

### 4.1.2.5 Manner of Notices and Electronic Signatures

Every effort must be made to hand-deliver the Offer Letter, Introductory Letter, and other letters or correspondence. Providing notices, offers, and correspondence by other means should not be used as a substitute for face-to-face meetings, but rather as a supplemental means of communication. The negotiator assigned to the file should not insist, prompt, or encourage property owners to receive information by any method other than face-to-face delivery.

If a face-to-face meeting with the property owner is not possible, notices may be sent by USPS certified, registered first-class mail, or another delivery service (e.g., FedEx, UPS, DHL, etc.) that can provide proof of delivery and receipt with a signature. Preapproval is required to send notices using this method of delivery. See Section 4.10, Offer of Just Compensation, for specific procedures.

The federal regulations allow use of electronic delivery of required notices; however, electronic delivery does not comply with Washington State regulations. Updates to the regulations are forthcoming.

Offer to acquire property from Federal and State agencies, railroads, and tribes are approved for USPS certified, registered first-class mail, or other delivery service as provided above.

#### 4.1.2.5.4 Electronic Signatures

The property owner may request use of electronic signatures. In such cases, the agency must follow up on this request with a personal contact to explain how electronic signatures work and obtain written consent from the property owner. The agency must provide the property owner with the Consent for Electronic Signature form (RES Form). The completed form must be included in the final parcel file. See Chapter 2, Section 2.5, Electronic Signatures, for specific procedures.

Use of electronic signatures do not require property owner consent when acquiring property from Federal and State agencies, tribal entities or railroads in accordance with each agency's procedures.

All electronic correspondence is retained in the final parcel file.

#### 4.1.2.5.5 Authorized Representatives

A property owner or tenant may designate an authorized party to receive all required notifications and documents from the agency. The owner or tenant must provide the agency with a written notification that states they are designating a representative, provides the representative's name and contact information, and states which, if any, notices or information the representative is *not* authorized to receive.



[49 CFR 24.5](#)

[49 CFR 24.102\(f\)](#)

#### 4.1.2.6 Record Keeping: Diary

A Diary of ROW Activities must be maintained as a complete record of the ROW transaction by anyone negotiating with the property owner or tenant. The diary is subject to the rights of discovery by all parties in any court proceedings.

Diary entries must contain all the essential and factual information discussed and/or obtained during each contact, any decisions made or additional actions to be taken, and other such information sufficient to inform the user and/or reviewer of the diary of the purpose of the contact and/or entry.

Upon completion of entries, the agent must sign and date the diary. Electronic signatures are approved.

Diary entries must be limited to a recitation of the facts. Diaries must not contain any judgmental or opinion statements relating to the property owner, displaced person, or any other party. Information contained in diary entries related to the property of the owner and/or displaced person must also be factual and non-judgmental. For example, it is important to note if there are items on the property that might require special consideration, such as animals, swing sets, etc.; however, the agent should not include opinions relating to the condition of the property except as they relate to valuation and/or relocation activities.

Diary entries for acquisition activities must include, but are not limited to, the following:

- The date of the parcel assignment and summary of the project details.
- The date, time, telephone number, email, and full name (e.g., Mr. John F. Jones, not Mr. Jones) of any party of interest who is contacted by telephone or in person.
- The date, time, address, and place of every meeting with any party in interest. This includes the actual location of the meeting (e.g., the dining room of the owner's residence, Attorney John T. Smith's office in the Block Building, etc.)
- The full names of all adult participants in a meeting and their relationship to the owner.
- The amount in dollars of the State's offer and the fact that the offer was made both orally and in writing. The same information is given for any revised offers by the State.
- A summary of the events of the meeting, including:
  - The owner's reaction to the State's offer.
  - Details of any counteroffer, etc.
  - Owner's questions and any concerns or issues noted, including the negotiator's responses.
  - The explanation of the statutory evaluation allowance.
  - The explanation of the Relocation Assistance Program (if negotiator is also the relocation agent) or contact information for the Relocation Specialist.
  - If improvements are being acquired, an explanation of any salvage allowed.
  - Either an indication of who signed the receipts for the offer letter and for the relocation brochure, the acquisition brochure, or a statement that the letter and booklets were delivered but that the owner refused to sign the receipts.
  - The details of any negotiated/administrative settlement that is reached.
  - The details of any updated offers.
  - The details of any issues that may result in the withdrawal of the offer.
  - The details regarding final payment, whether hand delivered, mailed, electronic transfer, or other delivery method.

If condemnation is to be filed per RCW 8.25.290, diary entries must include the dates the final action notice is published in the local paper or papers, the date the notice was mailed to “taxpayer” by certified mail, the date and parties in attendance at final action, and the date condemnation transmittal was completed.



[49 CFR 24.9](#)



[RCW 8.25.290](#)



[WAC 468-100-008](#)

#### 4.1.2.7 Headquarters Compliance Audits

For WSDOT projects, the Acquisition Program Manager or their designee performs compliance audits of a project’s acquisition files for quality assurance/quality control and for compliance with federal and state laws and WSDOT policies and procedures.

The Acquisition Program Manager or their designee may audit a representative sample of files and documents to ensure compliance with federal and state law and WSDOT policy and procedures. Compliance audits may occur prior to offer, prior to payment, and/or prior to Right of Way Certification. The audits include but are not limited to verifying the acquisition of sufficient property rights; reviewing the conveyance document; including correct parties, signatures, notaries, and legal descriptions; title clearance; risk documentation; and adequate administrative settlement justification.

If corrective action is necessary, the Acquisition Program Manager or their designee will coordinate corrective action with the Region or Megaproject and will document the parcel or project file accordingly. The Acquisition Program Manager revises written compliance audit procedures as needed.

**Once the acquisition is complete, the acquisition parcel files must be submitted to the Acquisition Program Manager or their designee for final records retention and compliance review prior to the issuance of a Right of Way Certification 1.**

Review Chapter 2, Section 2.7.3 Headquarters Compliance Audit, for additional information.

## 4.2 Sufficient Property Rights

Sufficient property rights must be acquired for the construction, operation, and maintenance of the project or facility. Different property rights may be acquired to meet this obligation, including but not limited to fee title, permanent easements, or temporary easements. Any property rights needed for environmental mitigation required by the NEPA document must also be acquired and the property identified in the ROW certification. This section explains the various types of property rights that may be acquired and describes the instruments used to acquire them.

WSDOT is authorized to acquire lands or interests in land for right of way needs, drainage, maintenance, sundry sites, mitigation sites, or other lands needed to support the highway transportation system per RCW 47.12.010.



[23 CFR 1.23](#)

[23 CFR 710105\(b\)](#)

[23 CFR 710.305\(b\)](#)



[RCW 47.12.010](#)

[RCW 47.12.250](#)

[RCW 47.12.330](#)

The following chart summarizes the typical types of property rights acquired and the requirements associated with them.

### 4.2.1 Types of Rights

Property Right	Typical Project Phase	Work Activities	Payment Required?	Duration Limit	Valuation Required	RES Document	Things to Consider
Fee Title (Purchase)	Right of Way Phase for Construction	Required for construction, operation and Maintenance of the project	Yes	Perpetuity	Yes	Warranty Deed	Fee title is acquired to all lands within a programmed project, with exceptions. All rights within Limited Access are acquired by Fee.
Permanent Easement	Right of Way Phase for Construction	Required for construction, operation and Maintenance of the project	Yes	Perpetuity	Yes	Easement	Used when a continuing non-exclusive right to enter upon the property of another for operation and maintenance is needed. (Slope, drainage, mitigation, access)
Temporary Easement (TE)	Pre-Design	Invasive work / Ground disturbing activity (typically over a year and high-risk work that should not be completed using a permit)	Yes	As needed for work completion	Yes	Temporary Easement	Used when a temporary right is needed to enter upon the property of another for a specified purpose or condition, for a limited time period, and the project cannot be constructed without this right.
	Design						
	Right of Way Phase for Construction	Rights needed to construct and meet any permit or other requirements					
Change of Grade	Right of Way Phase for Construction	Work in the right of way, adjacent to a property where a change of grade is necessary due to the project	Yes	As needed for work completion	Yes	Change of Grade Form	The right is not a property right from the owner of the adjacent property to the right of way but a compensable agreement based on the analysis of the effect the change of grade may have on a property and its value in the after.
Construction Permit	Right of Way Phase for Construction	Light feathering of driveway, reconnect - Benefit to the property owner	No	12 months or less	No	Permit	This permit is only used when it is to the sole benefit of the property owner and no compensation is due.
Permit	Pre-Design	Invasive work activities and ground disturbing activities more than de minimis ground disturbance	Yes	12 months or less	No, per fee schedule - Min. Payment \$500.00	Permit	Personal right, not a property and <b>revocable at any time by the property owner.</b> Risk analysis should be completed to determine if the right needed is appropriate for the work.
	Design						
	Right of Way Phase for Construction	Rights needed to construct: Local Agency, Haul Road, detour agreement				Right of Way Use Permit/Agreement	This is typically from a local or state agency to work within existing right of way. Typically negotiated and obtained by the Project Office.
Right of Entry	Pre-Design	Non-invasive work that is not allowed under the right of entry statute below.	Yes	12 months or less	No, per fee schedule - Min. Payment \$500.00	Right of Entry	Personal right, not a property and <b>revocable at any time by the property owner.</b>
	Design						
	Right of Way Phase for Construction	Example: Pre/Post construction inspections, Rights from Federal and State Agencies and Railroads	Typically	As needed for work completion	Typically	Right of Entry, Letter of Consent, Special Use Permit, Agreement	May be used to certify for construction in the case of a State or Federal, or Railroad Acquisition.
Right of Entry (Per 47.01.170)	Pre-Design	Non-Invasive work activities allowed such as surveying, flagging, locations, staking, environmental examinations, archaeological examinations	No	Reasonable time frame - Must be identified in Notice of Entry Letter	No	Notice of Right of Entry Letter	Typically RES, environmental, or the project office may send a Notice of Right of Entry to the property owner including contact information, work activities, time and duration. <b>NOTE:</b> The extent of ground disturbance/invasion authorized is a di minimus shovel probe and/or the use of wooden stakes and flagging. If more than di minimus testing is needed to make the appropriate assessments, or the ground disturbance is in a landscaped area, or the owner refuses entry, then a Permit or Temporary Easement should be considered if the project cannot be completed without entry.
	Design						
	Construction						

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## 4.2.2 Right of Way (ROW) Plans

The ROW plans or approved plans are prepared according to the procedures in the Plans Preparation Manual M22-31.11. They are generally prepared separately from the construction plans.



[M22-31.11 Plans Preparation Manual](#)

The property rights acquired must be consistent with the ROW plan, or other approved plan used to acquire property rights, as well as the construction plans (e.g., the Project Specifications and Estimates (PS&E) for design-bid-build projects or the Conceptual and Final Plans for design-build projects).

The approved ROW plan serves as a visual tool when negotiating with property owners and may be used as an exhibit in litigation if negotiations are unsuccessful. The plan must be reviewed for accuracy and completeness to ensure that the agency will acquire sufficient property rights to construct, operate, and maintain the facility, and to verify that the agency can sufficiently write accurate legal descriptions for the property rights to be acquired.

## 4.2.3 Fee Title

Fee title is typically acquired to all lands required for a highway project. Fee title is acquired through a Statutory Warranty Deed. A Quit Claim Deed (QCD) or other conveyance document may be used to acquire fee title with prior written approval of by the Acquisition Program Manager or agency designee.

Fee title subject to a reversionary right cannot be acquired without the approval of Acquisition Program Manager.

Fee title is required for all property rights acquired for a limited access facility.



[49 CFR 24.101\(c\)\(1\)](#)



[RCW 47.52.050](#)

[RCW 64.04.030](#)

[RCW 64.04.050](#)

## 4.2.4 Access Only/Limited Access

WSDOT controls access to the State's highways to preserve highway safety, efficiency, and public investment. All Washington State highways are either *limited access* or *managed access* highways.

- **Limited access** highways are those where control of access is a deeded right.
- **Managed access** highways are those where control of access is a permitted right, obtained through either WSDOT or a local agency.



[RCW 47.50.010](#)

Compensation for loss of access is justified only by indication in an Appraisal Review or Waiver Valuation and completed through the standard acquisition process.

When acquiring access only rights, the agency obtains a Warranty Deed - Access Rights Only and clears encumbrances when obtaining from the fee owner of a parcel.

When constructing a new limited access facility, the agency acquires access rights from the abutters of the new facility via a Quitclaim Deed - Access Rights Only, even though the abutters did not have the right of access in the before.

When converting a managed access facility into a limited access facility, the agency acquires the abutting owner's access rights through the standard acquisition process and acquires the rights of use from the easement holder, if any.

When acquiring a parcel that is encumbered by an easement for access, the agency acquires the benefitted owner's access rights in accordance with the standard acquisition process and clears the easement.

Access control is shown on the ROW plans, together with the location of deeded accesses rights.

Access control is approved through a formal access hearing process; therefore, access cannot be negotiated as part of the property rights acquisition.

**NOTE:** Title to city and town streets, roads, and alleys, are acquired by operation of law pursuant to RCW 47.52.210(1).



[RCW 47.24.020\(2\)](#)



[RCW 47.52.210\(1\)](#)



[RCW 47.52](#)

### 4.2.4.1 Access Approach

An access approach is an access point, other than a public road/street, that allows access to and from a limited access highway on the state highway system. All access approaches are identified on the access approach schedule located on the ROW plan. The appropriate language necessary must be added in the conveyance document to properly reserve the access point in the conveyance document. For more information, see the WSDOT Design Manual M22-01.23 Division 5, Right of Way and Access Control.



[WAC 468-58-080](#)



[M22-01.23 Design Manual](#)

### 4.2.5 Permanent Easement

Typically, a permanent easement is acquired when needing a continuing, nonexclusive right to enter upon the property of another.

Typical easement situations include but are not limited to the following:

- An easement for cut or fill slopes.
- Construction of and continued access to project protection features (e.g., channel change, drainage).
- Construction of and continued access to project environmental mitigation features.
- Flood easements.

**NOTE:** The draft Easement must be provided to the professional valuation at the time of the appraisal assignment.

### 4.2.6 Temporary Easement (TE)

A temporary easement is acquired when needing the temporary right to enter the property of another under specified circumstances and/or conditions for a limited time period, and the project cannot be constructed without it.

Requirements for temporary easements include, but are not limited to, the following:

- **The draft temporary easement conveyance document must be provided to the valuation professional at the time of the appraisal assignment.**
- The purpose statement in the temporary easement document must clearly identify the activities and use within the easement.
- Just compensation must be paid for the acquisition of a temporary easement.
- The temporary easement document must include the following statement specifying the termination date: “The temporary rights herein granted shall terminate on (date).”
  - When specifying the termination date, the agency takes caution to allow ample time for construction completion, temporary maintenance (including plant reestablishment), and the opening of the highway to traffic.
- A temporary easement or a Consent to Change of Grade (see below) is used if there is a change of grade that requires compensation.

- The temporary easement is shown on the appropriate plans, in accordance with the [Plans Preparation Manual M 22-31](#).
- All temporary easements must be recorded.

Temporary easements may include “option to extend” language, however these types of temporary easements will require an Appraisal and Appraisal Review, since the property owner must be paid compensation on both the option to extend and compensation on the extension if it is exercised prior to expiration.

If the term of the temporary easement acquired is insufficient to complete the project, the agency must acquire a new temporary easement, regardless of purpose, construction, or plant reestablishment. The agency is not entitled to a credit against the consideration for the new easement if the term of the prior easement has not yet expired. The new temporary easement will require a new valuation and a new offer. If the area being acquired has changed, a new parcel number must be assigned, otherwise an “A” parcel may be used.

#### 4.2.6.1 Temporary Easements and Relocation

**NOTE: Contact the Relocation Team immediately to see if persons or personal property will be displaced by a Temporary Easement.**

Any time an occupant or personal property needs to be temporarily relocated for a project due to a temporary easement, the project team must provide the specific dates the project will need the occupants or personal property to vacate. Dates must be provided in advance and written in the temporary easement document.

If construction dates for the project change, the temporary easement must be renegotiated. This is the only way to ensure that temporarily displaced occupants are treated fairly and consistently.

The Notice of Eligibility must include a specific vacate date. Occupants are legally required to receive a written 90-Day Assurance of the earliest date they will be required to vacate the property.

Option language to extend a temporary easement is not permitted when there is a relocation involved in the temporary easement area. An option to extend a temporary easement can have a dramatic impact on the Relocation entitlements, including the need to provide all new entitlements, required notices, restart a 90-Day Assurance, and provide new comparable housing, which also requires project re-certification.

## 4.2.7 Access Easement for Transfer

A ROW plan may show an “Access Easement for Transfer” across a private owner (A) - the servient tenement, to serve another single private owner (B) - the dominant tenement.

Should negotiation to acquire an access easement for transfer not be successful, the agency cannot use public money to condemn a private access for a third party because this situation is not a Public Use as defined in [RCW 8.04.070](#). In such cases, a two-premise appraisal is often prepared for damages due to the loss of the easement right and/or acquiring an easement for transfer over another property.



[RCW 8.04.070](#)

## 4.2.8 Change of Grade

Even when a change of grade can be accomplished **within the existing ROW**, it should be considered whether the change of grade might cause a compensable damage to any abutting property owner. Such consideration is on a case-by-case, property-by-property basis. The Consent to Change of Grade form is used only in those cases where the change of grade is to be accomplished entirely within the existing ROW.

## 4.2.9 Permits

A Permit is a personal right, not a property right, that gives the agency the right to perform a service with the permission of the property owner. A Permit can be revoked by the property owner and is only valid with the current property owner. Should the property be transferred or sold, the Permit will need to be renegotiated.

A construction permit or a pre-scoping permit may be obtained in the following circumstances:

- A **construction permit** is used for relatively minor work that is strictly beneficial, acceptable to the property owner, and non-compensable, such as driveway reconnections, slope flattening, and/or contouring. In most situations, a construction permit is used when acquiring no other property rights from the same ownership as a part of the same project. This type of permit does not require payment to the property owner, since the permit is not a requirement for construction.
- A **pre-scoping permit** is used for more invasive work than is allowed with a right of entry, such as preliminary testing that disturbs the property, archaeological and geotechnical work, or piezometers, etc. This type of permit may require payment to the property owner. The executed permit is retained until expiration.

The permit requires specific language describing the purpose of the permit and its expiration date. Permits durations should not extend past one year. Any right greater than one year must be inventoried. If the nature of the work and the time required to complete it do not fit the characteristics of a permit, a temporary easement must be acquired.

Project offices may negotiate and obtain a detour route, street use permit, haul road agreement, or other right of way use permits/agreements etc., from a local agency. Such permits/agreements must be included as part of the ROW Certification.

## 4.2.10 Right of Entry

Right of Entry is a personal right, not a property right, that gives the agency the right to perform a service with the permission of the property owner. For WSDOT, this may be accomplished by statute for activities allowed under RCW 47.01.170 or by a right of entry document. Right of entries under this section are not to be used for any invasive activities.

WSDOT or its agents do not require a written right of entry for surveying and location of boundaries and monuments; some environmental examinations of soil, water, hazardous and biological materials; and historical/cultural and archeological examinations. If making the appropriate assessment requires more than stakes, flagging, and/or a de minimis shovel probe, then a permit or temporary easement is required.

A Notice of Entry letter is sent as a courtesy to the property owner, which includes an explanation of the work, contact information, and dates of entry.

Please see Section 4.62, Notice of Entry, for more information.



[RCW 47.01.170](#)

WSDOT personnel, consultants, or contractors may need to enter lands for non-invasive activities, such as some soils analysis, wetland delineation, septic or well testing, building inspection, or such work usually associated with the initial scoping and design of the project or post construction inspections that may not fall under RCW 47.01.170.

If a Right of Entry document is prepared to memorialize the work, the Right of Entry can be revoked by the property owner and is only valid with the current property owner. Should the property be transferred or sold, the Right of Entry will need to be renegotiated.

A Right of Entry is allowed for construction purposes when property is being acquired from governmental agencies that have agreed to the transaction, but the governmental agencies' disposition processes are not yet complete, or they cannot be completed until after construction is finalized.

If the Right of Entry is required for construction purposes, it must be included and submitted as part of the ROW Certification.

A Right of Entry for a Federal Land Transfer must be made as a part of the application to FHWA for a Letter of Consent. For more information, see Section 4.4, Acquisition of Government-Owned Land.

See Chapter 7, Property Management, for Right of Entry information on WSDOT owned or managed property.

### 4.2.11 Emergency Permit and Right of Entry

This section applies to WSDOT projects only.

Emergency repair is defined as “Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of (1) Minimizing the extent of the damage, (2) Protecting remaining facilities, or (3) Restoring essential traffic.”

**CFR →** [23 CFR 668.103](#)

When an emergency occurs, it must be determined if the emergency requires a “Declaration of Emergency.” The declaration of emergency authority is delegated from the Secretary of Transportation to the Regional Administrators and the Directors of Aviation and or Ferries for all work directly or indirectly related to transportation facilities.

A Governor’s Proclamation is another type of “Declaration of Emergency” and is required for consideration of Emergency Relief funding. The Office of Emergency Management prepares the Governor’s Proclamation at the start of the incident.

In these situations, the Emergency Permit and Right of Entry form is used; use of this form is restricted to circumstances that are exceptional or emergency in nature.

Typically, the Emergency Permit and Right of Entry form is obtained prior to the valuation process and initiation of negotiations and, ordinarily, will not dislocate people or impact improvements of a significant nature.

The Emergency Permit and Right of Entry states that the agency will promptly, but in no later the 12 months, initiate the valuation of the property and/or property rights subject to the Emergency Permit and Right of Entry and will determine the compensation for such rights acquired for the construction, reconstruction, repair, operation and/or maintenance of the highway or transportation facility.

As soon as possible after obtaining the Emergency Permit and Right of Entry, and prior to its expiration, the agency follows through with the standard appraisal and acquisition process required by state and federal law.

### 4.2.12 Acquisition Lease

A lease may be obtained if a permit or temporary easement does not secure adequate interest and if a lease is customarily used in private real estate practices involving the types of rights acquired. A lease is generally used if a material source or other sundry site, including Radio Sites is unable to be acquired.

The Acquisition Lease form contains the basic lease language (“grants”), to which specific language is added that establishes rights and privileges of the lessee and the termination.

## 4.3 Property Acquisition Alternatives

### 4.3.1 Early and Advance Acquisition

Early acquisition is the acquisition of real property interests prior to completion of the environmental review process required for a proposed transportation project under the National Environmental Policy Act of 1969 (NEPA), as provided under 23 CFR 710.501 and 23 U.S.C. 108.



[23 U.S.C. 108](#)



[23 CFR 710.501](#)

In practical use, early acquisition refers to the acquisition of real property prior to the final NEPA decision on a project, which may be one of the following:

- The Record of Decision (ROD), for projects developed with an Environmental Impact Statement (EIS).
- A Finding of No Significant Impact (FONSI), for projects developed with an Environmental Assessment (EA).
- The Environmental Classification Summary (ECS), for a Categorical Exclusion (CE).

In cases where a project may not require a NEPA action, early acquisition is the acquisition prior to completion of the environmental review process. Final environmental documentation is provided by the Environmental Office

See WSDOT's Environmental Manual M31-11.29, Chapter 400, for more information about the environmental review process.



[M31-11.29 Environmental Manual](#)

**NOTE:** Early Acquisition is not a tradeoff to shorten a ROW schedule.

The property must be in designated highway transportation corridors and be for projects approved as part of the state's six-year plan or included in the state's development planning effort.



[23 U.S.C. 108](#)



[23 CFR 710.105](#)

[23 CFR 710.501](#)



[RCW 47.12.180](#)

[RCW 47.12.242](#)

Property may be acquired using early and advance acquisitions in a manner consistent with State and Federal regulations. See Section 4.3.2, Early/Advanced Acquisition Options and Requirements, for more information.

An Application for Early/Advanced Acquisition must be submitted to the Acquisition Program Manager for approval and the Acquisition Program Manager's approval must be obtained before proceeding with any early or advanced acquisition.

The Acquisition Program Manager requires the following information to review and approve early/advanced acquisitions:

- Funding type
- Confirmation environmental due diligence is completed
- Status of Environmental documentation completion
- Right of way plan, Parcel Acquisition Plan or Exhibit applicable to the acquisition
- Property management plan.
- Limited access hearing status, if applicable

The standard acquisition process applies to early and advance acquisitions, with potential requirements for additional documentation, such as FHWA approval, prior to the parcel being incorporated into a federally funded project.

Generally, FHWA's prior approval for using **early acquisition** is not required; however, there may be circumstances that necessitate prior approval by FHWA, such as projects with a federal nexus. Any requests for **advance acquisition** for a federal project must be approved by FHWA through the Acquisition Program Manager or Local Programs.

All required approvals to proceed with early or advance acquisition must be documented in the acquisition parcel file.

The acquisition must meet the requirements of the Uniform Act in order for FHWA to approve the parcel's incorporation into a federal aid project.

Acquisition may be completed under the threat of condemnation except for federally funded stand-alone projects. Early acquisition by eminent domain may not be used for a federally funded stand-alone project. These projects are identified in a STIP specifically for the early acquisition project.



[23 CFR 710.501](#)

[23 CFR 710.503](#)

### 4.3.1.1 Early/Advanced Acquisition Mandatory Conditions

- The acquisition must be lawfully obtained in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- The acquisition cannot influence the environmental review process for the proposed transportation project or limit the choice of reasonable alternatives in the NEPA analysis for the project.
- Must comply with Title VI of the Civil Rights Act of 1964.
- Environmental due diligence (Environmental Site Assessment) must be completed on the early acquisition parcel.
- Early acquisition will NOT be used on properties that are protected under section 4(f) of the Department of Transportation Act of 1966, codified at 23 U.S.C. 138, and the regulations in 23 CFR 774.



[23 U.S.C. 138](#)



[23 CFR 774](#)

- FHWA must also concur that the Early Acquisition did not influence the NEPA decision for the proposed project including the need to construct, the considerations of alternatives or the selection of design and location.

### 4.3.1.2 Additional Conditions

In addition to mandatory conditions, a variety of other factors should be considered prior to proceeding with any early or advanced acquisition, including, but not limited to, the following:

- For early or advanced acquisitions under the threat of eminent domain, the agency must be able to prove public use and necessity for the real property being acquired.
- If the property involves a relocation, a relocation plan must be completed and approved prior to the early acquisition.
- Property management considerations may include but are not limited to maintenance and security costs for the property prior to actual use, displaced person's lease, and the need to dispose of property acquired that is surplus to project needs.

Based on these factors, and other risk factors specific to the parcel or project, an informed decision can be made to move forward using early or advanced acquisition.

### 4.3.2 Early/Advanced Acquisition Options and Requirements

**CFR →** [23 CFR 710.501](#)

Acquisition Options	Requires NEPA Decision?	Allows 4F Properties?	Acquisition Start	Request Reimbursement/Credit	Comply with Federal Law? (Uniform Act, Title VI Civil Rights Act, and Federal Regulations 23 CFR Part 710)	Subject to Condemnation?
<b>Early Acquisitions</b>						
1) State-funded early Acquisition without Federal Credit or Reimbursement 23 CFR 710.501(b) 23 USC 108(c)(1)	NO	NO, if the State wishes to maintain federal eligibility for future federal assistance on any part of the transportation project	When legally permissible by State law	N/A	YES, if the project maintains federal eligibility.	YES, if State law allows.
2) State-funded Early acquisition eligible for future credit 23 CFR 710.501(c)	NO	NO	When legally permissible by State law	Request credit for the portion of the property after incorporated in the federal-aid project.	YES	YES, if State law allows.
3) State-funded Early Acquisition Eligible for future reimbursement 23 CFR 710.501(d) 23 USC 108(c)	NO	NO	When legally permissible by State law	After NEPA is completed and real property interests are incorporated in a Title 23 project and all applicable requirements are met.	YES	YES, if State law allows.
4) <i>Federally funded Early Acquisition (Stand-alone project)</i>  23 CFR 710.501(e) 23 USC 108(d)	YES, NEPA decision required for the early acquisition, stand-alone project only (not the transportation project) (Usually a CE)	NO	After NEPA is complete for the Early Acquisition Project.	This is a reimbursable, stand-alone, Federal-aid Project based on FHWA authorization to proceed with acquisition.	YES	NO
<b>Advance Acquisitions</b>						
Protective Buying 23 CFR 710.503	Yes typically a CE CFR 771.117(d)(12)	Yes, if consultation is completed on 4F	Usually during the NEPA process	After property is incorporated in the Federal-aid project	YES	YES, if State law allows.
Hardship Acquisition 23 CFR 710.503	Yes typically a CE 3 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F	Usually during the NEPA process	After property is incorporated in the Federal-aid project	YES	YES, if State law allows (See comment)

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### 4.3.2.1 Early Acquisition Funding Options

Funding Options must be discussed with Program Management or Local Programs before proceeding with an early or advanced acquisition.

There are four alternative methods of early acquisition:

- State-Funded No Federal Credit or Reimbursement.
- State-Funded Eligible for Future Credit.
- State-Funded Eligible for Future Reimbursement.
- Federally-Funded (Stand-Alone Project).

#### 4.3.2.1.4 State-Funded, No Federal Credit or Reimbursement

Acquisition of real property using State funds may be initiated at any time the agency has legal authority to do so, based on program or project considerations.

This option is used when the agency will not be seeking either reimbursement or matching credit from FHWA. It is useful for corridor preservation, access management, or similar purposes.



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

#### 4.3.2.1.5 State-Funded, Eligible for Future Credit

Credit can be received for State funds expended in the early acquisition of property prior to completion of the environmental review process for a transportation project if the project receives surface transportation program funds. The credit can be used toward the non-federal share of the total project costs.

In addition to the conditions in sections 4.3.1.1 and 4.3.1.2 of this chapter, the following conditions must be met:

- The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.
- FHWA must concur that the early acquisition did not influence the environmental review process for the proposed transportation project.
- The original project agreement covering the project was executed on or after June 9, 1998.



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

[23 CFR 710.203\(b\)](#)

#### 4.3.2.1.6 State-Funded, Eligible for Future Reimbursement

Federal reimbursement of State funds expended in the early acquisition of property for a transportation project can be received.

In addition to the conditions in sections 4.3.1.1 and 4.3.1.2 of this chapter, the following conditions must be met:

- The State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law.
- The early acquisition is certified by the Governor as being consistent with the State's plan prior to the acquisition.

- Federal participation and reimbursement of the costs associated with early acquisition under this option will not occur until after the completion of the environmental review process for the project.
- FHWA must concur that the early acquisition did not influence the environmental review process for the proposed transportation project.

**USC →** [23 USC 108\(d\)](#)

**CFR →** [23 CFR 710.203\(b\)](#)

#### 4.3.2.1.7 Federally Funded (Stand Alone Project)

An *Early Acquisition Project* may be programed in the State Transportation Improvement Plan (STIP) authorizing the use of federal funds for the acquisitions within the project. Preapproval is required by FHWA prior to proceeding with any acquisition of property.

In addition to the conditions in sections 4.3.1.1 and 4.3.1.2 of this chapter, the following conditions must be met:

- The Early Acquisition Project must be included in the STIP.
- The acquisition cannot be acquired under the threat of condemnation.
- An environmental review process must be completed and approved by FHWA.
- Real property interests acquired under this option may not be developed and any existing improvements may not be demolished 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.

**CFR →** [23 CFR 710.203](#)

#### 4.3.2.2 Advance Acquisition Options

Prior to completion of the environmental review process for a transportation project, the agency may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels. Advanced acquisition is the acquisition of real property interests for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

There are two options for advance acquisition:

- **Protective Buying** to prevent imminent development and increased costs for the preferred location.
- **Hardship Acquisition** to alleviate hardship to a property owner or owners for the preferred location.

In addition to the conditions in sections 4.3.1.1 and 4.3.1.2 of this chapter, the following conditions must be met for both alternatives:

- FHWA must approve of the advance acquisition for federally funded projects.
- The project must be included in the currently approved STIP.
- The State must have complied with the public involvement requirements addressed in 23 CFR Part 450 and 23 CFR Part 771.



[23 CFR Part 450](#)

[23 CFR Part 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.



[23 CFR 710.503](#)

#### 4.3.2.2.4 Protective Buying

To acquire property in advance as a protective buying measure on federally funded projects, it must be clearly demonstrated to FHWA 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. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

#### 4.3.2.2.5 Hardship Acquisition

Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property.

A hardship acquisition is initiated by a property owner, not the acquiring 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.

The agency is NOT required by federal regulation to agree to a hardship purchase request.

#### 4.3.2.3 Advance Right of Way Revolving Fund

The "Advance Right of Way Revolving Fund" is a State-funded alternative for early acquisition that enables the agency to acquire ROW for future construction projects, generally not more than ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance ROW acquisition.

To use the fund, the proposed purchase must be in a highway transportation corridor, included in the State's ten-year capital improvement and preservation program, have a high degree of certainty that the ROW will be needed, and have a high degree of certainty that the ROW will increase in cost.

For WSDOT projects, application to use the Advance Right of Way Revolving Fund must be made through the RESPA. Approval expires after eight months; approval time limits may be extended if WSDOT provides documentation that progress is being made on the acquisition process.

Use of the Advance Right of Way Revolving Fund is not a stand-alone process; it is in addition to the requirements of the "with match" or "without match" processes.



[RCW 47.12.242](#)

[RCW 47.12.244](#)

[RCW 47.12.246](#)

### 4.3.3 Donations

Nothing in these regulations prevents a person from making a gift or donation of real property, any interest therein, or any compensation received. A donation of property rights may be accepted only after the owner has been fully informed in writing of their right to receive just compensation and has waived in writing their right to an appraisal and payment of just compensation.

The agency must ensure that an appraisal or waiver valuation of the real property is obtained unless the owner releases the agency from this obligation.

This applies to individuals, businesses, corporations, other private entities, and local government and state agencies. Donations from federal government agencies are exempt from these requirements. ROW obtained through donation may be incorporated into a federal aid project without jeopardizing participation in other project costs.

Donated properties must have clear title.



[49 CFR 24.108](#)



[RCW 47.14](#)



[WAC 468-100-106](#)

### 4.3.4 Functional Replacement

Occasionally it is necessary to acquire **publicly owned** real property, including land and/or facilities, such as a school or fire station. Compensation may be provided by functionally replacing the publicly owned real property with another facility that will provide equivalent utility. For example, if a fire station is being acquired, just compensation may be the cost of sufficient land in an equally suitable location for a replacement plus the amount necessary to construct a new fire station thereon.

Functional replacement costs are limited to the replacement of acquired lands and facilities with functionally equivalent lands and facilities.

Functional replacements must be identified as early as possible in the location and design stages so that they can be included in the environmental impact studies and addressed following plan development.

Once identified, the project team must immediately consult with the RESPA; for WSDOT projects, functional replacements must be requested by memorandum and approved by the RESPA. FHWA must approve of the functional replacement in federally funded projects in order to qualify for reimbursement.

Washington State has no specific case or statute law covering functional replacement and relies on the principle of substitution and the provisions of RCW 47.12.040 and RCW 47.12.150.



[RCW 47.12.040](#)

[RCW 47.12.150](#)

Functional replacement may be authorized under the following conditions:

- The property is publicly owned and will continue to be publicly used.
- The functional replacement takes place and the costs of replacement are actually incurred.
- The replacement site and construction thereon comply with existing codes, laws, and zoning regulations.
- The property owner has been informed by the agency in writing of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.
- The FHWA concurs with the agency's determination that functional replacement is in the public interest.
- The real property is not owned by a utility or railroad.



[23 CFR 710.509](#)

### 4.3.5 Voluntary Acquisition

Voluntary acquisition is defined as a donation, exchange, market sale, or other type of agreement entered *without compulsion on the part of the agency*. **WSDOT does not have the authority to acquire property by means of voluntary acquisition**; WSDOT's authority is limited to acquiring lands or interests in lands necessary for an intended, planned, or designated project area, therefore does not meet the requirements for voluntary acquisition. Any other agency seeking to acquire property voluntarily must meet all requirements in federal and state law including but not limited to:

- The agency will not use the power of eminent domain to acquire the property.
- The agency will not acquire the property in the event the negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The agency presents an estimate of fair market value for the property being acquired.
- The property to be acquired is not part of an intended, planned or designated project area where all, or substantially all, of the property within the area is eventually to be acquired.
- In those situations where an agency wishes to purchase more than one site within a geographic area on a “voluntary transaction” basis, all owners shall be treated similarly.



[49 CFR 23.101 \(b\)\(1-3\)](#)



[RCW 47.12](#)



[WAC 468-100-101](#)

## 4.4 Acquisition of Government-Owned Land

Property and/or property rights may need to be acquired from government entities, including cities and counties, state agencies, federal agencies, tribal entities, and railroads.

Government agencies may be entitled to just compensation for the acquisition of property rights, including permanent rights, less than fee long-term rights, or short-term temporary rights. The title is cleared, and relocation assistance is provided, if appropriate.

There may be some deviation to the requirements, as legal authority may control how agencies transfer real property to other agencies.

The Acquisition Program Manager must be notified of any property rights to be acquired from the following government entities:

- State Agencies
- Federal Agencies (except Bureau of Indian Affairs (BIA))
- Class 1 Railroads (Burlington Northern San Francisco (BNSF) and Union Pacific (UP))

**NOTE:** Acquisitions of government-owned land can take a year or more, depending on the complexity of the parcel and project.

### 4.4.1 Local Agencies and Political Subdivisions

This section pertains to counties, cities, towns, school districts, irrigations districts, etc. These entities are entitled to just compensation. Early engagement with the agency is necessary to determine their authority and procedures.

Standard acquisition procedures apply to any real property not deemed ROW.

**County Roads** – If the county road is located within the highway ROW, WSDOT RES secures a Quitclaim Deed from the county for all county ROW lying within the ROW limits of each state highway project. This action is postponed until the transactions with all other owners are substantially completed to avoid the necessity for supplemental instruments due to plan revisions. The area of the county road located in the highway does not need to be defined in the legal description, however the specific details clause must be included in the Quit Claim Deed.

**City Streets** – When a street, etc., in an incorporated city or town is placed on the route of a **non-access-controlled** state highway, title to such street, etc., remains vested in the city or town.



[RCW 47.24.020](#)

If the State elects to improve its highway by widening such a street, the additional ROW may be acquired either by the city or town or by the State. The costs of acquisition may be split by mutual agreement. By statute, the title to such additional width's vests in the city or town.

The title to the ROW for **limited access facilities** vests in the State upon a declaration by the Secretary of Transportation that such highway is operational as a limited access facility. This declaration cannot be made prior to the acquisition of ROW or access rights for such highway and must be made before the final completion of construction.

No documents are necessary to transfer ownership of a city street to the State when it is within the ROW limits of a limited access highway. The project office acquires a permit, sometimes through agreements, for work within the city street prior to the automatic transfer of ownership as outlined in RCW 47.52.210.



[RCW 47.52.210](#)

## 4.4.2 State Agencies

State agency lands are acquired via standard acquisition procedures, including an offer letter and transmittal of title reports, appraisals, ROW plans, and any other pertinent information. Appropriate time must be allocated in the project schedule for the acquisition process. State agencies may require an application or additional documentation completed according to their internal procedures. Early engagement with the agency is necessary to determine their authority and procedures.

**Department of Natural Resources (DNR)** – Acquiring ROW over and across DNR-managed lands is controlled by RCW 47.12.023 for all DNR-controlled uplands and RCW 47.12.026 for ROW over aquatic lands, and over and across beds of navigable waters and/or harbor areas.



[RCW 47.12.023](#)

[RCW 47.12.026](#)

**NOTE:** An appraisal is not required if ROW needed is over and across beds of navigable waters or harbor areas, as these rights are transferred by DNR without charge.

## 4.4.3 Federal Agencies

Acquisitions from federal agencies, such as the U.S. Forest Service, U.S. Fish and Wildlife, U.S. National Parks, and other federally owned property require early engagement to determine the federal agencies authority and procedures. The federal agency may adopt WSDOT's or the local agency's environmental documentation therefore, they must be consulted to confirm that all NEPA requirements are met.

Some federal agencies have authority to grant ROW. In such cases, the acquisition may continue between WSDOT or the local agency and the federal agency.

Some federal agencies do not have authority to grant ROW or may request to proceed under Title 23 USC, Section 107(d) or Section 317, The Federal Land Transfer Process.



[23 U.S.C. Section 107](#)

[23 U.S.C. Section 317](#)

In these cases, and when projects involve federal funds or a federal nexus, application is made to FHWA for a Federal Land Transfer. FHWA assists in obtaining the necessary property rights. The procedures for a Federal Land Transfer can be found in the *Manual for Federal Land Transfers* and in guidance found in the *Federal Land Transfer Toolkit* provided by FHWA.



[Manual for Federal Land Transfers for Federal-Aid Projects](#)

[FHWA Real Estate Federal Land Transfers Tool Kit](#)



[23 CFR 710.601](#)

The application may differ by federal agency, but should include at minimum:

- Federal Aid number
- Federal agency information and authority
- A letter stating the purpose and use of the lands, including the interest to be acquired along with any stipulations previously agreed to by the agencies.
- Map or survey approved by the federal agency (the federal agency may have survey requirements, i.e. U.S. Forest Service).
- Legal description of property to be transferred stamped by a licensed surveyor.
- Completed NEPA documentation.
- Draft Highway Easement Deed.
- Request for Letter of Consent and Right of Entry.

Once the Letter of Consent and Right of Entry is issued, it will include a right of entry for construction, if requested as well as any stipulations or conditions related to the property transfer. Typically, the stipulations are required as an exhibit to the Highway Easement Deed.

For example, the Federal Highway Act of August 27, 1958, includes provisions for the FHWA to convey an easement for the ROW to the State on behalf of the USFS using a Highway Easement Deed under the terms and conditions set forth in the Letter of Consent and the separate Stipulation.

**Temporary uses** of federal land needed for a project, such as a waste site, can be acquired via a special use permit or document approved by the federal agency and must be included in the certification.

When acquiring any property rights from the United States, WSDOT is required to ensure the documents created to transfer the property rights comply with USDOT Order No. 1050.2A. This order requires the specific assurances number 4 and appropriate clause of Appendix B to be inserted in any documents that transfer property rights.



[USDOT Order No. 1050.2A](#)

### 4.4.4 Tribal

Tribal acquisitions for WSDOT projects require consultation with the WSDOT Tribal Liaison, appropriate research as to how the property is held and documentation of who has authority to convey the property.

**Trust Lands** – Many lands owned by Native Americans are held in trust by the United States for the benefit of individual Native Americans or Tribes. This means the Bureau of Indian Affairs (BIA) manages these lands, and they cannot be sold, leased, or otherwise encumbered without federal approval.

The (BIA) has jurisdiction over applications to acquire property rights needed for state highway purposes on tribal trust lands. In addition to BIA approval, the acquisition of tribal trust property requires the consent of the individual owners of the majority of interests in the land, where the land is held by the BIA in trust for individual members, or from the tribe, where the land is held by BIA in trust for the tribe.



[25 CFR 169](#)

Agencies must comply with all regulations and requirements of the BIA. The BIA will prepare their own appraisal, however the agency must also value the property and issue a determination of just compensation prior to negotiating with the BIA representative.

**Restricted Fee Land** – Some lands are held in "restricted fee" status, where the title is held by an individual Native American or Tribe, but any transactions involving the land require approval from the Bureau of Indian Affairs (BIA). The agency typically negotiates directly with the Native American Tribe or individual Native American for the acquisition of the necessary property.

The BIA plays a significant role in managing these lands, including approving leases and permits for agricultural and range trust lands. They also oversee the process of converting land into trust status, which involves a detailed application and approval process.

**Tribal Corporations** – A tribally chartered corporation is a corporation that is organized under a tribal statute or code or pursuant to a resolution of an authorized tribal legislative body. The tribe under whose laws a corporation is organized will typically issue a charter or certificate of organization. The charter or certificate will include the corporation's powers, authorized parties and limitations. Review of the appropriate documentation is essential to determine authority.

### 4.4.5 Railroads

Railroad acquisitions for WSDOT projects require coordination with the WSDOT Railroad Liaison.

Railroad rights are agreed to and established through Construction and Maintenance (C&M) Agreements with each railroad within the project area. Agreements must be initiated a minimum of one year prior to the transportation project construction RFP/Ad date and must be executed before the project is awarded for construction.

Conveyance documents are completed based on the terms of the C&M Agreement. The details of the property rights being acquired in the C&M Agreement must be reviewed. This includes whether a right of entry is being authorized, type of real property rights, expiration of temporary rights, and the cost the agency negotiated for payment of the rights.

The C&M Agreement cannot be executed until the offer is made to the railroad and agreement on the compensation is reached. If a right of entry is included, the fully executed C&M Agreement allows the project to proceed to Advertisement and Award, while pending final documentation and payment for the property rights.

### 4.4.6 Section 4(f) and 6(f) Properties

Section 4(f) protects publicly owned parks and recreational areas, waterfowl and wildlife refuges, and historic sites considered to have national, state, or local significance. Section 6(f) resources are protected by specific regulations applying to recreational areas acquired or developed with the Land and Water Conservation Fund (LWCF) funds.

4(f) and 6(f) properties require significant lead time and coordination with other internal and external parties.

Section 4(f) requirements stipulate that FHWA and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless one of the following conditions apply:

- There is no feasible and prudent avoidance alternative to the use of land; and the action includes all possible planning to minimize harm to the property resulting from such use;
- The Administration determines that the use of the property will have de minimis impact.

Close and early coordination with the Environmental Office and the Project office is required for these types of acquisitions.

 [23 U.S.C. 138](#)

 [23 CFR 774](#)

## 4.5 Sundry Sites

A sundry site is any site under WSDOT authority that is used (or intended for use) for pit, quarry, stockpile, common borrow, riprap, maintenance, park and ride, ferry terminals, airports, mitigation, radio or communication sites, etc.

### 4.5.1 Material Sites

A materials site is acquired either in fee or by lease; in fee is preferred.

A lease is generally used if the agency is unable to acquire a materials source or other sundry site in fee and temporary rights are determined to be an acceptable alternative.

When the State requires acquisition of other than a fee interest in a materials site, the agency must obtain the concurrence of the owners/lessors in the concept of the reclamation plan.

### 4.5.2 Mitigation Sites

Sites required to mitigate environmental impacts will typically be acquired based on the terms of the commitment established in the NEPA documentation. Mitigation sites are considered part of the project because the project will not be in compliance without following through on the commitment to acquire the site. Acquisition of mitigation sites follows all policies and procedures set forth in this manual.

If sites must be maintained in perpetuity, the agency must acquire them by either permanent easement or in fee. If the mitigation commitment specifies a lesser term, such as ten years, a acquiring a temporary easement may be sufficient.

### 4.5.3 Radio Sites

Radio sites are a part of WSDOT's emergency management system. These acquisitions may include land, towers, equipment, and/or access to a radio site. WSDOT may secure adequate interest in fee or lease. A lease is customarily used in private real estate practices involving these types of rights.

These types of leases involve many different departments within WSDOT. They are assigned by the Facilities office, and may involve Region RES, Facilities, Maintenance, Utilities, Region Radio Technician, Right of Way, and HQ Title and Acquisition.

## 4.6 Pre-Acquisition Activities

### 4.6.1 Initial Contact with Property Owners

As part of the pre-acquisition and pre-relocation activities, property owners are provided with an Introductory Letter and additional accompanying content informing property owners “of the agency's interest in acquiring the real property and the basic protections provided to the owner by law.”

Displaced persons are also provided “a general written description of the agency's relocation program” and additional content that may include the “Property Needs & You” brochure, a Relocation Assistance brochure, and the Relocation General Notice. Such notices are provided as soon as feasible and no later than the receipt of approved ROW plans, exhibits, or parcel acquisition plans as it pertains to any individual parcel or project.

**NOTE:** Any early contact with property owners cannot appear to be an initiation of negotiations.

**CFR →** [49 CFR 24.102\(b\)](#)

[49 CFR 24.203\(a\)](#)

**WAC →** [WAC 468-100-203\(1\)](#)

### 4.6.2 Notice of Entry

Work authorized by RCW 47.01.170 does not require a written right of entry or permit. See Section 4.2.1 for more information.

**RCW →** [RCW 47.01.170](#)

The agency sends a Notice of Entry form as a courtesy to the property owner. A Notice of Entry is required for the following activities that **do not** include invasive purposes:

- Surveying – location, flagging, boundaries, topography, channel features and monumentation.
- Environmental examinations – soil, water, hazardous and biological material.
- Archaeological examinations – historical and cultural

The extent of ground disturbance/invasion authorized is a de minimis shovel probe and/or the use of wooden stakes and flagging. If more than de minimis testing is needed to make the appropriate assessments, or the ground disturbance is in a landscaped area, or the owner refuses entry, then a temporary easement or permit, and payment to the property owner is required.

The Notice of Entry must include an explanation of the type of work that will take place and the type of equipment that will be used; the date, time, and duration the agency or its agent will be on the property; and contact information for the Project Engineer if the property owner needs to plan for entry. A Notice of Entry must be delivered 14 days prior to commencement of on-site activities.

**RCW →** [RCW 47.01.170](#)

### 4.6.3 Title

When referring to real property, “title” defines who has legal ownership and a right to use a piece of property. Preliminary title commitments are also referenced as title reports, prelim title, or preliminary commitment.

Preliminary title commitments for title insurance are ordered early in project planning. Coordination also occurs with the Project Engineering Office (PEO) on real estate matters that have bearing on interdisciplinary team activities, such as ownership, contiguous properties, taxing districts, assessing districts, utilities, water rights, mineral rights, timber cruises, public recreation sites, easements, covenants, and access, etc. This information is used to prepare the ROW plans, and assists in route selection, cost estimates, and preliminary project planning.

#### 4.6.3.1 Title Reports

A title report is obtained for each parcel, which includes a Commitment for Title Insurance plus any Supplemental Title Reports. The title report lists the recorded encumbrances affecting the title. In addition, other encumbrances (e.g., unrecorded leases) may be discovered.

Services of title insurance companies are used for title commitments. Each title company engaged provides preliminary commitments along with all supporting documents of record necessary for title insurance. The title company also provides any necessary supplemental title commitments, or other sundry title services needed for acquisition. Fees, delivery schedules, service, etc. may vary between companies.

All transfers of fee ownership and permanent easement rights require an ALTA Owner’s Standard Form Policy of Title Insurance insuring the acquisition, unless otherwise approved by the Acquisition Program Manager.

#### 4.6.3.2 Title Review

ROW plans, other appropriate maps, preliminary title reports, and supporting documents provided are reviewed to ensure that all properties within the limits of the proposed project have been identified to determine the effect of any access easements, road maintenance agreements, easements, covenants, conditions, and restrictions (CCRs), and other miscellaneous items affecting the subject parcel or other parcels or entities benefitted by such rights. These encumbrances may be compensable. After thorough examination, these encumbrances may need to be identified on the plan and considered in the valuation.

## 4.6.4 Identity of Parties

The agency is responsible for determining and clarifying the identity of parties in interest and/or in possession and the status and ability to give a legal conveyance.

A title report may question the ability of a party in interest to give a legal conveyance. These questions normally arise from the appearance of filings (by name) for dissolution of marriage (divorce), of guardianships, commitment of persons to institutions for the care of mental illnesses, or registration of corporations, etc.

It may also be appropriate to raise questions of personal identity, questions of legal capacity of any party in interest, and questions of parties in possession of the premises as a result of field investigation.

If title insurance is being issued, the title company will make the final decision on signing authority of the parties. If title insurance is not being issued, and there is a question regarding signing authority of the parties, the Acquisition Program Manager or Local Programs will make the final decision.

### 4.6.4.1 Owner Represented by Others

The property owner (or any other party in interest) may choose to be represented by another party. Certain individuals (e.g., minors or those declared legally incapacitated or incompetent) are required by law to have another party represent them.

An attorney at law may act as the owner's representative but may not contract or convey in the place or name of the owner without legal authority.

At the owner's written request, acquisition activities are conducted with the interested party's representative. See Section 4.1.2.5.5 Authorized Representatives for more information.

## 4.6.5 Property Inspection

An on-site inspection of the parcel is conducted, noting evidence of any recent or pending public improvements that may cause an assessment; parties in possession; physical access in the before and after situation; and any items such as improvements (e.g., fences, buildings, business signs, etc.), personal property within the proposed acquisition area, utilities, and evidence of septic drain fields that may have been missed in the title report and/or appraisal.

## 4.6.6 Option Agreement

Options are legal agreements between a future buyer (optionee) and seller (optionor) to contract to buy and sell real estate within a certain amount of time at a certain price with certain terms. An appraisal is required. The optionee has no obligation to follow through and buy the property, however if the optionee elects to exercise the option, it must notify the optionor in writing. Once the option is exercised all acquisition policies and procedure in this manual shall be followed. All options require prior approval by the Acquisition Program Manager.

## 4.6.7 HAZMAT Contamination / Toxic/Hazardous Waste Situations

Appropriate environmental due diligence is required in advance of property acquisition. These assessments are described in Chapter 447 of the Environmental Manual. For more information, see also Section 510 of the Design Manual and Chapter 3, Section 3.1.4.

For WSDOT projects, the decision to acquire contaminated property after the appropriate due diligence is completed must be approved in writing by the Assistant Regional Administrator or Program Administrator. Once the decision to acquire a contaminated property is approved, it may also require consultation with legal staff depending on the circumstances.



[40 CFR 312.20](#)



[RCW 70A.305.040](#)



[M31-11.29 Environmental Manual Chapter 447](#)

[M22-01.23 Design Manual](#)

### 4.6.7.1 Environmental Due Diligence Process

Valuing and purchasing contaminated properties can be complicated and any possible remaining liability to the property owner is often nuanced. For WSDOT projects, the Region RESM is responsible for ensuring that the results of any environmental due diligence are considered as part of the appraisal before an offer is made to a property owner.

The Region RESM must also adequately consult with the project team, the Environmental Services office, and the Headquarters RES office whenever contamination is indicated to ensure appropriate measures are taken to protect WSDOT and treat the property owner fairly.

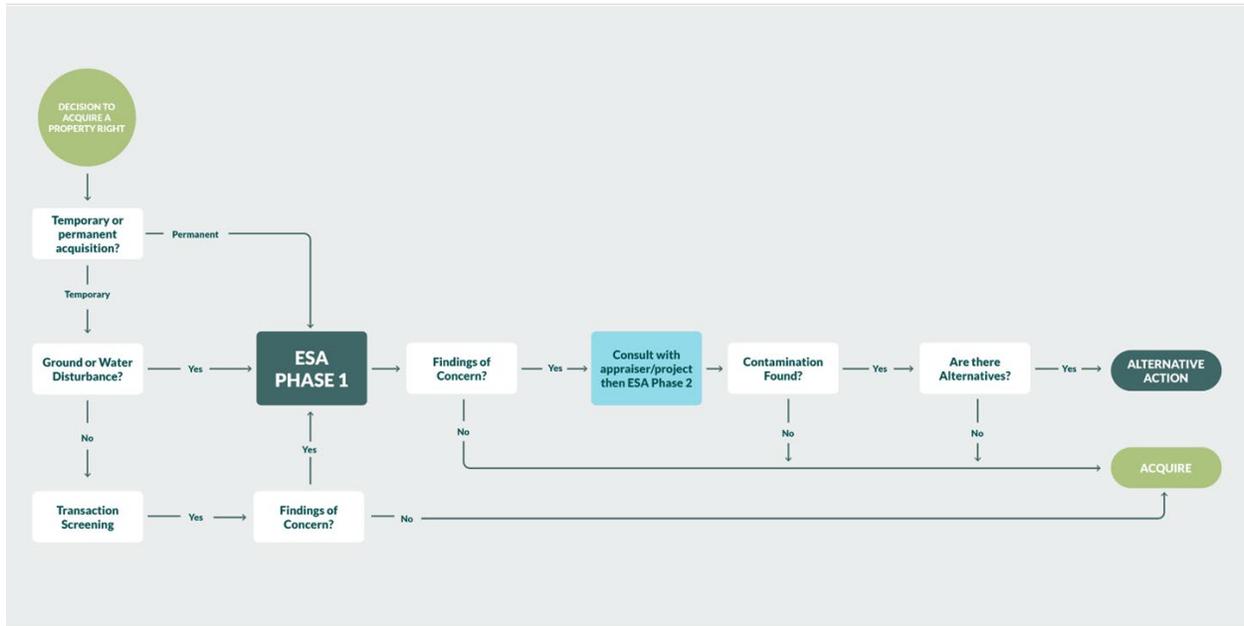
There is no universal approach to dealing with contaminated properties and it may also require consultation with the Attorney General's Office depending on the circumstances.

The project design team initiates the process by determining whether it is likely that the project requires permanent or temporary rights from all, or a portion, of a parcel.

Environmental due diligence assessments occur in different scales and levels of detail based on this determination:

- **Transaction Screening:** Lowest level of detail, used in the case of a temporary acquisition where there is no ground or water disturbance anticipated as a result of project-related actions.
- **Phase I Environmental Site Assessment:** Used in the case of a permanent acquisition (or temporary acquisitions where there is ground and/or water disturbance) to determine whether there will be a finding of concern or used if a Transaction Screening results in a finding of concern.
- **Phase II Environmental Site Assessment:** Highest level of detail, used if a Phase I assessment results in a finding of concern.

The sequence and timing of these assessments are related to the type of acquisition and project activities envisioned, and state of progress in design. At a minimum, a project footprint or defined area needs to be established to estimate the scope of acquisitions that are involved. An evaluation may proceed at an earlier stage as part of a formal or otherwise well-reasoned risk analysis process.



## 4.7 Encumbrances and Title Clearing

This section addresses encumbrances and the policies and procedures for clearing them. A title report is obtained for each parcel that lists the recorded encumbrances affecting the title. Additional encumbrances (e.g., unrecorded leases) may be discovered after property investigations and interviews with property owners.

All encumbrances must be reviewed and analyzed to determine if they interfere with the purpose of the acquisition. If an encumbrance held by a third party is determined to be a compensable property interest, the property interest must be appraised and treated as a separate parcel.

If an encumbrance doesn't interfere with the purpose of the acquisition, it may remain on title with proper documentation as required by this section.

Any deviations must be approved by the Acquisition Program Manager or Local Programs upon receipt of a written risk analysis.

Each parcel transmittal package must include documentation clearing all encumbrances against the property being acquired, including approvals for any deviation.

If any interest cannot be cleared or acquired by negotiations, the acquisition is achieved through eminent domain proceedings.

### 4.7.1 Assessments

The lien is cleared of current and delinquent assessments on all acquisitions of fee title and on those acquisitions of less than fee title for projects that would restrict the operation, maintenance, or other functional interest of the assessing district.

#### 4.7.1.1 Irrigation Assessments

There are instances where the agency may acquire property situated in an irrigation district where the lands are irrigable and being serviced by facilities of the district. WSDOT is required by statute to pay these assessments by one of the following methods:

- If the regional administrator determines that WSDOT-controlled lands or highways will remain in irrigable status, the annual assessments are handled by WSDOT's Property Management program.
- If the regional administrator determines that WSDOT-controlled lands of highways should be removed from an irrigable status in accordance with [RCW 87.03.810](#) and [RCW 87.03.815](#), WSDOT determines and pays a lump sum payment in coordination with the irrigation district.



[RCW 87.03.810](#)

[RCW 87.03.815](#)

## 4.7.2 Deeds of Trust and Mortgages

Deeds of trust and mortgages are encumbrances cleared with either a reconveyance document or a satisfaction of mortgage, respectively, and may require payment of funds. Certain incidental expenses incurred in releasing a deed of trust or mortgage are payable by the agency, including reasonable fees for processing and reconveyance fees. For more information about incidental expenses, see Section 4.11.1 Incidental Expenses.

Most deeds of trust and mortgages contain a condemnation/eminent domain or an acceleration clause calling for all proceeds to be applied to the unpaid balance if all or a portion of the property is sold. If proceeds are not applied to the unpaid balance, the lender can call all amounts immediately due and payable.

Procedures for clearing deeds of trust and mortgages are summarized below and in the decision matrix that follows:

- For **total acquisitions**, a full reconveyance (satisfaction of mortgage) is required to clear a deed of trust (mortgage). If the deed of trust includes additional tax parcels not a part of the total acquisition parcel, a partial reconveyance may be appropriate.
- For **partial acquisitions including easements, temporary easements, access rights only**, a partial reconveyance (partial release of mortgage) is not required, but due diligence and risk factors must be considered and approved per the guidelines below:
  - When compensation is under \$10,000 and there are no appreciable improvements (e.g., building, garage/sheds, outbuildings, etc.) in the area being acquired, the decision to assume risk is noted in the diary, along with a verbal conversation with the property owner regarding the condemnation clause.
  - When compensation is between \$10,000 and \$25,000 and there are no appreciable improvements in the area being acquired, the decision to assume the risk must be made, the Request to Accept Encumbrance document completed, and the Owner Loan Terms Letter executed by property owner.
  - When compensation is over \$25,000, a risk review must occur on a case-by-case basis, the Request to Accept Encumbrance document completed, and the Owner Loan Terms Letter executed by property owner.
- If the risk is determined to be too high to accept the encumbrance, or at the property owner request, a partial reconveyance (partial release of mortgage) is obtained.
  - For an **easement only acquisition**, the beneficiary (mortgagee) also executes the document consenting to the easement.
  - For **temporary rights acquisitions**, consider having the beneficiary (mortgagee) execute the document, based upon the length of time involved, the compensation, the degree of interference, and size of the easement.
- If a property owner agrees to a Negotiated Possession and Use Agreement (P&U), the P&U may be accepted without obtaining a reconveyance based on the risk factors and analysis above for partial acquisitions. If the risk is determined to be too high to accept the encumbrance, the beneficiary (mortgagee) must execute either the appropriate Full or Partial Reconveyance or the Possession and Use Agreement, if applicable.

4.7.2.1 Deed of Trust/Monetary Liens Decision Matrix

Acquisition Type	Clear?	Next Steps/Action Items	Request To Accept Encumbrance Form RES333
Total Fee	Yes	Obtain full reconveyance	N/A
Partial Fee and All Easements > \$25,000	If no	Obtain letter signed by owner acknowledging risk	YES, with approval from RA
	If yes	<ul style="list-style-type: none"> <li><b>Fee:</b> obtain partial reconveyance</li> <li><b>Easement:</b> obtain lender's signature on document</li> </ul>	N/A
Partial Fee and All Easements \$10,000 to \$25,000	If no	<ul style="list-style-type: none"> <li>Obtain letter signed by owner acknowledging risk</li> </ul>	YES, with approval from RES Manager
	If yes	<ul style="list-style-type: none"> <li><b>Fee:</b> obtain partial reconveyance</li> <li><b>Easement:</b> obtain lender's signature on document</li> </ul>	N/A
Partial Fee and All Easements < \$10,000	No	Verbally inform owner of condemnation clause and note response in diary	No
Access Rights Only	No	Verbally inform owner of condemnation clause and note response in diary	No

### 4.7.3 Leases

A lease is a conveyance of possessory rights in realty for a specified period, the consideration for which is termed “rent.” A lease may come in different forms and may be recorded or unrecorded. A lease must be in writing to be fully binding, just as any other conveyance involving real estate. The person conveying the possessory right is the lessor and the person to whom the right is conveyed is termed the lessee.

Any portion of the bundle of rights that make up full ownership may be subject of a lease (e.g., lease of the surface of the land only, lease of improvements or a portion thereof only, some combination of land and improvements, lease of airspace over the property, or lease of subsurface rights such as oil or minerals).

When acquiring fee title, typically all interest in existing leases is acquired prior to possession.

When acquiring a temporary easement, all existing leases need to be examined to determine if there is a conflict between the rights of the lessee and the rights proposed to be conveyed under the temporary easement (i.e. access, parking, etc.). Acquisition of a temporary easement may require the lessee’s written consent.

A copy of the lease should be obtained to determine the terms of the lease and the effect the acquisition under the threat of eminent domain has on the leasehold interest. The appraiser and the relocation agent will also need a copy of the lease.

The Landlord/Tenant form must be completed by all properties under the lease, whether recorded or unrecorded.

#### 4.7.3.1 Residential Leases

When premises are rented for an indefinite time whether by oral or written lease with monthly or other periodic rent reserved, such tenancy is construed as a month-to-month tenancy. Such leases are terminated by written notice of 20 days or more, preceding the end of any months or periods of tenancy.

When the agency requests a release of lease from a residential tenant, a displacee lease must be signed concurrently in order to not violate RCW 59.18.200, the Landlord/Tenant Act.



[RCW 59.18.200](#)

### 4.7.4 Liens

Liens may come in many forms, recorded on real property as collateral for a debt. A release of lien must be obtained for the property acquired. This includes Department of Social and Health Services Liens for Child Support.



[RCW 26.18.055](#)

### 4.7.5 Judgment Liens

A judgement lien is a lien on a debtor's property that is granted to a creditor by a court judgement. A judgment is applicable to all the real and personal property of the debtor, including:

- All properties owned by the debtor in the county in which the judgment is entered on the date of filing the judgment.
- All properties to which the debtor acquires ownership or a contract purchaser's interest during the life of the judgment.
- All properties owned by the debtor in all other counties in Washington provided an Abstract of Judgment has been recorded in the county in question.

Most judgment liens expire within ten years of the date of their entry if no action is taken to collect or to renew. Judgment liens for child support expire ten years after the youngest child reaches the age of 18. Criminal restitution judgments do not expire.

Judgments are cleared by payment, partial payment, and/or release of the property being acquired. **All child support judgments must be cleared.**

On partial acquisition or acquisition of easements, the agency may acquire subject to the judgment with appropriate documentation.

Without documentation to the contrary, it is assumed that the party named or cited in the title report is, in fact, the judgment debtor and that the judgment has been neither satisfied nor expired.

### 4.7.6 Utilities

Public and private utility companies may hold fee interest and/or easements for construction and operation of their facilities. Utilities may be underground, at grade, above grade, or combinations thereof. The State is obligated to make reasonable accommodation of utilities, avoiding disruption of operating systems in the public's interest.

**When a project impacts a utility facility in which the utility has an easement or some type of compensable property interest, the agency is obligated to pay for its fee/title property interest and/or utility relocation costs.**

A utility is entitled to just compensation when documentation shows either a compensable real property interest; the adjustment or relocation is requested by a highway project; or the facility adjustment or relocation cannot be accomplished inside the utilities existing property right.



[M22-87.11 Utilities Manual](#)

The agency must ensure that all utility property rights issues are addressed and negotiated in close coordination with the Region or Project Utilities Engineers.

## 4.7.7 Additional Title Considerations

### 4.7.7.1 Water Rights

Washington recognizes water rights evidenced by either an existing beneficial use of water resources by way of private diversion, a water right claim filed with the Department of Ecology or one of its predecessors, or a permit issued by the Department of Ecology or one of its predecessors.

RCW 90.03 controls the right of any person to private use of the water resources within Washington. While specifically preserving water rights that existed at the time of the adoption of the State law, the law sets out that all waters within Washington belong to the public and any right thereto, or to the use thereof, must be acquired for a beneficial use and only in the manner provided for by law.



[RCW 90.03](#)

The law provides for certain differences between rights in “surface waters” as opposed to “ground waters,” however there is no basic difference requiring separate procedures for highway project acquisitions.

### 4.7.7.2 Vacated Streets and Roads

Streets and roads are vacated by either city or county ordinance. Such vacations will be noted in the preliminary commitment for title insurance.

### 4.7.7.3 Prescriptive Streets and Roads

The State legislature may add a county road to the State highway system. When the entire ROW of the county road has been acquired by recorded deeds, waivers, or condemnation actions, the width of the ROW is known. However, many county roads have been acquired by prescription (i.e., without a formal conveyance to the county) and the widths of these roads must be determined when they become a part of the State highway system.

The principle that governs the width of a prescriptive road is set out in the *Matter of the Extension of West Marginal Way* (109 Wn 116).

When a county road becomes a part of the State highway system without any acquisition instruments, the county road is prescriptive, and the width of the ROW is determined by the statute applicable at the time the road was created:

- **Territorial law: Section 7, Act of January 11, 1859:** “County roads shall be 60 feet in width unless the county commissioners shall, upon prayer of the petitioners for same, determine a less number of feet in point of width.”
- **Legislature of 1881, Section 3119, page 578:** Continued Territorial law.
- **Laws of 1890, Chapter 19, Section 1:** Provided that county roads should be not less than 30 nor more than 60 feet in width.
- **Laws of 1925, Ex. Sess., Chapter 173, Section 3:** Provided that county roads should be not less than 30 nor more than 120 feet in width.

- **RCW 36.86.010:** County Road rights of way designated as being 60 feet in extremities and 30 feet on each side of the centerline of the road, unless the commissioners elect a different width.

A road is established as a public highway after seven years of uninterrupted public use if the county is performing maintenance on the ROW, and ten years if there is no county maintenance.



[RCW 36.75.070](#)

[RCW 36.75.080](#)

#### 4.7.7.4 Mobile Homes and Other Structures

Mobile homes and other structures, including floating homes, houseboats, tiny homes, container structures, sheds and others, are either personal property or real property. The determination of whether a structure is real property or personal property is made by the appraiser and included in the appraisal report. See Chapter 3, Section 3.3.2 Special Appraisal Situations, for additional information real property and personal property.

For the purposes of this chapter, mobile homes include manufactured homes and recreational vehicles (RVs) used as residences. Mobile homes may be determined to be either real property or personal property, based on whether the mobile home is or is not licensed by Department of Licensing, Motor Vehicle division.

Procedures for valuation, acquisition, relocation, and property management will differ based on this determination. It is important to review the title work and the valuation documents.

A mobile home may be determined to be personal property and approved for purchase. If approval is provided a separate mobile home offer letter is presented to the owner. A mobile home determined to be personal property cannot be acquired under eminent domain or the imminent threat of the state's exercise of its rights of eminent domain.

Property Management must be notified that a mobile home is being acquired as personal property.

**NOTE:** If the title is eliminated, advise Property Management that if mobile home is being moved off site, Property Management will need to apply for the title to be reinstated from the Department of Licensing.

If it is determined that the mobile home should not be purchased, or if the owner elects not to sell the home, the procedures set forth in Chapter 5, Relocation, apply.

## 4.8 Instruments

An instrument (e.g., deed, easement, temporary easement, etc.) is a written legal document that conveys interest in real property.

Instruments are generally prepared after reviewing a current preliminary title commitment and prior to the issuance of the appraisal report, because an appraiser cannot effectively establish the value the property rights being acquired without knowing the scope, purpose, and terms of the easement or temporary easement.

A copy of the instrument must be provided to the person completing the valuation.

Unless otherwise specified, all instruments are prepared, signed, and acknowledged in such form and manner as to make them eligible for recording with the county auditor.



[RCW 65.04](#)

[RCW 65.08](#)

### 4.8.1 Pre-Approved Forms

Instrument forms are pre-approved by the Attorney General's Office and Federal Highway Administration. Any modifications to the approved forms require preapproval by the Acquisition Program Manager prior to execution.

Instruments for which there is no approved form can be prepared on a case-by-case basis in compliance with the requirements of this chapter and in coordination with the Acquisition Program Manager.

In rare circumstances, a conveyance may be accepted in the format or form prepared/required by another agency or major corporate body on a case-by-case basis. **All non-standard documents require pre-approval by the Acquisition Program Manager and the Attorney General's Office prior to execution.**

### 4.8.2 Identification Information

The State Route Number and the ROW plan title must be noted on the conveyance document.

Recording information must be noted in the top left-hand side of the document per State recording requirements.

The Federal Aid Project Number, Project Identification Number (PIN), and Parcel Number(s) must be noted in the lower right-hand corner of each instrument.

## 4.8.3 Party Clause

The party clause identifies the parties who are making the conveyance. They are usually (but not necessarily) identified as “grantors” in deeds, easements, and permits, and as “lessors” in leases, etc. The name(s) of the “grantor(s)” are generally shown to agree with the name(s) of such person(s) as they acquired title to the property being conveyed. The party clause also answers or resolves questions of the grantor’s identity, marital status, the relationship between persons, and the estate or interest held by the grantors.

### 4.8.3.1 Marital Status

Because Washington is a community property state, any deed taken by either spouse of a marital community, with some exceptions, automatically becomes the community property of both, and the interests of spouses (and former spouses) must be acquired or eliminated. Because of this, it is very important that the statement regarding marital status be correct in the party clause, and the spouse’s interest is cleared, by signature on the conveyance.

### 4.8.3.2 Tenants in Common and Joint Tenants

If the party clause shows title vested in the parties as Tenants in Common (or as Joint Tenants), it should be noted as such. Tenancy by the entirety is not authorized by Washington State law. All parties are required to join on the instrument.



[RCW 11.04.071](#)

### 4.8.3.3 Fractional Interest

If the party clause shows title held by two or more persons in fractional interests, it must be verified that the sum of such interests equals 100 percent, and the parties are joined on the instrument.

### 4.8.3.4 Entities

Proof of proper signature authority is required when the grantor is an entity such as a partnership, limited liability company, corporation, trust, governmental agency, estate, or other entity. Proof of the signatory authority is retained in the acquisition parcel file, and it will need to be provided to the title company if title insurance is required.

## 4.8.4 Consideration Clause

Consideration is the benefit that each party expects to receive. Every instrument requires consideration to be legally binding.

## 4.8.5 Conveyance Clause

Every instrument has a conveyance clause that states the exact terms and conditions of the conveyance. The complexity of the language varies with the function of the conveyance.

The words of conveyance in the statutory forms are as follows:

- Warranty Deed: conveys and warrants RCW 64.04.030.
- Quitclaim Deed: conveys and quit claims RCW 64.04.050.



[RCW 64.04.030](#)

[RCW 64.04.050](#)

## 4.8.6 Grantee Clause

WSDOT acquires title as “the State of Washington, acting by and through its Department of Transportation.”

## 4.8.7 Property Description

“A legal description, to be adequate, must be capable of being located on the ground with reasonable certainty by a competent surveyor, either with or without the aid of extrinsic evidence.” (21 Wash. 371.) Composing legal descriptions can present challenges. While WSDOT most frequently uses Highway Engineers Stations (HES) to describe the real property being acquired, legal descriptions may describe the property by reference to:

- **Highway Engineers Stations (HES)** – A method of land description using the ROW plan. These stations are based on a centerline survey and are spaced one-hundred-feet apart.
- **Platted** – A method of land description where the property is divided per a survey into smaller portions of land creating a subdivision. May consist of small number of lots or a large number of lots and blocks.
- **Metes and Bounds** – A method of land description that involves locating property by a reference and tie to a legal monument (or point of public record) and to an outline of the courses and lengths of each line of the perimeter of the property.
- **Government Lots** – A method of land description where an irregular portion of a section in the United States public land survey system is formed by a meandered body of water, impassable object, a state, a reservation, or a grant boundary.

## 4.8.8 Miscellaneous Clauses

Additional pre-approved clauses may be necessary, depending on the terms and rights being acquired. These include, but are not limited to, the pay one clause, access clauses, release of interest, reservations, road approaches, and the specific details clause.

## 4.8.9 Grantor Signature

The signature of the authorized party is required. All alterations made to the document at the time of signing or after must be initialed by the grantor. If the grantor is signing on behalf of an entity, their name and title must be noted in the signature line.

### 4.8.10 Acknowledgement

To be recordable and to permit its entry as evidence in a court of law without witnesses, a person signing an instrument must acknowledge before a qualified officer that the signature on the instrument is their signature and that they signed the instrument as a free and voluntary act and deed.

Electronic notarization is permissible in accordance with RCW 42.45.280. If electronic notarization is contemplated, title company approval is required in advance.



[RCW 42.45](#)

[RCW 42.45.280](#)

[RCW 64.08](#)

### 4.8.11 Attachments/Corollary Documents

Attachments and corollary documents include but are not limited to legal descriptions, stipulations, conditions, covenants, reservations, and exhibits.

The attachment/corollary document is bound to the instrument by inserting language such as “See EXHIBIT ‘A’ attached hereto and by this reference made a part hereof” in the instrument.

### 4.8.12 Acceptance and Approval

The instrument is not valid unless accepted and approved by the agency.

The authority to execute documents for the various transactions required for acquisition of real property have been delegated by Secretary’s Executive Order Number: E 1012 and subsequent versions, *Delegation of Authority*, and as further sub-delegated.

### 4.8.13 Excise Tax Affidavit

Washington State imposes an excise tax upon each sale or transfer of real property. Transfers under the threat of eminent domain are exempt from paying excise tax; however, the affidavit must still be filed with the appropriate county treasurer.

Excise tax must be paid on transfers not under the threat of eminent domain, acquisitions of excess property, mobile homes purchased as personal property, and uneconomic remnants.

Acquisition of an easement or temporary easement under the threat of eminent domain does not require an excise tax affidavit since the transfer is not taxable.



[RCW 82.45](#)



[WAC 458-61A-111](#)

## 4.9 Initiation of Negotiation

All parties having an ownership in property rights to be acquired (e.g., land, encumbrances, and improvements) are contacted and verification completed that the person(s) to whom the offer is to be made is the parcel owner, contract buyer, or an agent for same who is authorized to convey the subject parcel (see Section 4.6.4 Identity of Parties).

The assigned negotiator is required to maintain a diary of ROW activities of all contacts and events in such detail that they can attest to the facts therein.

The **initiation of negotiation** is when the offer is formally made to the property owner or their authorized representative.

**NOTE:** The negotiator must not make an offer to a property owner without first coordinating with the Relocation team to ensure prompt delivery of required relocation notices to all displaced persons. When acquiring a residential home that is owner-occupied, the offer and presentation of the Relocation Notice of Eligibility, Entitlements, and 90-Day Assurance must occur at the same time/day. The relocation entitlements delivered must include the calculated Replacement Housing Payment, which includes at least one available comparable home.



[49 CFR 24.2](#)

## 4.10 Offer of Just Compensation

When initiating negotiations, the owner of the real property and/or property rights to be acquired, or their authorized representative, is provided with a copy of the appraisal or waiver valuation and a written offer letter that includes the following minimum components:

- Identification of the real property to be acquired, including the estate or interest being acquired.
- The amount established as just compensation for the real property to be acquired, and the amount included for damages to remaining real property separately stated. The amount shall not be less than the approved appraisal or waiver valuation of the fair market value and must be established prior to initiation of negotiations.
- A statement explaining that the offer is based either on the agency's review and analysis of an appraisal or by a waiver valuation.
- Identification of improvements and fixtures considered to be part of the real property to be acquired.
- Identification of any uneconomic remnants and offer to purchase at property owner's discretion.

**Minimum Payment** – WSDOT will not prepare an acquisition offer of just compensation for less than \$1,000 for real property except in situations of special benefits, in which case the minimum amount of the offer of just compensation may be \$0.

This minimum payment policy is not applicable to permits needed for pre-design work.

WSDOT's minimum payment policy is not applicable to local agencies; however, a local agency can create a policy if desired.



[49 CFR 24.102](#)

### 4.10.1.1 Offer Presentation

The offer letter package is hand delivered and personally served to the property owner or their authorized representative, who will be requested to sign a copy of the offer as evidence of receipt. If the property owner or their authorized representative refuses to sign the offer, the agent notes the refusal in the diary. The offer must be provided orally and in writing.

The offer letter package must be hand delivered and personally served unless requested by the property owner to be sent by alternate methods, or the property owner is unresponsive, or the property owner lives out of state. In these cases, and with prior approval of the RESM/Program Administrator, the offer package may be sent by USPS certified, registered first-class mail, or another delivery service (e.g., FedEx, UPS, DHL, etc.) that can provide proof of delivery and receipt with a signature.

Approval cannot be granted on a project-wide basis and must be parcel specific. Electronic delivery of offer letters is not approved to be the primary delivery option until the Washington regulations are updated. If the offer letter is sent electronically, it must also be personally delivered or mailed according to the procedures above.

The offer letter package must include at minimum, the offer letter, acquisition brochure, valuation document, project overview, and an approved ROW plan or map depicting the acquisition area. The offer letter package may also contain the necessary legal documents for the transfer of the property rights, a copy of the title report, or additional forms requiring completion to move forward with the acquisition.

The offer presentation should consist of an explanation of the acquisition process, the details of the offer letter, an overview of the project, and an opportunity for the property owner to ask questions to ensure a complete understanding of the offer and its components.

The property owner must be provided with a reasonable opportunity to consider the offer to ensure the agency does not cause those whose property is being acquired to suffer an undue burden or be treated in a manner that is coercive in nature. The reasonable time needed for meaningful negotiation can vary significantly, depending on the circumstances, but most negotiations take a minimum of 90 days.

### 4.10.2 Updated Offer

There are several reasons why just compensation may need to be reestablished, and an updated offer provided. These may include new information presented by a property owner, material changes in the character or condition of the property, a significant delay since the time of the valuation, or the latest valuation information indicates that a change in the purchase offer is warranted.

Material changes are any conflicts with the original property valuation or property rights to be acquired. Examples include, but are not limited to, revised ROW plan, changes in access, changes in use of an easement or temporary easement, changes to acquisition area, or changes in ownership.

In such circumstances, the original offer is promptly rescinded. If there is relocation on the file, coordination with the relocation agent is required and they must be notified that the offer was rescinded. Once the updated valuation is available, an appointment is made with the owners to present the updated offer for the revised amount in person, verbally and in writing, using the same general presentation as in the original offer presentation. The updated offer should include any additional supporting documentation from the original offer.

**NOTE:** In the event of an updated offer, the negotiator must not make the updated offer to a property owner without first coordinating with the Relocation team to ensure simultaneous delivery of required notices.

**NOTE:** Changes in property ownership require a new valuation and a new offer rather than an updated offer.



[49 CFR 24.102\(g\)](#)



[RCW 8.25.290](#)

### **4.10.3 Mobile Home Offers**

WSDOT has the authority to purchase mobile homes classified as personal property through the Department of Enterprise Services (DES). Mobile homes, classified as personal property, cannot be acquired under the threat of eminent domain. A separate offer letter is presented to the property owner for the mobile home. Close coordination with Relocation is required.

## 4.11 Additional Negotiated Items

Negotiations continue until either reaching a satisfactory settlement or determining that one cannot be reached. The following items may be considered as part of the negotiations.

### 4.11.1 Incidental Expenses

The agency is required to reimburse the owner of real property for a portion of the costs of evaluating the offer or for reasonable expenses the owner incurred that were necessary to transfer the property to the agency. These costs may be paid directly so the owner will not have to pay such costs and then seek reimbursement.



[49 CFR 24.106](#)

[49 CFR 24.107](#)

#### 4.11.1.1 Statutory Evaluation Allowance (SEA)

Parties having interests in a parcel may be reimbursed up to \$750 for “expenditures actually and reasonably incurred” in evaluating the agency’s offer. This applies to each acquisition of real property interests acquired by eminent domain.



[RCW 8.25.020](#)

The agency is required to explain the SEA verbally and in writing (via the offer letter) when making the offer to the owners. An evaluation of the agency’s offer may take many forms; owners are encouraged to seek professional advice to assist them in evaluating the offer.

Only one SEA allowance of \$750 may be paid per acquisition. This rule applies to the standard single parcel-single owner transaction as well as when more than one offer is made on a parcel with multiple owners. This rule also applies when there are two or more tracts with separate county parcel numbers, but the tracts are combined for appraisal and acquisition purposes due to common ownership, and/or when more than one party in interest elects to have an evaluation made.

If additional property rights are acquired from the same parcel, such as the clearance of an easement, the SEA shall be paid for that additional acquisition.

#### 4.11.1.2 Allowance for Other Expenses

Certain “incidental expenses” incurred in transferring property to the agency, can be paid including the following:

- **Real Estate Excise Tax** – If the property is not acquired under eminent domain, (i.e., early acquisition, advanced acquisition, and remainders), then the agency pays the real estate excise tax. If property is acquired under eminent domain, then the agency pays the administrative fees due.
- **Processing Expenses** – The mortgagee’s reasonable fees for processing documents and analyzing the account, recording fees, owner’s legal fees, etc., required to pass good title.

- **Prepayment Penalties** – Loan prepayment penalties charged by a mortgagee. Note: There are no prepayment penalties in the case of FHA insured loans.
- **Reconveyance Fee** – A trustee is entitled to a fee for execution of a reconveyance.
- **Pro rata Portion of any Prepaid Property Taxes** – Taxes that are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.
- **Other Charges** – Charges incidental to the conveyance of clear title by the owner, such as attorney’s fees in connection with the appointment of a guardian, administrator, or executor, recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the agency.

The following expenses are not eligible for payment:

- Prepayment penalties when they are incurred by the voluntary act of the grantor (e.g., when the grantor elects to prepay all or part of a loan).
- Any other expense incurred solely for the convenience of the grantor (e.g., general attorney fees related to advice rather than to perfecting title) that exceeds the SEA allowance.

### 4.11.2 Counteroffer

The property owner is given a reasonable opportunity to consider the offer and present material the owner believes is relevant to determining the value of the property. The owner’s presentation of their counteroffer must be considered in a timely manner. The acquisition agent must read and consider the owner’s valuation, regardless of formatting or preparer, and decide whether there is information contained in it that deserves further consideration by the appraisal team.

If the acquisition agent determines the owner provided new information or a valuation that contains additional information, not considered in the agency’s valuation, the agent submits a copy of the valuation and a summary of the requested action to the Region’s Senior Appraiser. The Senior Appraiser will consider whether any new information indicates the need for a new valuation. If appropriate, the agency may reestablish just compensation. If a new amount of just compensation is established, an updated offer of just compensation is required.

See Section 4.10.2, Updated Offer for more information.

If the owners’ counteroffer does not result in new information and an updated offer of just compensation, the agency may still determine that an administrative settlement is appropriate based on the material and justification presented by the property owner as part of a counteroffer.



[49 CFR 24.102\(f\)](#)

[49 CFR 24.102\(g\)](#)

### 4.11.3 Administrative Settlement

The settlement amount for the property may exceed the amount offered as just compensation. This can occur when reasonable efforts to negotiate an agreement at the offer of just compensation have failed and an authorized agency official approves acquisition by means of an administrative settlement. The administrative settlement must be reasonable, prudent, and in the public interest.

**If an administrative settlement is contemplated and there is a displacement on the parcel, relocation must be notified immediately as it may affect the relocation benefits.**



[49 CFR 24.102\(i\)](#)

Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action is in direct violation of 49 CFR 24.102(n)(2).



[49 CFR 24.102\(n\)\(2\)](#)

Administrative settlements must stand on their own merits, be clearly understood, and must bear signature approval of the appropriate agency official with authority to approve administrative settlements.

Each administrative settlement must consider all the following components:

- agency review of parcel specific information, including copies of appraisals, estimates, bids, research information, etc. (Note: these items must carry the most weight in the justification).
- Condemnation process (updating for trial, pretrial, conferences, attorney's expenses, witness fees, etc.).
- Trial and litigation risk (based on experience in a particular county).

Relocation payments are based on actual expenses and are not eligible to be negotiated. As such, relocation must not be a consideration in the administrative settlement.

The administrative settlement is written as a memorandum to the file and must contain appropriate background, justification, and conclusion. The memorandum states the amount of the administrative settlement and explains the rationale to an extent consistent with the circumstances. Attorney representation costs are not allowable as a component of the administrative settlement.

### 4.11.4 Salvage Items

Items requested for salvage by the owner or tenant owner should be identified early in the valuation process. The agency obtains written approval from the project engineer and the Region RESM for any improvements to be salvaged and obtains a salvage value. If the owners desire to salvage any or all improvements and it will not adversely impact project construction, the agency may offer the same at the amount of the salvage value, plus the required Performance Bond.

The agency determines the amount required as a performance bond sufficient to cover the costs to perform the necessary cleanup if the owner does not perform as promised. Then, a Fixtures and Improvements Agreement is prepared and executed by all parties.

**NOTE:** There are different procedures if the improvement acquired is a mobile home and whether it is determined to be real property or personal property.

### 4.11.5 Trades and Exchanges



Proceed with caution!

Trades and exchanges of land no longer needed for a highway purpose and deemed surplus to the agency's needs are allowed per [RCW 47.12.287](#). However, they are highly discouraged due to additional layers of complexity and the high likelihood of creating unrealistic expectations, contentious negotiations, and significant project delays.



[RCW 47.12.287](#)

If a trade or exchange is contemplated, careful consideration and coordination between the Project Engineer and WSDOT's Acquisition and Property Management sections is essential. Exchange cannot be completed without the approval of Property Management.

In cases where a project wants to move forward with a trade or exchange, the project should add at least one additional year to the typical acquisition schedule for processing and unexpected problems and delays.

There are additional requirements detailed in [RCW 47.12.063](#) and Chapter 7, Section 7.3.1 Disposal of Surplus Property, for proceeding with trades and exchanges.



[RCW 47.12.063](#)

If a parcel is needed for a project and trade or exchange negotiations come to an impasse, proceeding with a trade or exchange through condemnation is not an option.

Land available for trade or exchange includes the following:

- Land shown on the approved ROW plans as “excess right of way,” provided such land has been entered into the Real Property Inventory and has been declared surplus. It may be necessary to delay the actual transfer of this type of land until after the opening of the new facility.
- Any State-owned, WSDOT-controlled land in the vicinity of the project which is shown on the Real Property Inventory as “surplus”.
- Any “remainder” acquired on a specific project may be used as trading stock on that same project, provided that the “remainder” is entered into the Real Property Inventory, the State has acquired a valid title to the “remainder,” and the property has been declared surplus and a value for the property has been established.

In addition to the formal instruments, documents, etc., the acquisition transmittal includes a completed Exchange Agreement. A Real Property Voucher is required in all trades or exchanges involving money paid by the State. The lands traded may be either full or partial compensation for the lands acquired. Full credit for the value of traded or exchanged surplus lands, as determined by a current Appraisal Review, must be realized against the costs of acquisition of the needed lands, or the difference justified through administrative settlement procedures.

### 4.11.6 Uneconomic Remnants

An uneconomic remnant is a parcel of real property in which the owner is left with an interest after a partial property acquisition and which the agency has determined, as part of the appraisal review, has little or no value or utility to the owner. If the acquisition of only part of a property leaves the owner with an uneconomic remnant, the agency is required to offer to acquire the remnant at its determined value by selecting the appropriate clause in the offer letter. Although the agency is required to offer to purchase uneconomic remnants, the owner is not required to sell them. This should be fully explained as part of the offer presentation.

If the remnant shows evidence of contamination, consult with the Acquisition Program Manager or Local Programs about how to structure the offer.

If the owner rejects the State's purchase offer and condemnation is authorized, the uneconomic remnant is normally not included in the condemnation action except by agreement between the Assistant Attorney General (AAG) and the property owner at settlement.

If the owner will retain an uneconomic remnant, the agency determines if the remnant will have access. If there is no access and the remnant is "land locked", the agency informs the owner and notes the Diary of ROW Activities accordingly.



[RCW 47.12.160](#)

### 4.11.7 Pre-Condemnation Agreements

A Negotiated Possession and Use Agreement (P&U) is a negotiated instrument in which the agency, and the property owner agree, that upon payment of a certain amount (typically, the agency's offered amount of just compensation) to the property owner, the agency is entitled to immediate (or dated) possession and use of the property prior to agreeing on compensation. If the only remaining issue to conclude negotiations is the amount of just compensation, the agency attempts to obtain a Negotiated P&U from the owners.

A fully executed Negotiated P&U is sufficient for the agency to construct, operate, and maintain the project. The Negotiated P&U does not take away any of the property owners rights to present a counteroffer or otherwise continue to dispute the amount of final just compensation. The Negotiated P&U benefits the owner by preserving a potential right to reasonable attorney's fees as well as the right to interest on the additional compensation from the date of possession to final settlement or judgement. Date of possession is considered the date the payment for the Negotiated P&U is made available to the property owner.

The encumbrances are cleared in accordance with Section 4.7, Encumbrances and Title Clearing.

Once P&U is obtained, negotiations will continue in a timely manner to reach a final settlement. Upon final settlement, final conveyance documents are executed and recorded and filed for permanent retention in accordance with Section 4.12 Settlement.

If the agency cannot acquire the property through negotiation final action procedures shall commence, and the file referred to AGO/legal for condemnation promptly. See Section 4.13 Condemnation for more information.

### 4.11.8 Construction Items

Commitments between the project office, WSDOT RES, and the property owners are memorialized in a Construction Memorandum. Such items may include providing a 30-day notice to the property owner prior to the start of construction, leaving a gate open or shut, fences, access, drainage, allowing a right of entry to another area to perform an agreed to obligation, or other matters of interest to the owners.

All construction items require the submission of a Construction Memorandum approved by the project engineer and the property owner. The original memorandum is sent to the project engineer for inclusion in the contract and a copy included in the parcel file.

### 4.11.9 Protective Rent

If a current tenant vacates the property or the property is already vacant before the agency acquires possession, then it may be prudent to pay protective rent to prevent the property from being rented to another tenant, resulting in another displacement or in a property owner claiming loss of rent.

Payment of protective rent is based on the following considerations:

- Terms and rental rate for the current leasehold interest held by the displaced person.
- Lead time for business and tenants to find and secure replacement sites.
- Availability of replacement sites suitable to the displaced person.
- The potential of the owner to rent the subject site.
- Ability to facilitate negotiations and goodwill with the property owner.
- The acquisition schedule (ad date).
- A term of payment specific to each situation.

The cost effectiveness of paying rent must be analyzed, considering the time and cost of rent versus the payment to the displaced person(s).

If the property is occupied by a tenant, then the agency establishes a timeline for the displaced person(s) to vacate the property and the date to commence protective rent. Upon the current tenant vacating the premises, verification is obtained that the existing lease has been terminated and that all deposits have been returned to the tenant.

### 4.11.10 Tenant-Owned Improvements

An acquisition may include tenant-owned improvements. Ownership of those improvements may be by lease or by verbal agreement between the tenant and the landlord; ownership should be determined at the time of the appraisal. The appropriate option paragraph must be included in the offer letter and a separate offer letter is presented to the tenant-owner for the tenant-owned improvement.

Payment is not made for a tenant-owned improvement unless:

- The tenant-owner assigns, transfers, and releases to the agency all their right, title, and interest in the improvement.
- The owner of the real property on which the improvement is located disclaims all interest in the tenant-owned improvement.
- The payment does not result in the duplication of any compensation, otherwise authorized by law.

### 4.11.11 Special Benefits

Special Benefits are the value that accrues to the remainder of a property because the portion of the property acquired and used by the agency created a value added, where such value is "special" to the remainder and not enjoyed by the general public. Benefits may be special even if other owners of the facility receive similar benefits.

The agency must understand and differentiate whether there are any special benefits attributable to the remainder, which may result in unusual acquisition scenarios.

Special benefits must be offset against compensation for the part being acquired and/or damages. The appropriate optional paragraph must be included in the offer letter regarding special benefits.

## 4.12 Settlement

Once satisfactory settlement is reached and all interests and encumbrances have been identified and cleared or noted for future clearance, all documentation necessary to convey the property and/or property rights is finalized and payment is made. Final documents should not be signed until the title is cleared.

Payment must be made within 45 days from property owners' signature and concurrent (within two business days) with recording of the conveyance document.

**NOTE:** For WSDOT projects, payment cannot be made until a Statewide Vendor Number (SWV) is assigned by The Office of Financial Management (OFM). The property owner should sign and complete this form early in the process as to not delay payment. If a settlement cannot be reached, the final action notice is prepared, final action is held, and the parcel is referred for condemnation. See Section 4.13 Condemnation for more information.

Acquisition must notify both Relocation and Property Management immediately that the parcel has been settled and provide the terms of the settlement and access to all final documentation.

### 4.12.1 Possession Date/Payment Available Date

Ownership and possession of property and/or property rights is acquired on the "payment available date" (i.e., the date when the owner has received and has the opportunity to deposit the payment or when funds are disbursed through escrow). The agency must pay the agreed purchase price to the owner before possessing or using unimproved real property.

When lands are occupied by displaced persons or personal property, the agency cannot use the property until all displaced persons and personal property have been relocated. In the case of tenant-occupied properties, the agency verifies that all damage deposits and prepaid rents have been addressed. If an amount is disputed between the owner and tenant, the disputed amount is withheld until the dispute is resolved.



[49 CFR 24.102 \(j\)](#)

#### 4.12.1.1 Leaseback

Any occupancy by the original displaced owner or tenant after the agency acquires ownership (i.e., leaseback) requires payment of rent to the agency. The execution of a Displacee Lease under most circumstances is preferred. Coordination with Property Management is required. Any deviation from the requirement shall be approved in writing by Property Management Program Manager. Rental rates to the original displaced owner or tenant may not exceed fair market rent.

Leasing to the original displaced owner or tenant beyond the initial displaced person's lease period is allowed only with prior written approval by the authorized approving authority. Either a copy of the displaced person's lease or a statement that a lease is being obtained must be included in the diary. A leaseback does not preclude the agency from providing continuing and ongoing advisory services related to available replacement dwellings and other required relocation benefits to occupants.

## 4.12.2 Acquisition Transmittal

The Acquisition Transmittal is the summary of the acquisition and includes all pertinent documentation. Timely preparation of the Acquisition Transmittal is required to comply with payment and certification requirements. **The property owner must be paid as soon as possible and no later than 45 days after receipt of signed documents.**

All interests in each respective parcel must have been acquired, cleared, or noted for future clearance early in the acquisition process. If an interest cannot be acquired, cleared, or noted for future clearance, and the parcel is referred for condemnation.

Prior to transmitting the Acquisition Transmittal for permanent retention, the entire Acquisition Transmittal must be reviewed to ensure that all Federal and State requirements have been met, and appropriate interests required for the project have been acquired.

**NOTE:** The negotiator on the parcel file cannot be the final reviewer.

The review includes, but is not limited to the following:

- The file is compliant with the URA.
- Verification that all instruments needed to convey and/or clear title have either been executed or are provided for by the escrow instructions, and the correct parties, signatures, notaries, and legal descriptions are identified.
- All interests and encumbrances have been cleared or noted for future clearance.
- Compliance with the current policy, documentation, and justification for administrative settlements.
- Verification that all real property vouchers have been sufficiently prepared and executed.
- The appropriate signature authority executed the final documentation and payment vouchers.
- All necessary property management forms have been completed and made available.
- All necessary relocation requirements have been met.
- All entries have been made in the appropriate database.
- Proof of payment received and documented.
- All necessary correspondence is included.

Upon verifying recording and payment, the completed Acquisition Transmittal File (and title policy, if received) must be sent to the Acquisition Program Manager in Headquarters for compliance review and records retention.

### 4.12.2.1 Property Management

Project and parcel closeout with property management is required. This includes the acquisition to property management handoff for every property right acquired on every project.

The following tasks are required to be completed:

- Acquisition must supply Property Management with documentation of the acquisition as required and note in diary the date documentation was provided to PM lead/supervisor.
- Acquisition must enter all dollars spent to purchase the parcel in the RES database.
- Acquisition must request ICN(s) from the Property Management team.
- Property Management must inventory the property right(s) purchased and dollars paid in the RES database.
- Project or parcel closeout meetings must occur with Region Property Management Supervisor to review all rights acquired and confirm all data is entered into the RES database and determine if further action is necessary for proper project closeout.

## 4.13 Condemnation

The agency makes every reasonable effort to expeditiously acquire property rights by negotiation. When property rights needed for transportation purposes cannot be acquired by negotiation, the agency exercises its power of eminent domain and acquires the interests of all parties by condemnation action. The agents involved in negotiation provide expert advice and testimony in the Condemnation.

No parcel may be considered for condemnation until the agency has met with the owner or owner's designee and discussed the offer at least three times (including the meeting during which the Initial Offer Letter is presented), unless the owner refuses to grant an appointment and instructs the agency to submit the parcel for condemnation, or in the rare circumstances in which the owner cannot be found. Telephone calls to set up an appointment do not count as a meeting.

The reasonable time needed for meaningful negotiation can vary significantly, depending on the circumstances, but most negotiations take a minimum of 90 days. Regardless of project time pressures, property owners must be afforded this opportunity, except in instances where the owner (owner's attorney) rejects the State's offer and unequivocally instructs the agency to submit the parcel for condemnation, or the owner is so abusive that the agency is unable to meaningfully communicate.

If early acquisition was previously approved, but the agency fails to acquire the property through negotiation the decision to proceed to final action and condemnation requires approval by the Acquisition Program Manager and by the AGO or Local Programs if the environmental review of the preferred alternative for the project is not yet complete or the limited access hearing is not completed.

**Once the parcel has been forwarded to the AGO/legal for condemnation procedures, the agency should not make any material changes to the acquisition. Material changes include any changes that would conflict with the original property valuation or deviate from the description of property rights to be acquired. Examples include, but are not limited to, revised ROW plan, changes in access, changes in use of an easement or temporary easement, changes to acquisition area.**



[RCW 47.12.180](#)

[RCW 47.52.133](#)

[RCW 8.04](#)

### 4.13.1 Final Action

The agency must provide a “Notice of Final Action” before authorizing condemnation of a specific property. This notice must contain a general description of the property (address, lot, or parcel number), and it must state that condemnation of the property will be considered during the Final Action. The notice must also give the date, time, and location of the Final Action meeting at which the Regional Administrator will decide whether to authorize the condemnation of the property.

The Notice of Final Action is mailed by certified mail to the property owner(s) of record as indicated on the tax rolls of the county to the address provided on such tax rolls, at least 15 days before the Final Action. The Notice of Final Action is also published in two newspapers for two consecutive weeks prior to Final Action. The property owner(s) as defined above are entitled to both a) notice of final action, and b) opportunity to comment at final action.

According to WSDOT Executive Order E1012, Delegation of Authority, the Regional Administrator or Megaprogram Administrator has authority to condemn. This authority cannot be subdelegated.

The diary must include the date, time, location, and parties in attendance at Final Action.



[RCW 8.25.005](#)

[RCW 8.25.290](#)

Immediately after the file is authorized for condemnation at Final Action, the Region submits a Condemnation Transmittal, including proof of the final action and authorization for condemnation to the Acquisition Program Manager. After the final action is held, all offers are considered withdrawn, and the acquisition is referred to the AGO/legal. The AGO/legal then assumes full responsibility for all aspects of the acquisition, except that settlements negotiated by the AAG/legal must be coordinated with and approved by the appropriate regional level of authority for administrative settlements.

#### 4.13.1.1 Condemnation Transmittal

The Condemnation Transmittal Package is transferred to the AGO/legal and discloses all parties to be named or those not to be named in the condemnation proceeding. All parties named must have sufficient street addresses to ensure that court service can be completed. Appropriate research is required for all parties to be named in the condemnation petition. Some parties are cleared by other means or not impacted at all, therefore should not be named. All parties to be named or excluded from naming in the condemnation shall have an explanation as to why they are or are not being added to the condemnation petition.

If there are existing utilities, coordination with the project and Utilities Office is necessary to determine if negotiations are ongoing with the utility company, or if an agreement is in place. This information is needed to make an informed decision on whether a utility will be named.

If construction items or other terms were negotiated with the property owner, these items must be noted in the condemnation transmittal and communicated to the AAG/legal.

## 4.13.2 Condemnation Process

Project should allow a minimum of **ONE year** for condemnation proceedings after the AG/legal files the petition with the court. The condemnation process has many steps. Timing for the condemnation process may vary based on the court schedules, county requirements, and owner responsiveness. The agency must allow sufficient time for completion once submitted to the AGO. The condemnation process is summarized below:

Possession and Use (if granted): 90 to 100 days +



Judgement and Decree: 6 to 9 months **additional**



### 4.13.2.1 Possession and Use

The court must confirm that the property sought to be appropriated is necessary for the public use of the agency, based on the declaration provided by the agency. An Order Appropriating Possession and Use (OAPU) is filed with the court. Once OAPU is granted, and if the agency requires immediate possession and use of the property sought to be condemned, a request for immediate possession and use may be filed and the parties may agree to stipulated possession and use. **The parties are not required to grant possession and use of the property.**

Should the order granting immediate possession and use of the property be granted, the full amount of the agency's offer of just compensation is deposited into the court. The agency has possession and use only once payment is received by the court. Possession and Use is sufficient to construct, operate, and maintain the project. It does not take away the rights of the property owner to present an argument of additional compensation and gives them the opportunity for payment of reasonable attorney fees.



[RCW 8.04.010](#)

[RCW 8.04.090](#)

### 4.13.2.2 Judgement and Decree

The Judgement and Decree (J&D) grants legal title to the State of Washington. J&D may be accomplished through a mediated agreement that is then quantified as a judgement and decree. That mediated agreement must be approved by the appropriate delegated authority at WSDOT. J&D may also be granted based on a bench trial or a jury trial.



[RCW 8.04.120](#)

[RCW 8.04.160](#)

### 4.13.3 Condemnation Closeout

Once the condemnation is completed, the AAG completes the following and provides to the agency:

- **Trial Attorney's Certificate** – A statement signed by the Assistant Attorney General who is assigned to the case reciting the findings and orders of a court and certifying the award is due and payable. The certificate is accompanied by a request for a warrant.
- **Trial Attorney's Closing Report** – A statement signed by the Assistant Attorney General who is assigned to a particular case, setting forth the circumstances which resulted in the J&D. If the J&D was stipulated, this statement includes the rationale for entering the stipulation.
- **Court certified copy of the filed Judgement and Decree** – WSDOT shall record a certified copy in the county auditor's office where the judgement was filed.

Once the agency receives all appropriate documentation from the AGO, payment is requested and made to the court. The condemnation is considered closed once all payments are received by the court and the Judgement and Decree recorded. The agency must retain all documentation related to the condemnation in the parcel file.

## 4.14 Post-Settlement

### 4.14.1 Damages and Inverse Condemnation

A claim for damages may be received from a property owner. Upon receipt of a claim for damages, the agency investigates the basis for the claim. A damage claim may be initiated by written or oral communication and preliminary investigation made based on that communication. Investigators obtain the facts but do not make any comments on cause or liability.

- If a construction project is ongoing in the area of the claim, the Region RESM or the agency designee and the project manager should investigate the possibility of having the problem corrected by the contractor.
- If a claim is based on taking or damaging private property or property rights for which the owner has not been paid and rights must be acquired, the claim is a ROW responsibility.
- If the claim appears to arise from negligence (e.g., WSDOT or contractor carelessness), the claim will be handled as a tort claim. To start this process, the property owner or their representative needs to file a tort claim with the Department of Enterprise Services.



[File a Tort Claim | Department of Enterprise Services \(DES\)](#)

- Throughout the Tort Claim process, Real Estate Services will only be involved if requested by the Tort Claim investigator or Tort AAG to help with claim resolution.

If it is unclear who should have responsibility for the claim, Risk Management can be consulted for their input. It is possible that some claims have elements that cross boundaries and responsibility may be shared.

The agency obtains title evidence for the use of the AAG WSDOT Liaison or their designee in inverse condemnation proceedings and on damage claims; prepares and submits an estimate of all necessary costs and requests funding; compiles data on legal descriptions and parties' defendant as requested; and makes specific notes of any toxic/hazardous situations that will need to be addressed by the AGO.

In general, Tort Claims have a three-year Statute of Limitations and Inverse Actions have a ten-year Statute of Limitations.

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## 5.1 Chapter Overview

WSDOT administers the Relocation Assistance Program for all acquisitions that require moving persons or personal property from the parcel. The Relocation Program Manager administers and oversees the program in accordance with the following operating policies.

### 5.1.1 Relocation Policies

On June 3, 2024, FHWA revised 49 CFR 24. The policies of this chapter comply with this revised regulation and apply when the initiation of negotiations occurred on or after June 3, 2024.

#### 5.1.1.1 General Operation Policies

Whenever a program or project results in the temporary or permanent displacement of any person, the displaced person must be fully informed of their rights and entitlements to relocation assistance and payments provided by the Uniform Act. The agency is responsible for determining and paying actual, reasonable, and necessary moving expenses to individuals, families, businesses, farm operations, or owners of personal property.



[49 CFR 24.202](#)

[Appendix-A "Section 24.202 Applicability"](#)

No person lawfully occupying real property will be required to move from the acquired parcel, dwelling, business, farm, or nonprofit organization (NPO) without being provided a written assurance at least 90 days prior to the earliest date by which they could be required to vacate the property. No person may be deprived of any rights the person may have under the Uniform Act or WSDOT's Relocation Assistance Program.

Agencies must treat all persons displaced by their projects in a fair, equitable, and consistent manner and avoid actions that are coercive in nature.

**Aliens Not Lawfully Present in the United States** – An alien not lawfully present in the United States, as defined in federal and state regulations is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child. Exceptional and extremely unusual hardship to a qualifying spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in one or more of the following:

- A significant and demonstrable adverse impact on the health or safety of a qualifying spouse, parent, or child;
- A significant and demonstrable adverse impact on the continued existence of the family unit of which a qualifying spouse, parent, or child is a member; or
- Any other impact that the agency determines will have a significant and demonstrable adverse impact on a qualifying spouse, parent, or child.

**CFR →** [49 CFR 24.2\(a\) "Alien not lawfully present in the United States"](#)

[49 CFR 24.202\(a\)\(6\)](#)

[49 CFR 24.203\(a\)\(4\)](#)

[49 CFR 24.208](#)

**WAC →** [WAC 468-100-203\(3\)\(d\)](#)

[WAC 468-100-002\(2\)](#)

[WAC 468-100-208](#)

**Availability of Replacement Housing** – WSDOT cannot require a person who is permanently displaced to move unless WSDOT has provided at least one comparable replacement dwelling. Where feasible, WSDOT must make available at least three comparable replacement dwellings. Comparable Replacement Dwellings are discussed in detail in Section 5.4.3.3.

A comparable replacement dwelling is considered “made available” to the displaced person when all the following requirements are met:

- The person is informed of the replacement dwelling’s location in writing, which is provided to the displaced person in the Notice of Eligibility, Entitlements, and 90-Day Assurance Letter.
- The person has sufficient time to negotiate and enter into a purchase and sale agreement or lease for the replacement property.
- Subject to reasonable safeguards, the person is ensured of receiving the relocation assistance and acquisition payment to which they are entitled in sufficient time to complete the purchase or lease of the replacement property.

**CFR →** [49 CFR 24.2\(a\) “Comparable replacement dwelling”](#)

[49 CFR 24.204](#)

**RCW →** [RCW 8.26.075\(2\)](#)

**Deductions from Relocation Payments** – Advanced relocation payments are payments made prior to an eligible task being accomplished. Agencies must deduct the amount of any advanced relocation payment from the relocation payment(s) to which the displaced person is otherwise entitled. An agency will not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any creditor. This includes satisfying any debts owed to the agency for a displaced person’s rents.

**CFR →** [49 CFR 24.207\(h\)](#)

[49 CFR 24.403\(a\)\(6\)](#)

**WAC →** [WAC 468-100-403\(f\)](#)



[FHWA FAQ #107](#)

[Non-Regulatory Supplement 49 CFR 24 Subpart A #7](#)

**Duplicate Payments Prohibited** – Displaced persons are not entitled to receive any payment that duplicates the same purpose and effect of any other payment or project cost. An agency cannot pay two separate entities for the same entitlement and cannot reimburse for the same item or pay an entitlement if the recipient has already been reimbursed through other federal, state or local law, or through insurance proceeds.



[49 CFR 24.3](#)

[Appendix-A “Section 24.3 No duplication of payments”](#)

[49 CFR 24.403\(g\)](#)



[RCW 8.26.105\(2\)](#)



[WAC 468-100-003](#)

[WAC 468-100-403\(1\)\(h\)](#)

**Eviction for Cause and Unlawful Occupant**– An *unlawful occupant* is a person who occupies the property without a property right, title, or payment of rent, or a person legally evicted and no longer has the legal right to occupy the property under State law. Unlawful occupants are not eligible for the relocation entitlements described in this chapter, except Advisory Services as outlined in Section 5.4.1.

For the purpose of this policy, a person is considered *legally evicted for cause* if either of the following conditions is met:

- The person received an eviction notice before the initiation of negotiations and is subsequently evicted as a result of that notice.
- The person is evicted after the initiation of negotiations due to a serious or repeated violation of material terms of the lease or occupancy agreement. This item is specific to the lease or occupancy agreement between the person and the entity leasing the subject site to the person.

In both cases above, the eviction must not be carried out to avoid the agency’s obligation to provide relocation entitlement or payments.

Eviction brought by the agency due to project related timelines, such as failure to relocate when instructed, or to cooperate in the relocation process, does **not** disqualify a person from receiving relocation entitlements or payments.

If a person is determined to be evicted for cause, a Notice of Non-Eligibility should be issued. For more information, see Section 5.3.1.4.



[49 CFR 24.206](#)

[49 CFR 24.2\(a\) "Unlawful occupant"](#)

[Appendix-A "Section 24.206 Eviction for cause"](#)



[468-100-206](#)



[FHWA FAQ #53](#)

**Losses Due to Negligence** – It is recommended that all displaced persons obtain - replacement value insurance that is included in move entitlements prior to moving any personal property. If a displaced person declines this insurance and sustains any losses or damages due to their own negligence, that of their specialist, or their employees, the displaced person is not eligible for reimbursement of loss or damages. If losses or damages are not due to negligence of the displaced person and replacement value insurance covering loss, theft, or damage during a move was not reasonably available, a displaced person is eligible for reimbursement of loss or damages.



[49 CFR 24.301\(g\)\(5\) and \(6\)](#)



[WAC 468-100-301\(7\)\(f\)](#)

**No Waiver of Relocation Assistance** – An agency will not propose or request that a displaced person waive their relocation assistance rights or entitlements provided by the Uniform Act and governing regulations. Any such action could jeopardize federal funds for the project. A displaced person may choose not to claim an entitlement; in such instances, the Agent must note this in the Relocation Diary.



[49 CFR 24.207\(f\)](#)

[Appendix-A "Section 24.207\(f\)"](#)



[WAC 468-100-207\(6\)](#)

**Owner's or Tenant's Designated Representative** – An owner or tenant may request all required notifications and documents be sent to a designated representative. In such circumstances, the owner or tenant must provide a written notification to the agency that states they are designating a person or persons to be their representative, that provides the person's name and contact information, and notes which notices or information the representative is not authorized to receive, if any.



[49 CFR 24.2\(a\) "Owner's or tenant's designated representative"](#)

[49 CFR 24.5\(d\)](#)

**Property Not Incorporated into Right of Way** – An agency may still approve monetary relocation entitlements if relocation is made necessary by a project acquisition, even though the property acquired is not incorporated within the final ROW.

**Temporary, Daily, or Emergency Shelters** – These types of facilities have a primary purpose to provide a person with temporary overnight shelter; they do not allow prolonged or guaranteed occupancy. A shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and, in most cases, does not meet the URA’s definition of a dwelling.

Occupants of these facilities are, in most cases, not considered displaced persons.

In certain extenuating circumstances, which may include a reasonable expectation of a prolonged stay, an agency may determine such a person to be displaced. At a minimum, advisory services must be provided to all occupants at the initiation of negotiations.



49 CFR 24.2(a) “Temporary, daily, or emergency shelter (shelter)”

**Time for Filing, Timely Payments and Advanced Payments** – All permanent relocation entitlement claims must be submitted to the agency by the claim expiration date to be eligible for payment. The claim expiration date is no later than 18-months after the following dates:

- For non-owner occupants: the date they vacated the subject site.
- For owner occupants: the date they vacated the subject site, the date the full amount of just compensation is deposited in the court, or the date of the final payment for the acquisition of the real property, whichever is later.

All claims made by a displaced person must be reviewed in an expeditious manner by the agency. If additional documentation is needed to support a claim, the agency will promptly notify the displaced person of the documentation required. Payment must be made as soon as feasible following the agency’s receipt of sufficient supporting documentation.

See Chapter 2, Section 2.6 for additional information.

If the agency disapproves or denies all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, the agency must promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

Advanced relocation payments are payments made prior to an eligible task being accomplished. If a displaced person demonstrates the need for advanced relocation payments in order to avoid or reduce a hardship, the agency will issue the payment to ensure the eligible relocation activity is accomplished, subject to appropriate safeguards.

Examples of appropriate safeguards are advancing only a certain percent of the total entitlement amount or paying a third-party vendor directly on behalf of the displaced person once a contract has been executed between those two parties and the displaced person signs a voucher authorizing payment of their entitlement to the vendor.

Care, planning, and monitoring should be taken so advance payments are used for move expenses and to avoid misappropriation that would not allow the move to be completed. Advance move payments should not exceed 25-percent of total move costs, unless there are unusual and extraordinary circumstances.

**CFR →** [49 CFR 24.207\(b\)](#)

[49 CFR 24.207\(c\)](#)

**WAC →** [WAC 468-100-002\(6\)](#)

[WAC 468-100-207](#)

**Reassignment of a Relocation Assistance File** – Reassignment of a relocation assistance file can happen for many reasons, including unpredictable situations. Thus, the relocation file, documents, and all communication must be saved to the agency’s shared drive and should not be on personal devices. All relocation assistance files and communication are the property of the agency. See Chapter 2, Section 2.3.9 Record Keeping for more information.

The relocation agent must maintain documents in their original electronic state or scanned per guidance in the Records and Information Manual and save in real time. When a relocation assistance file is reassigned, the current relocation agent verifies that the electronic file is up to date with all documents and correspondence. Then the agent reviews their final agent diary, makes a final statement that the file is being reassigned, signs and dates it, and saves it to the electronic file.

### 5.1.1.2 Disaster Project Regulations

The federal funding agency may waive the requirement that no person must move unless at least one comparable replacement dwelling is made available where it is demonstrated that a person must move because of one or more of the following:

- A major disaster as defined in the Section 102(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122).

**USC →** [42 USC 5122](#)

- A presidentially declared national emergency.
- Another emergency that requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants and/or the public.

In any of the above situations, the agency must request and receive a waiver from FHWA in writing prior to requiring a person to move.

**CFR →** [49 CFR 24.204\(b\)](#)

**RCW →** [RCW 8.26.075\(3\)](#)

**WAC →** [WAC 468-100-204\(2\)](#)

**Basic Conditions of Emergency Move** – Whenever a person to be displaced is required to move from the displacement dwelling for a temporary period (defined as lasting no longer than 12 months) because of an emergency and a federal agency waives the requirement of providing at least one comparable replacement dwelling, the agency will:

- Take whatever steps are necessary to assure that the person who is required to move from their dwelling is temporarily relocated to a decent, safe, and sanitary (DSS) dwelling.
- Pay the actual, reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the emergency move.
- Make available at least one comparable replacement dwelling, as soon as feasible.

For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from their dwelling.



[49 CFR 24.204\(c\)](#)



[WAC 468-100-204\(3\)](#)

**Tenure of Occupancy:** If a displaced person, for reasons beyond their control, cannot meet the occupancy requirements described in section 5.4.3, the agency shall still provide replacement housing. Reasons beyond their control include a disaster, emergency or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the agency.

## 5.1.2 Relocation Authority, Roles, and Responsibilities

### 5.1.2.1 Authority

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

- [42 USC Chapter 61](#), Sections 4601-4655 and [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](#)—Uniform relocation assistance and real property acquisition
- [FHWA Non-Regulatory Supplements](#)
- [FHWA Uniform Act FAQs](#)
- [FHWA ROW FAQs](#)

### 5.1.2.2 Roles and Responsibilities

WSDOT ensures the Relocation Assistance Program is adequate to provide orderly, timely, and efficient relocation of displaced persons in compliance with the legal authorities listed above in 5.1.2.1 and as noted in this chapter.

Relocation assistance problems are analyzed specific to each project in a “Relocation Plan.” The Relocation Plan is the framework for developing solutions to minimize adverse impacts on displaced persons and implementing the relocation program.

An agency is required to certify that all occupants have vacated the property and have been advised on the relocation services to which they are entitled, before the agency may proceed with construction.

### 5.1.2.3 Diaries

In addition to the requirements in Chapter 2, Section 2.3.9.1, an agency must create a Relocation Diary for each displacement. Relocation Diaries need to provide a complete record of the displacement, as they are often the only written documentation that demonstrates compliance with the Uniform Act and 49 CFR Part 24. If it is not in the diary, it is difficult to prove it happened.



[49 CFR Part 24](#)

Diaries should be well organized and written for an audience that may not be familiar with the displacement. They must reference any appropriate documents provided to property owners/tenants, such as brochures and forms, or estimates obtained to support the agency file.

Diary entries must contain all the essential information discussed and/or obtained during each contact, any decisions made or additional actions to be taken, and other such information sufficient to inform the user and/or reviewer of the purpose of the contact and/or entry.

Each diary entry must 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 (e.g., “the agent presented the general notice” or that “discussions were held” on a given date. The entry should indicate, at a minimum, where the event took place, what the owner’s reaction was, what questions the owner asked, and what answers were given. Entries need to be made concurrent with the activity being recorded or as soon as possible thereafter to ensure accuracy.

Each contact should have a separate paragraph.

All persons who participate in relocation activities with a displaced person, whether staff or consultant, shall maintain an appropriate diary or log of such activities and discussions with the displaced person. If more than one agent is working on a specific claim/issue, it is recommended that all agents contribute to the same diary.

Diary entries must be limited to factual information. Diaries must not contain any judgmental or opinion statements relating to the property owner, displaced person, or any other person. For example, the diary should note whether there are items on the property that might require special consideration, such as animals, swing sets, etc. The diary should not include the agent’s opinion on the condition of those items except as they relate to relocation activities.

Diaries should be proofread for content, accuracy, and not have spelling errors. Upon completion of entries, the agent must sign and date the diary. Electronic signatures are approved.

Relocation diaries should be complete and include all pertinent contact and information. The following non-inclusive list highlights information that should be standard in the relocation diary.

- Proper displacee information including name, a contact phone number, address of displacement site, current mailing address, project name, parcel number, and current work order number and control section.
- Agent assigned and date of assignment.
- A brief description of the displacement with high level details.
- Date and time of all telephone contacts. Date, time, place, and name of all individuals present at face-to-face meetings, including what was discussed and any resolutions.
- Information obtained during the occupancy survey.
- Personalty vs. realty concerns and/or determinations.
- Preparation and presentation of all official relocation notices, and any other general correspondence mailed to the displacee. If notice was mailed by certified mail, include tracking numbers. Include the date mailed for such notices.
- Date when items were received from the displacee (i.e., signed documents, letters requesting information, phone calls, and emails).
- Statement that the relocation program was discussed with the displacee verbally and that the displacee was given a relocation brochure. Include what was discussed with the displacee, any questions from the displacee and how such questions were addressed.
- Information on how the agent arrived at the move entitlement amount.
- Recital of all advisory services offered to the displacee.
- Questions asked or issues raised by the displacee and response given by the relocation agent.
- Clearly identify the vacate date.
- Documentation of all relocation claims submitted by the displacee.
- Final statement that the relocation is complete.

Residential Relocation diaries should include:

- Discussion of comparable search information. Where and when did the relocation agent obtain the information for the comparable home search? What search criteria was used? How many comparable homes were available? Of those, how many were selected to view?
- Information or statement in relation to viewing the selected comparable homes and which of the three comparable homes the agent selected as the most comparable and why. Also, a statement should be included that an interior inspection of the most comparable home was completed or if the interior was not inspected why, it was not inspected.
- Carve out issues. If applicable, discuss why a carve-out is necessary (i.e., mixed use property, large outbuilding, pool).
- DSS inspection details of the replacement property including any issues found, and advisory services shared regarding their eligibility for reimbursement of a home inspection.
- Confirm with acquisition and record the final settlement amount in the diary. Document any administrative settlement and relocation impacts.

Non-residential Relocation diaries should include:

- Verification and determination of business status and number of businesses.
- Statement that moving expense options were discussed in detail. Explain the actual cost moving options, including commercial and self-moves, search expenses, actual direct loss of tangible personal property (DLT), substitute personal property (SPP), and related expenses. Explain the business reestablishment expense and how it is determined. Discuss the fixed payment and explain that the selection of this option is in lieu of any other monetary options.



[49 CFR 24.9\(a\)](#)

## 5.2 Relocation Planning

Relocation planning starts during the early stages of project development and can occur at two different times. The first is during the environmental phase, and the second is at the right of way phase.

### 5.2.1 Environmental NEPA/SEPA

RES staff, including the Relocation staff, work with the Environmental staff and provide expertise on the URA. Real estate and Relocation staff are available to gather necessary information for Environmental reports. In that capacity, the Relocation staff may be asked to provide information prior to the development of a project relocation plan, for use in Environmental Impact Statements and other environmental reports. Information may be obtained by visually inspecting the area and from readily available secondary or community sources. Reports at this level should exclude parcel-specific information, such as names and addresses of potential displacements.

Please see WSDOT's Environmental Manual, M31-11.27, Section 458.04(2), Analysis and Methodology, Relocation.



[Environmental Manual, M31-11.27, Section 458.04\(2\), Analysis and Methodology, Relocation.](#)

### 5.2.2 Project Relocation Plans

Project relocation plans are required on all projects that will cause the permanent or temporary displacement of individuals, businesses, farms, NPOs, or personal property. Negotiations cannot be initiated on any project that will cause relocation until the Project Relocation Plan is approved.

The Project Relocation Plan should be written with enough detail to address all the relocation issues caused by the project. For example, a project affecting only a small amount of personal property only (PPO) displacements may not need to be written to the same extent as a project affecting many residential and commercial displacements. In all cases, a personal interview should be conducted, and the Occupancy Survey should be completed which captures specific needs and requirements of each displaced person. During the Occupancy Survey interview, the relocation agent should compile a list of personal property and any other questionable items to be shared with the appraiser at the appraiser's joint inspection. The relocation agent is required to attend the joint inspection. The information collected on the Occupancy Survey is the foundation of an effective Relocation Plan.

The Project Relocation Plan includes the following components:

- Detailed, firsthand information regarding the occupants affected by the project.
- Important displacement information.
- A summary of problems associated with displacements.
- Proposed solutions related to identified problems.
- Estimated relocation costs for the project.
- A plan for timely and orderly relocation of all affected occupants.

### 5.2.2.1 Contents of the Project Relocation Plan

The components of each Project Relocation Plan contain the following details:

- **Relocation Assurances** – Assurances that the agency will comply with the Uniform Act and inform the public of relocation payments and services available, and requirements to provide such payments and services. The Plan advises that no person lawfully occupying real property will be required to move from the acquired dwelling, business, farm, or NPO without being provided a written assurance at least 90 days prior to the earliest date by which they could be required to vacate the property. The Plan also assures that no person displaced from a residential dwelling shall be required to move unless at least one, and if available, three comparable replacement dwellings are made available.
- **Project Description** – A description of the project, including information on limits, area, location, project purpose, type and extent of work, and any other pertinent information deemed appropriate by the plan author.
- **Parcels and Displacements Summary** – A summary of the number of parcels to be acquired and the resulting number of displacements by type (e.g., residential owner, residential tenant, business, personal property only, and/or temporary relocation).
- **An Inventory of Individual Needs** (e.g., the characteristics and needs of individuals, families, businesses, and/or personal property to be displaced). The survey process is carried out to the depth necessary to fully identify the characteristics and needs of displaced persons. This should include photos of the subject site and may include the completed occupancy survey as an attachment to the Plan. Recent census and other valid survey data obtained from city and/or county planning departments, redevelopment agencies, precinct registers, etc., may be used to assist in preparing the Inventory.

*For Residential Displacements, the Inventory must contain:*

- A narrative for each potential displacement, including specific information obtained during the Occupancy Survey. A personal interview with each displaced person is necessary to obtain such information.
- Analysis of DSS replacement housing needs. This does not necessarily mean a replacement in kind for the dwellings to be acquired. It means identifying the needs of the occupants being displaced to guide the future search of DSS replacement dwellings.
- Information such as owner/tenant status, estimated value, rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.
- The financial means of the displaced persons are also considered and discussed in the report. Consideration should include replacement housing computation for displaced tenants and identification of any advance relocation payments requested for the move. Advanced payments in hardship situations must be paid by the agency pursuant to state and federal regulations.



[49 CFR 24.207\(c\)](#)



[WAC 468-100-207\(3\)](#)

*For Nonresidential Displacements (businesses, farm, NPO), the Inventory must contain:*

- A determination of the relocation needs and preferences of each nonresidential displacement. A personal interview with each displacement is necessary to obtain such information. At a minimum, interviews with displaced business owners and operators should include the following items:
  - The business's replacement site requirements, current lease terms and other contractual obligations, and financial capacity of the business to accomplish the move.
  - Determination of the need for outside specialists that will be required to assist in planning the move, assistance in the actual move, and any reinstallation of machinery and/or other personal property.
  - An identification of personalty/realty issues. Every effort must be made to identify and resolve personalty/realty issues prior to or at the time of the property appraisal.
  - An estimate of the time required for the business to vacate the site.
  - An estimate of the anticipated difficulty in locating a replacement property.
- An identification of any advance relocation payments requested for the move. Advance payments must be provided in hardship situations pursuant to state and federal regulations. An explanation of the relocation payments and other assistance for which the business, farm, or NPO may be eligible to receive.
- The type and size of the businesses, farms, and/or NPO to be displaced and the approximate number of employees that may be affected.



[49 CFR 24.207\(c\)](#)



[WAC 468-100-207\(3\)](#)

*For Personal Property Displacements Inventory must contain:*

- A determination of the relocation needs and preferences. A personal interview with each displacement is necessary to obtain such information. At a minimum, interviews should include the following items:
  - Determination of the need for outside specialists that will be required to assist in planning the move, assistance in the actual move, and any reinstallation of personal property.
  - An identification of personalty/realty issues. Every effort must be made to identify and resolve personalty/realty issues prior to or at the time of the property appraisal.
  - An estimate of the time required to vacate the site.
  - An estimate of the anticipated difficulty in locating a replacement property.
- An identification of any advance relocation payments requested for the move. Advance payments must be provided in hardship situations pursuant to state and federal regulations.

- **Inventory of Available Replacement Sites** – An estimate of comparable replacement housing currently available on the housing market and an estimate of the availability of replacement business sites in the general project area.
  - The types of buildings and the adequacy of supply of DSS housing as related to the needs of the persons or families to be relocated. Further discussion of the type of neighborhood, proximity of public transportation, commercial shopping areas, and distance to any pertinent social institutions, such as church, and community facilities, as desired. The use of maps, plats, charts, etc., is useful at this stage. This estimate is developed to the extent necessary to assure the relocation plan can be expeditiously and fully implemented.
  - Data on the availability of housing is gathered by any reasonable method such as: updating and using data previously gathered; using sources such as multiple listing services/bureaus, websites, individual brokers, real estate management companies, associations of landlords, rental agencies; and direct contact with apartment owners or managers, local planning offices, other governmental offices which regulate construction of homes and other buildings, and public utility companies that study population growth and/or trends.
  - The inventory of available residential housing should summarize:
    - The number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those displaced persons. When an adequate supply of comparable housing is not expected to be available, Housing of Last Resort actions should be considered.
    - The monthly (or annual) rate of “turn over” in the sale and rental markets.
    - The rate at which new housing is being added.
    - A projection of the amount of housing which will become available during the scheduled acquisition and right of way clearance activities.
  - The inventory of available nonresidential sites should summarize:
    - The availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the business should be considered and addressed.
    - An analysis of any anticipated moving issues, such as complex or lengthy moving processes and/or a business’s limited financial resources.
- **Analysis of Inventories** – An analysis and correlation of the above information is used to develop a plan that:
  - Proposes solutions to potential relocation issues, which commonly includes a lack of replacement sites.
  - Addresses cases concerning disadvantaged groups.
  - Considers current and future federal, state, and community programs in the project and nearby areas that could impact available human services.
  - Estimates the amount of lead time required to carry out a timely, orderly, and humane relocation program.
- **Sources of Information** – The plan shall identify the names/sources from which information was obtained and relied upon for the report.

- **Project Relocation Assistance Office** – The plan should give a brief discussion addressing the intended means by which displaced persons and adjacent occupants will have reasonable access to adequately staffed offices and how such offices will be operated, staffed, and equipped to provide relocation assistance services. This discussion should encompass the need or lack of need for project relocation assistance offices, the hours of operation, the location of said office, and the resources to be available at said office.
- **Alternate and/or Housing of Last Resort Needs** – The plan should discuss the impact of the project on available replacement housing within the financial means of the displaced person, noting whether there is an adequate and continuing supply of replacement housing available within the financial means of the displaced person, or if a “Housing of Last Resort” plan will be prepared on a case-by-case basis.
- **Maps, plats, charts pictorial, and/or graphic data** - Supporting graphics or data that further illustrates the needs of the displaced person or describes the availability or lack of availability of suitable replacement housing should be included with the report if they are available.
- **Estimated Relocation Project Costs** - Include a summary of total estimated relocation project costs (e.g., residential, non-residential, and personal property displacements).



[49 CFR 24.205\(a\)](#)



[RCW 8.26.065\(1\)](#)



[WAC 468-100-205\(1\)](#)

## 5.3 Written Notices

The regulatory notices described in this section apply to permanent and temporary displaced persons. Each notice shall be written in plain, understandable language. Persons unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and phone number of a person who may be contacted for answers to questions or other needed help.

All required notices should be delivered in person to the displaced person or their authorized representative. The agent shall request the displaced person or their representative to sign a copy of the notice as evidence of receipt. If the displaced person refuses to sign the notice, the refusal should be indicated on the copy of the notice and noted in the diary. All delivered notices must be placed in the official file.

All efforts to deliver notices in person should be made. Relocation assistance requires ongoing and continuous advisory services, which are best accomplished by face-to-face meetings during which the displaced person may more easily raise questions, request assistance, or indicate a need for additional advisory assistance.

Providing notices, offers, and correspondence by other means should not be used as a substitute for face-to-face meetings, but rather as a supplemental means of communication. The relocation agent assigned to the file should not insist, prompt, or steer displaced persons to waive or skip a face-to-face meeting with the agent. Delivered notices and brochures should be reviewed with and explained thoroughly through personal contact by a relocation agent as a requirement of advisory services. See Section 5.4.1 for additional details on Advisory Services.

The relocation agent must document delivery and advisory services given, including any questions asked and answers given in the agent diary.

If it is not possible or not feasible to deliver a required notice in person, the RESM/Program Administrator may provide written approval to send the notice by another means consistent with this chapter of the manual. **Sending required notices by mail is allowed as an exception and should not become standard practice. RESM/Program Administrator written approval must be sent to Headquarters and included in the applicable relocation file each time it is approved. Approval cannot be granted on a project-wide basis and must be displacement-specific.**

Examples of when it isn't possible or feasible to meet in person include, but are not limited to:

- Out of state owners.
- Unresponsive requests for personal meetings.
- Refusal to meet in person.

The relocation agent must document efforts to meet in person in the diary and the reasons leading up to delivering required notices by mail. When approved, notices can be sent by USPS certified, registered first-class mail, or another delivery service (e.g., FedEx, UPS, DHL, etc.) that can provide proof of delivery and receipt with a signature. The proof of delivery and signed receipt must be included in the applicable relocation file. Sending via standard mail does not meet the regulations for proof of delivery and a signed receipt of the notice.

Emailing required notices is currently not allowed under Washington law.

**CFR →** [49 CFR 24.5](#)

**WAC →** [WAC 468-100-005](#)

### 5.3.1 Regulatory Notices

Regulatory notices include the following:

- General Information Notice of Relocation Rights
- Notice of Relocation Eligibility, Entitlements, and 90-Day Assurance
- Notice of Intent to Acquire
- Notice of Non-Eligibility

**CFR →** [49 CFR 24.203](#)

**WAC →** [WAC 468-100-203](#)

#### 5.3.1.1 General Information Notice of Relocation Rights

The General Information Notice is required by federal and state law and must be delivered in person as soon as feasible after a person is identified as likely to be displaced or required to move temporarily. It can be presented when the Introductory Letter is delivered to the property owner or when the initial contact is made to gather information for the Relocation Plan; the General Information Notice must be delivered no later than when the ROW plan sheet, exhibits, or parcel acquisition plans showing the specific parcel is approved. If the General Information Notice is mailed with the Introductory Letter, an agency approval is still required.

The notice must include the following information:

- A statement that the person(s) may be displaced (or if appropriate, required to move temporarily from the property) due to a public project and a general description of the types of relocation payments, the basic conditions of eligibility, and how the payments can be obtained.
- A statement that the person(s) to be displaced (or if appropriate, required to move temporarily from the property) will be given reasonable advisory services including referrals to replacement properties, help in filing claims, and other necessary assistance.

- Advise that the person(s) will not be required to move without at least 90 days prior written notice/assurance and that a person displaced permanently (or if appropriate, required to move temporarily from the property) from a residential dwelling will not be required to move until at least one comparable replacement dwelling is made available to the displaced person(s).
- A statement that the person(s) to be displaced permanently (or if appropriate, required to move temporarily from the property) has a right to appeal WSDOT's determinations regarding relocation eligibility or entitlement amounts.
- A statement that informs the person that any person required to move permanently (or if appropriate, required to move temporarily from the property) who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.



[49 CFR 24.203\(a\)](#)



[WAC 468-100-203\(1\)](#)

### 5.3.1.2 Notice of Relocation Eligibility, Entitlements, and 90-Day Assurance

Eligibility for relocation assistance begins on the earliest of; the date of the notice of intent to acquire, rehabilitate, and/or demolish the site, the initiation of negotiations, or the actual acquisition of the site.

This notice combines several regulatory requirements and advises the displaced person that they are now eligible for relocation assistance and entitlements. For residential owner-occupants this notice must be presented in person simultaneously with the offer, in coordination with acquisition.

For all other relocation types, this notice must be presented within 14 days of the notice of intent to acquire or the initiation of negotiations.

Additionally, this notice provides the displaced person with a description of available relocation entitlements. It must include:

- Date of the notice of intent to acquire or the initiation of negotiations.
- Date of occupancy.
- Statement informing the displaced person(s) they are eligible for relocation assistance and entitlements.
- 90-Day Assurance, a statement that ensures the displaced person they will not be required to move for at least 90 days from the date they receive the letter (specific date referenced in letter). For residential occupants, if a Notice of Eligibility is presented before a comparable replacement dwelling is presented, the letter must clearly state that occupants will not have to move earlier than 90 days after such dwelling is made available.
- For temporarily displaced persons it should also include information on how long they are required to move and a statement that an additional 30-day notice of the exact date to vacate will be given.

- A summary of eligible relocation entitlements based on displacement type and their supporting calculations. For residential occupants (permanent and temporary), this includes at least one comparable replacement dwelling address, asking price/rental amount and monetary entitlements of Replacement Housing payments, including maximum Price Differential or Rent Supplement. See Section 5.4.3.5 for more information about Replacement Housing Payments, Price Differentials, and Rent Supplement.
- Availability of and access to advisory assistance.
- How to claim entitlements.
- The right to appeal and the appeal process.

In unusual circumstances, an occupant may be required to vacate the property on less than 90-days advance written notice if the agency determines that the person's continued occupancy of the property constitutes a substantial danger to health or safety. A copy of the agency's determination shall be included in the parcel file.

**CFR →** [49 CFR 24.203\(b\) and \(c\)](#)

**WAC →** [WAC 468-100-203\(2\)](#)

[WAC 468-100-203\(3\)](#)

### 5.3.1.3 Notice of Intent to Acquire

A Notice of Intent to Acquire advises owners and occupants that the agency intends to acquire their property, establishes eligibility for relocation assistance prior to the actual initiation of negotiations, and provides additional information pertaining to relocation assistance payments and services.

Should a Notice of Intent to Acquire be given to a property owner, it must also be provided to any tenants within 15-days; the owner is simultaneously notified of such action by providing the owner with copies of tenant notices. Because the Notice of Intent to Acquire triggers relocation eligibility, the appropriate Notice of Eligibility should be delivered concurrently.

There are a variety of risks associated with issuing a Notice of Intent to Acquire that should be discussed within the agency. This notice of intent is rarely used but can be a useful tool when displacements are anticipated to be complicated or lengthy.

**CFR →** [49 CFR 24.203\(d\)](#)

**WAC →** [WAC 468-100-203\(4\)](#)

### 5.3.1.4 Notice of Non-Eligibility

Should an offer to purchase be rescinded for any reason, a written notice of non-eligibility must be provided to all displaced persons (permanent or temporary) associated with the property that were previously provided with a Notice of Relocation Eligibility. The Notice of Non-Eligibility clearly explains that the person(s) is no longer eligible for relocation assistance. This notice should promptly follow the notification that the agency rescinded the offer. The agency is responsible for reimbursing the displaced person for any actual, reasonable, and necessary eligible relocation expenses incurred based on the original Notice of Eligibility.



[WAC 468-100-203\(2\)\(b\)](#)

## 5.3.2 Other Notices

### 5.3.2.1 Brochures

The applicable brochures should be provided to each permanently or temporarily displaced person at the time the General Information Notice is provided, or earlier.

There are three brochures that provide detailed information about the Relocation Assistance Program by relocation type:

- Residential Relocation Assistance Program
- Non-Residential Relocation Assistance Program (Business/Farm/NPO)
- Personal Property Only Relocation Assistance Program

### 5.3.2.2 Notice of Revised Maximum Price Differential

If an owner-occupant does not seek replacement housing after the Notice of Eligibility is delivered, and the offered comparable dwelling(s) are no longer available the agency must assure equal comparable dwellings are still available in the same price range. In most cases, the relocation agent can check the market to see if other comparable dwellings are available for sale in the area within the same price range. If there are comparable dwellings available, the relocation agent provides the list of properties to the displaced person and informs them the Price Differential will not be recalculated.

If the Price Differential must be recalculated, a Notice of Revised Maximum Price Differential must be presented to the displaced person (permanent or temporary).

If eviction action becomes necessary, a comparable replacement dwelling must be confirmed to be currently available for occupancy before initiating eviction and continue providing advisory services about potential replacement dwellings throughout the eviction process.

If after a reasonable period of time the displaced person has made little or no effort to acquire a replacement dwelling, and a less-expensive comparable dwelling has become available, it is permissible to recalculate the Replacement Housing Payment. If the Price Differential must be recalculated, a Notice of Revised Maximum Price Differential must be presented to the displaced person. In such cases, it should be documented in the file with the rationale.

See Section 5.4.3.5.1 for more information about Replacement Housing Payments, Price Differentials, and Rent Supplements.

Any time a Replacement Housing Payment or a Price Differential is recalculated, the original 90-day assurance time period continues to run without interruption; the presentation of a revised maximum Price Differential does not restart the 90-day assurance clock.



[FHWA FAQ #47 & #48](#)

[Non-Regulatory Supplement 49 CFR 24 Subpart C #2 & #4](#)

If the owner-occupant receives an administrative settlement for the displacement dwelling, the price differential must be adjusted accordingly, and a Revised Notice of Maximum Price Differential (RES-507a) must be presented to the displaced person. In accordance with Chapter 4, the relocation agent should receive notification from the acquisition agent if an administrative settlement is given.

If an owner-occupant decides to become a tenant, a revised notice should be presented stating the maximum entitlement for a rent supplement (RES-507a). In no case can the Rent Supplement be greater than the Price Differential would have been had the owner-occupant decided to purchase a replacement dwelling. Similarly, an owner-occupant cannot use a Rent Supplement as down payment assistance.

### 5.3.2.3 Notice of Revised Maximum Rent Supplement

If a tenant does not seek replacement housing after the Notice of Eligibility is delivered and the offered comparable dwelling(s) are no longer available, the agency must assure equal comparable dwellings are still available in the same price range. In most cases, the relocation agent can check the market to see if other comparable dwellings are available for rent in the area within the same price range. If there are comparable dwellings available, the relocation agent provides the list of properties to the displaced person and informs them their rent supplement will not be recalculated. If the Rent Supplement must be recalculated, a Notice of Revised Maximum Rent Supplement must be presented to the displaced person. If this becomes necessary, and the recalculated Rent Supplement is less than the originally calculated Rent Supplement, it should be documented in the file with the rationale.

If eviction action becomes necessary, a comparable replacement dwelling must be confirmed to be currently available for occupancy before initiating eviction and continue providing advisory services about potential replacement dwellings throughout the eviction process.



[FHWA FAQ #47 & #48](#)

[Non-Regulatory Supplement 49 CFR 24 Subpart C #2 & #4](#)

### 5.3.2.4 Relocation Determinations

Anytime a relocation determination is made that disapproves all or part of a relocation payment claim, the agency must provide the displaced person with a written statement explaining why the claim was denied. This includes citing the appropriate CFR, RCW, and/ or WAC and providing instruction for additional review, reconsideration, and appeal of the relocation determination.



[49 CFR 24.207\(e\)](#)



[WAC 468-100-207\(5\)](#)

### 5.3.2.5 Certification of Lawful Presence in the United States

In order to be eligible for relocation payments or advisory services, a displaced person must certify that they are lawfully present in the United States of America by reading and signing the Lawfully Present in the United States Certification. Ideally, the Lawfully Present form is signed in person at the time the Occupancy Survey is conducted, and the General Notice is provided. The certification must be signed prior to presenting the Notice of Eligibility.

Certification is signed by the individual or the head of the household on behalf of other family members. In the case of an unincorporated business, farm, or nonprofit organization, the certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest. For an incorporated business, farm, or nonprofit organization, the certification is signed by the appropriate signing authority for the business.

If a displaced person refuses to sign the Lawfully Present in the United States Certification, it may be necessary to provide the 90-Day Assurance to maintain project schedules. Contact the Headquarters Relocation Reviewer for additional guidance on how to proceed. It must be explained that the person is only eligible for relocation payments and advisory assistance if they provide written attestations, by signing the lawfully present certification. Until such time, the agency can only provide advice concerning the regulations and procedures surrounding lawful presence and eligibility. If/when the person signs the lawfully present certification a Notice of Eligibility may be sent establishing the person's eligibility.

The agency considers completing and signing the Lawfully Present Certification attesting that all residents, owners, owners of corporation are lawfully in the United States, or a corporation is authorized to conduct business in the United States, to meet the certification requirements and no additional documentation is needed to certify.

If during review of submitted personal documentation or information gathered during the standard relocation process the agency had creditable reason to believe that a person's certification is invalid the agency may use the following resources to validate the certification.

- For a person who has certified that they are an alien lawfully present in the United States, the agency may obtain verification of the person's status by using the Systematic Alien Verification for Entitlements (SAVE) program administered by USCIS to verify immigration status.

- For a person who has certified that they are a citizen or national, the agency may request evidence of United States citizenship or nationality such as; birth certificate, U.S. Passport, or Certificate of Citizenship or Naturalization. If considered necessary, verify the accuracy of such evidence with the issuer or other appropriate source.

In all cases the review of the certifications provided shall be conducted in a nondiscriminatory fashion. The agency shall apply the same standard of review to all such certifications it receives.



49 CFR 24.2(a) "Alien not lawfully present in the United States"

49 CFR 24.208

Appendix A 24.208(c)

Appendix A 24.208(h)



WAC 468-100-002(2)

WAC 468-100-208



FHWA FAQ #43, #55 & #56

## 5.4 Relocation Entitlements

Residential, non-residential, and PPO displaced persons may be eligible for relocation entitlements, including advisory services, payment for moving costs, payments for replacement housing, and/or reestablishment expenses.

Eligibility and entitlements differ between residential, non-residential, and PPO displaced persons.

### 5.4.1 Advisory Services

Relocation Assistance Advisory Services is personal assistance provided to displaced persons to help them locate and move into a replacement location. In addition, advisory services are the process of providing information to displaced persons on program benefits and assistance in completing and filing claim forms. The agency ensures that displaced persons will receive uniform and consistent services and payments regardless of race, color, religion, sex, gender, or national origin.

Advisory services are offered to any lawfully present displaced person whether permanently or temporarily displaced. Subsequent occupants (i.e. any person who occupies property acquired by the agency after our acquisition and occupancy is permitted through a displacee lease) shall be eligible for advisory services, as determined by the agency.

In addition to the advisory services discussed in section 5.2.2 Relocation Planning, advisory services provided shall include reasonable measures, facilities, or practices as necessary or appropriate for the needs of the displaced person.

General Advisory Services for all displacements include the following:

- Determine the needs, if any, of the displaced person(s) for relocation assistance by completing the appropriate occupancy survey during a personal interview.
- Personally review and explain all relocation notices and brochures. Including answering any questions specific to the displacee's eligibility, entitlements, and rights.
- Explain the types of relocation payments, move options, and eligibility requirements to receive relocation payments.
- Advise the displaced person they will be provided with a written 90-Day Assurance of the earliest date they will be required to vacate the displacement property.
- Assist in completing any required forms.
- Advise the displaced person that no payments received under the Uniform Act shall be considered as income for the purposes of the Internal Revenue Code of 1954 which has been re-designated as the Internal Revenue Code of 1986 or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under any state or federal law.
- Advise the displaced person they have the right to a reconsideration and/or appeal of the agency's determinations regarding eligibility for relocation assistance or relocation payment amounts.

- Advise displaced person as to other sources of assistance that may be available to help minimize hardships in adjusting to relocation. This may include providing information about federal, state, and local programs that may be of assistance to displaced person, and technical assistance to the displaced person in applying for assistance under those programs.
- Coordinate relocation activities with other federal, state, or local governmental actions in the community which cause displacements to further support the consistent treatment of displaced persons and minimize duplication of functions.

Advisory services may be offered to impacted occupants determined to be “persons not displaced” when necessary. This could include:

- Adjacent occupant(s). If the agency determines that such person(s) is caused substantial economic injury because of an acquisition.
- Occupants considered unlawful because they were evicted for cause, and advisory services could facilitate the project.
- Temporary, daily, or emergency shelter occupants not considered displaced shall be provided advisory assistance at the initiation of negotiation.
- Occupants subsequent to the acquisition of the property.

Advisory services requirements specific to each displacement type are further explained in other sections of this chapter.



49 CFR 24.2(a) “Displaced person” (iv)(J) & (L)

Appendix-A “Section 24.2(a) Displaced person—Occupants of a temporary, daily, or emergency shelter, (iii)(L)”

49 CFR 24.10

49 CFR 24.202(a)(1)

Appendix-A “Section 24.202 Applicability” and Section 24.205(c) Relocation Advisory Services to be provided”

49 CFR 24.203

49 CFR 24.205(c)

49 CFR 24.205(e)

49 CFR 24.206

49 CFR 24.209



RCW 8.26.115

RCW 8.26.065

[WAC 468-100-002\(9\)](#)[WAC 468-100-010](#)[WAC 468-100-203](#)[WAC 468-100-205\(3\)](#)[WAC 468-100-206](#)[WAC 468-100-209](#)[FHWA FAQ #50](#)

## 5.4.2 Move Entitlements

All displaced persons are entitled to receive a payment for actual moving and related expenses to move personal property located on the displacement property, as the agency determines to be reasonable and necessary.

The relocation agent must complete a detailed written and photographic inventory of the personal property on the subject site along with additional disconnection, moving, and reconnection requirements necessary. These elements are essential to correctly identify all necessary move entitlements.

A displaced person's moving entitlements may be based on the cost of a commercial move or a self move. A self move amount can be determined based on a fixed schedule, a calculated self-move amount, actual receipts, professional estimates, or a combination of these methods. See the below table to determine which move types are available based on the displacement type.

Move Types	Residential	Non-Residential	Personal Property Only
<b>Commercial Moves:</b>			
Permitted UTC Mover	X		
Lower of 2 Move Bids		X	X
Single Bid or Estimate for Uncomplicated		X	X
<b>Self Moves:</b>			
Fixed Residential Move Cost Schedule	X		
Actual Move Costs	X	X	X
Agent Move Estimates	X		
Commercial Mover Estimate (lower of 2 move bids)	X		
Move Cost Estimate (Commercial or Agent Estimate)		X	X
Move Cost Findings (uncomplicated \$5,000 or less)		X	X

**CFR →** [49 CFR 24.301](#)

**RCW →** [RCW 8.26.035](#)

**WAC →** [WAC 468-100-301](#)

**Commercial Move** – A displaced person who selects a commercial move can ask the agency to make a payment directly to the mover on their behalf or be reimbursed for the actual cost incurred by using a commercial mover. However, the agreement for direct payment must not extend beyond simply making the payment—the agency assumes no responsibility for the mover selected or the move itself.

For residential commercial moves, the displaced person must select a mover permitted through the Utilities & Transportation Commission (UTC) as a Household Good Carrier. A list of permitted movers can be found on the UTC’s website. Payment for a commercial move is limited to a maximum of 50 miles from the displacement site.

For displaced non-residential and personal property commercial move, the payment is based on the lowest of two acceptable bids or estimates prepared by a qualified commercial mover. A low cost or uncomplicated move may be based on a single bid or estimate.

**CFR →** [49 CFR 24.301\(b\)\(1\)](#)

[49 CFR 24.301\(c\)\(1\)](#)

[49 CFR 24.301\(d\)\(1\)](#)

**WAC →** [WAC 468-100-301\(2\)\(a\)](#)

[WAC 468-100-301\(3\)\(a\)](#)

[WAC 468-100-301\(4\)\(a\)](#)

**Self-Moves** – A self-move is a move performed by the displaced person and their move costs are reimbursed directly to them. Eligible self-move costs can be determined based on the criteria below. For non-residential and personal property self-moves, the payment is based on one or a combination of the following:

**Move Cost Estimates** -The lower of two bids or estimates prepared by a commercial mover or qualified agency staff person (Agent Estimate). Payment for a low cost or uncomplicated move may be based on a single bid or estimate. The displaced person, with the assistance of the agency, must prepare an inventory of the personal property to be relocated and assist the agency in preparing a Request for Proposal and Moving Specification. Bids are obtained by the agency from qualified commercial movers, and a recommendation is created to offer a payment to the displaced person based on the lowest acceptable bid. The agency must solicit the bids used to establish the approved payment. Bids received by the displaced person may be reviewed but still need to be substantiated by another competitive bid/estimate.

The amount of the payment to be offered to the displaced person may not exceed the amount of the lowest acceptable bid. The amount shall not include state sales tax and replacement value insurance (RVI) submitted by or included in the bid of a commercial mover. For a displaced person to be reimbursed for RVI, they must supply copies of the insurance policy and proof of payment.

A move cost lower than the lowest acceptable bid may be offered, taking into account the profit and overhead costs the commercial mover includes in its bids.

**Actual Move Costs** – The reimbursed amount is determined by the actual, reasonable, and necessary moving costs as documented by paid receipts or other reasonable evidence of expenses, including timesheets or other documentation that account for the hours of the people who performed the move.

Hourly rates for labor should be supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to their employees who perform move activities. Equipment rental fees should be based on the actual rental cost of the equipment (inclusive of sales tax), not to exceed the cost paid by a commercial mover. Hourly rates can be obtained from local movers or the UTC website.



[www.utc.wa.gov/consumers/movers/Pages/rulesRates.aspx](http://www.utc.wa.gov/consumers/movers/Pages/rulesRates.aspx).

**Move Cost Finding** - For small, uncomplicated moves estimated to be \$5,000 or less, a pre-qualified WSDOT staff member can prepare a move cost finding (also referred to as an Agent Estimate) based on Washington Utilities and Transportation Commission (UTC) current household goods mover rates published in Tariff 15-C. Within Tariff 15-C, the UTC also lists approved rates for packing materials and equipment.

Only pre-qualified staff members can provide such estimates. To perform such an estimate/finding, the agency must have written consent of the displaced person. Moves in this category are limited to uncomplicated moves that do not require disconnect and reconnect and/or specialty moving services necessary for activities including crating, lifting, transportation, and setting of the items being moved.

**NOTE:** WSDOT maintains a list of WSDOT staff members qualified to provide Specialist Move Estimates/Agent Estimates on our Relocation Workspace. Staff members interested in becoming qualified should reach out to the Relocation Program Manager.



[49 CFR 24.301\(d\)\(2\)](#)

[Appendix-A Part-24 "Section 24.207 General Requirements—Claims for relocation payments"](#)



[WAC 468-100-301\(4\)\(b\)](#)

For residential moves the payment is based on one or a combination of the following:

**Fixed Residential Moving Cost Schedule** - The schedule uses the Room Count Method to calculate self-move fixed costs for moving expenses and the dislocation allowance. The schedule applies to residential occupants of furnished or unfurnished dwelling units. The move expense payment is computed based on the number of furnished rooms in the dwelling unit (not to include bathrooms) plus basements, attics, garages, and “out buildings” if such spaces do, in fact, contain sufficient personal property to constitute a room or rooms.

The schedule can also be used when relocating personal property, such as vehicles, RVs, boats, and trailers from the outside areas surrounding the residential dwelling unit. The number of eligible rooms is based on the volume of the property to be moved. Excessive room counts for this type of move are best handled as an actual cost self-move, agent estimate, or commercial mover estimate.

Residential displaced persons who select a self-move based on the fixed payment schedule are eligible for a single move, including into or out of storage. The one-time move payment represents a full reimbursement of their eligible moving costs.

**CFR →** [49 CFR 24.302](#)

**RCW →** [RCW 8.26.035\(1\)](#)

[RCW 8.26.035\(2\)](#)

**WAC →** [WAC 468-100-302](#)

**Agent Move Estimate** - A qualified agency staff person can prepare an agent estimate based on a thorough review of the personal property to be moved. This estimate is prepared using the UTC current household goods mover rates published in Tariff 15-C. Within Tariff 15-C, the UTC also lists approved rates for packing materials and equipment.

Only pre-qualified staff members can provide such estimates. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

**Commercial Move Estimate** - Based on the lower of two bids from a commercial mover. A move cost lower than the lowest acceptable bid may be offered, taking into account the profit and overhead costs the commercial mover includes in its bids.

**Actual Move Costs** – The displaced person may move their personal property using their own resources. They will be reimbursed for their actual, reasonable, and necessary moving costs as documented by paid receipts or other reasonable evidence of expenses, including timesheets or other documentation that account for the hours of the people who performed the move.

Hourly rates for labor should be supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to their employees who perform move activities. Equipment rental fees should be based on the actual rental cost of the equipment (inclusive of sales tax), not to exceed the cost paid by a commercial mover. Hourly rates can be obtained from local movers or the UTC website.



[www.utc.wa.gov/consumers/movers/Pages/rulesRates.aspx](http://www.utc.wa.gov/consumers/movers/Pages/rulesRates.aspx).



[49 CFR 24.301\(b\)\(2\)](#)

[49 CFR 24.301\(c\)\(2\)](#)



[WAC 468-100-301\(2\)\(b\)](#)

[WAC 468-100-301\(3\)\(b\)](#)

**Combination of Commercial and Self-Move** – A displaced person may elect to use a combination of a commercial move and a self-move. In such cases, the displaced person must coordinate with the agency and the commercial mover to ensure all parties have a clear understanding of the respective roles and responsibilities.

The agency must closely monitor the move to confirm each party is performing the correct tasks and duties. See Section 5.4.2.4 for additional information on move monitoring.

The displaced person must complete and sign the moving expense agreement prior to the move, which confirms the type of move and agreed upon amount for the type of move selected.

#### 5.4.2.1 Eligible Actual Moving and Related Expenses

The following items are eligible for reimbursement as actual moving costs when determined by the agency to be reasonable and necessary for residential, non-residential, and personal property moves.

Actual moving costs include:

- The cost to transport a displaced person and transportation of personal property within a 50 miles radius. Mileage costs to transport beyond 50 miles are not eligible unless the agency determines that relocation beyond 50 miles is justified.
- Packing, crating, unpacking, and uncrating of the personal property.

- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, machinery, equipment, and other personal property. This includes modifications to the personal property required by federal, state, or local law, code, or ordinance necessary to adapt it to the replacement structure, replacement site, or the utilities at the replacement site, and modifications necessary to adapt utilities at the replacement site to the personal property. Modifications in this section are specific to either modifying the personal property itself or the utilities to adapt to the eligible personal property at the replacement site. Modifying the real estate/replacement site/building are not eligible in this category.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- The replacement value of property that is lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, their agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- Storage costs for up to 12 months when the process of relocating from the acquired site to the replacement site is delayed for reasons beyond the control of the displaced person. The agency should preapprove all storage claims. For storage longer than 12 months, the displaced person must make a request in writing. The agency can approve storage exceeding 12 months when justified and documented. In determining if storage is reasonable and necessary, the agency should consider the needs of the displaced person, the nature of the move, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage will facilitate relocation.
- Other moving-related expenses the agency determines to be reasonable and necessary, which are not listed as ineligible.



[49 CFR 24.301\(g\)](#)



[WAC 468-100-301\(7\)](#)

#### 5.4.2.1.1 Unique Move Entitlement Situations

##### Households with Lawfully Present and Unlawfully Present in U.S. Combination

Move entitlement for households, business, farms, or non-profit organizations with a combination of eligible lawfully present in the United States displacees, and non-eligible displacees' who are not lawfully in the United States should be based on inventory of personal property items owned by the eligible displaced person. See Section 5.3.2.5 for more information.

If separating the inventory is not possible the move entitlement will be calculated as a ratio.

- For households, the entitlement is based on the number of lawfully present household members divided by the total number of household members.
- For unincorporated business, farm, or nonprofit organization, the ratio is based on the number of lawfully present owners divided by the total number of owners.

No relocation payments may be provided to a person who has not provided the lawfully present certification who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States. See Section 5.1.1.1 for more details.



[49 CFR 24.208\(c\)](#)

[Appendix-A-to-Part-24 "Section 24.208\(c\) Aliens not lawfully present in the United States"](#)



[WAC 468-100-208\(3\)](#)

### Calculating the Cost to Move an Obsolete Item When an Actual Estimate Cannot be Obtained

The eligible amount to move an obsolete item, an item that cannot be moved due to the physical condition, or an item whose move cost exceeds the replacement costs will follow the procedures outlined in Section 5.4.5.3 for Substitute Personal Property (SPP) or Direct Loss of Tangible Goods (DLT). Move costs should not exceed replacement and installation costs in any circumstances.

If the personal property is considered obsolete and installed at the displacement site it can be difficult to compute the cost to install/reconnect at replacement site.

If the item that is proposed to be replaced with substitute personal property is obsolete or in a condition where it cannot reasonably be moved and/or installed at the replacement site, the following actions should be taken by the relocation agent:

- Obtain an estimate of the cost to remove the item from the displacement site (including disconnect) and move it as if it was intact and capable of being moved. For example, if a storage tank or water heater at the displacement site is considered to be personal property rather than real property, but its age and condition are such that a mover or specialist considers it not capable of being moved intact, have the estimator(s) provide a price to move as if it was in movable condition.
- If the technology for the item in question has changed and it would not be adaptable for installation or reconnection at the replacement site, one option would be to obtain an estimate to install/reconnect a substitute item that most nearly matches the item in question but conforms to current technology.

Once estimates have been obtained, the calculation would be done consistent with 49 CFR 24.301(g)(17).



[49 CFR 24.301\(g\)\(17\)](#)

Non-residential moves may incur additional moving and related expenses. Please see Section 5.4.5.3 for additional information.

Residential Mobile Home moves may incur additional moving and related expenses. Please see Section 5.4.4.4 for additional information.

### 5.4.2.2 Ineligible Moving and Related Expenses

- The cost of moving any structure or other real property improvement in which the displaced person reserved ownership.
- Interest on a loan to cover moving expenses.
- Personal injury.
- Loss of goodwill.
- Loss of profits.
- Loss of trained employees.
- Additional operating expenses of a business or farm operation incurred because of operating in a new location except for those costs eligible under increased cost of doing business.
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the displaced person before the agency.
- Expenses for searching for a temporary or replacement dwelling, that include costs for mileage, meals, lodging, time, and professional real estate broker or attorney's fees.
- Physical changes to the real property at the temporary or replacement location of a business or farm operation except as provided in the list of eligible reestablishment expenses.
- Costs for storage of personal property on real property already owned or leased by the displaced person.
- Refundable security and utility deposits.
- Cosmetic changes to a replacement or temporary dwelling that are not required by state or local law, such as painting, draperies, or replacement of carpet or flooring.
- Costs/fees to dispose of personal property, other than hazardous materials described in 5.4.5.3 below.

 [49 CFR 24.301\(h\)](#)

 [WAC 468-100-301\(8\)](#)

### 5.4.2.3 Personalty vs. Realty

The relocation agent and the appraiser should work together to determine all personalty versus realty concerns prior to working with the displaced person(s) to prepare an inventory of the personal property items to be relocated. It is strongly advised that the relocation agent and the owner both be present during the appraisal walk through to discuss personalty/realty issues. In addition, the displaced person needs to understand the importance of the differences between personalty and realty.

The Personalty/Realty Report in the appraisal lists those items determined to be real property and personal property as well as ownership of the same items. If the Personalty/Realty Report is not clear or comprehensive as to what is realty and what is personalty, the review appraiser can help clarify.

If the item is not discussed in the appraisal, it does not automatically make the item personal property and eligible for relocation assistance. If not addressed, the relocation agent should consult with the appraisal team to determine the status of the item. When a displaced person(s) wants to keep an item that is considered real property, it should be salvaged according to procedures for the salvage of real property in Chapters 4 and 7.



[49 CFR 24.103\(a\)\(2\)\(i\)](#)

[49 CFR 24.301\(d\)](#)

[49 CFR 24.301\(g\)](#)



[RCW 8.26.035](#)



[WAC 468-100-301\(4\)](#)

[WAC 468-100-301\(7\)](#)



[FHWA FAQ #36](#)

[Non-Regulatory Supplement Subpart D #3](#)

#### 5.4.2.4 Move Monitoring

The agency is required to inform the non-residential displaced person and persons required to move temporarily, in writing, of the requirements related to move monitoring. This is provided as part of the Notice of Eligibility to the displaced person. To be eligible for payments, the non-residential displaced person must provide the agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. In addition, they must permit the agency to make reasonable and timely physical inspections of the personal property at both the displacement and replacement sites and to monitor the move.

Move monitoring helps support the accounting of the inventory, ensure the personalty is moved to the replacement site, identify those items not moved that could potentially lead to a claim for direct loss of tangible (DLT) or substitute personal property (SPP), and to answer any questions that may arise the day of the move.

The amount of move monitoring done should be based on the level of complexity of the move; large, complex moves will require more move monitoring than smaller, uncomplicated moves.



[49 CFR 24.301\(i\)](#)



[WAC 468-100-301\(9\)](#)



[FHWA FAQ #69](#)

### 5.4.2.5 Vacate Inspections

When the move is completed, the agency verifies and documents that all personal property is removed from the displacement property and verifies and documents that all personal property is at the replacement property. Verification must include photographs of the vacated site and replacement site. The agent must document the on-site vacate inspections in the diary and enter the vacate date on the relocation voucher.

In some cases, personal property is left at the displacement property due to the agency's waiving the need for the displaced person to make a reasonable attempt to sell the personal property under SPP or DLT. In those cases, the move entitlement is calculated as described in Section 5.4.5.3.

The abandoned personal property becomes the property of the agency through the transfer of ownership provision discussed in state and federal regulations or through a Bill of Sale to the agency. The moving expense attributable to the abandoned property must be deducted from the displaced person's final move payment and noted on the vacate inspection. In either case, the personal property is managed by the Property Management section.

A displaced person should not remove an improvement that is considered real property that has not been salvaged through acquisition. Real property should be salvaged according to procedures for the salvage of real property in Chapter 4.



[49 CFR 24.2\(a\) "Salvage value"](#)

[49 CFR 24.301\(j\)](#)



[WAC 468-100-002\(23\)](#)

[WAC 468-100-301\(10\)](#)



[FHWA FAQ #69](#)

[Non-Regulatory Supplement Subpart A #12](#)

### 5.4.2.6 Claiming Moving Entitlements

All moving claims must be submitted to the agency by the claim expiration date. Claims for moving payments are submitted when the move is completed and documentation supporting the actual or preapproved costs has been received by the agency. The agency must provide the displaced person with reasonable assistance necessary to complete and file any required claim for payment.

Documentation should support the claim is an eligible expense and may include proof of payment, if necessary, and supporting documents that the payment amount was reasonable for the service provided.

Acceptable documentation will be dependent on the claim, but standard documentation to verify eligibility, proof of payment, and reasonableness could include:

**Eligibility** – Statement of what the claim is for and reference to the regulation that allows for reimbursement. See Section 5.4.2.1 for eligible moving and related expenses.

**Proof of Payment** – If the claim includes reimbursement of actual expenses incurred, proof of payment is necessary. Documentation could include a paid invoice, copy of cleared check or bank register, a paid receipt, credit card receipt, screen shot of a text receipt, or other documentation the agency finds reasonable to validate the actual amount and that payment was made. This documentation should be reviewed for accuracy and may need to be line itemed out to insure eligibility for the full amount.

**Reasonableness** – All claims must be reviewed and documented for reasonableness of cost. This could include referencing move estimates of other specialists, documenting the hours and rates are standard for the industry and work completed, gaining copies of any tangible work completed or items received (i.e. drafted moving plans, rental applications, rental agreements, labor records, etc.). The amount reimbursed should represent what is determined reasonable to achieve the claimed items.

Moving cost payments are made after move completion and/or expenses are incurred. See Section 5.4.2.3 for more information on move monitoring requirements. See Section 5.4.2.4 for vacate inspection details.

Agencies must review, respond to, and reimburse submitted claims in an expeditious manner. Advance payments can be issued in hardship cases. See Section 5.1.1.1 for more information policy regarding claim expiration date, timely payments, and advanced payments.

Payment can be made to the displacee or requested to be paid directly to the commercial mover with a supplied invoice.

If the displaced person has not claimed relocation entitlements promptly after moving or incurring the expense, the agency advises the displaced person of the final claim expiration date.



[49 CFR 24.207](#)



[WAC 468-100-207](#)

### 5.4.3 Residential Entitlements

This section outlines residential displaced person eligibility for advisory services and Replacement Housing Payments (RHP); how payments are calculated; and how displaced persons may claim their entitlements.

There are three categories of residential displaced persons:

- **90-Day Owner:** A person who lawfully owns and occupies the displaced dwelling for at least 90 consecutive days immediately prior to initiation of negotiations or the date the occupant vacates after receiving notice of intent to acquire, whichever is earlier. This includes those persons with life estates and other ownership interests.

**CFR →** [49 CFR 24.2\(a\) "Owner of a dwelling"](#)

**WAC →** [WAC 468-100-002\(20\)](#)

- **90-Day Tenant:** A person who rents and occupies the displaced dwelling for at least 90 days prior to initiation of negotiations.

**CFR →** [49 CFR 24.2\(a\) "Tenant"](#)

**WAC →** [WAC 468-100-002\(26\)](#)

- **Less Than 90-day Occupant:**

- A person who has occupied the displacement dwelling for less than 90 days.

**CFR →** [49 CFR 24.205\(e\)](#)

[49 CFR 24.403\(d\)](#)

[49 CFR 24.404\(c\)\(3\)](#)

**WAC →** [WAC 468-100-205\(f\)](#)

[WAC 468-100-403\(4\)](#)

[WAC 468-100-404\(3\)\(c\)](#)

**FHWA →** [FHWA FAQ #86](#)

[Non-Regulatory Supplement Subpart E #17](#)

Displaced persons may decide to relocate to the same or different occupancy (owner or tenant) status.

### 5.4.3.1 Eligibility

A lawfully present residential owner or tenant is eligible for relocation entitlements if they must move either permanently or temporarily from their primary dwelling as a direct result of an agency's acquisition, an initiation of negotiations, a written notice of intent to acquire, rehabilitation, and/or demolition, or a written notice to vacate.

The type of RHP for which a residential displaced person is eligible depends on whether they are an owner or tenant, their length of occupancy, and whether they decide to relocate to the same occupancy status (owner or tenant) or a different occupancy status.

The following non-exclusive list indicates residential occupants that are not eligible for residential relocation entitlements:

- A person who moves before the initiation of negotiations, unless the agency determines the person was displaced as a direct result of the project.
- A person who initially enters into occupancy of the property after the date of acquisition.
- A person who occupies the property for the purpose of obtaining assistance under the Uniform Act.
- A residential owner who moves due to a voluntary acquisition.
- A person whom the agency determines is not displaced as a direct result of a partial acquisition.
- A person who is determined to be in unlawful occupancy or has been evicted for cause. See Section 5.1.1 under eviction of cause.
- A person who is not lawfully present in the United States and determined to be ineligible for relocation assistance.
- A person living at temporary, daily, or emergency shelters. However, advisory assistance shall be provided to all occupants at initiation of negotiations.

**CFR →** 49 CFR 24.2(a) "Displaced person" (iii)

**WAC →** WAC 468-100-002(9)(b)

### 5.4.3.2 Advisory Services for Residential Displacements

In addition to the advisory services provided to all displaced persons detailed in Section 5.4.1, residential displaced persons are provided with the following:

- A personal interview with each residential displaced person to determine their relocation needs and preferences.
- An explanation of the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.
- Current and continuing information regarding the availability, purchase prices, and/or rental costs of DSS housing, DSS requirements, and an explanation that the displaced person cannot be required to move unless at least one comparable DSS replacement dwelling is made available. (See Section 5.4.3.4: Decent Safe and Sanitary requirements).

- Information in writing about the specific comparable replacement dwelling and the purchase price or rent used for establishing the upper limit of the RHP and the basis for the determination so the displaced person is aware of the maximum RHP for which the displaced person may qualify. This information must be provided to owner-occupants on the same day the offer is made, and to tenants within 14 calendar days of the offer.
- The agency must make a significant effort to physically inspect housing used to compute the RHP prior to it being made available to ensure it meets applicable standards. If such an inspection is not made, the agency must notify the displaced person in writing why the housing was not inspected, and that a RHP may not be made until the replacement dwelling is subsequently inspected and determined to be DSS.
- Supply information regarding relevant federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons, and technical help applying for such assistance.
- Advice to any displaced person who may be eligible for government housing assistance at the replacement dwelling explaining that the requirements of such government housing assistance program dictate the comparable dwelling made available to them. All efforts should be made to move the displaced persons to the same or similar government housing program. WSDOT must provide advisory services explaining the implications of accepting a different form of assistance than the assistance the person may currently be receiving.
- Offer to provide transportation to search for or view replacement housing.
- Other advisory services to minimize hardships to any such displaced person adjusting to a new location, as appropriate.



[49 CFR 24.204](#)

[49 CFR 24.205\(c\)](#)

[49 CFR 24.301\(b\)](#)

[49 CFR 24.401](#)

[49 CFR 24.402](#)



[RCW 8.26.065\(3\)](#)



[WAC 468-100-204](#)

[WAC 468-100-205](#)

[WAC 468-100-301\(2\)](#)

[WAC 468-100-401](#)

[WAC 468-100-402](#)

### 5.4.3.3 Comparable Replacement Dwelling

At least one comparable replacement dwelling must be made available to all permanently displaced residential persons prior to displacement. When possible, three or more comparable replacement dwellings shall be made available. See Section 5.4.3.9.

The upper limit of the RHP will be based on the cost of a comparable replacement dwelling. The payment is computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling.

A comparable replacement dwelling is defined as any dwelling that is all of the following:

- Decent, safe, and sanitary (DSS) as described in Section 5.4.3.4.
- Adequate in size to accommodate the occupants.
- Within the financial means of the displaced person with the addition of the Replacement Housing Payment including Last Resort Housing payment.
- Functionally equivalent to the displacement dwelling.
- In an area not subject to unreasonable adverse environmental conditions.
- In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.
- Currently available to the displaced person. This includes homes that can be purchased or rented and occupied in a typical time for the market. Homes that are listed as a Short Sale or a Bank/Real Estate Owned Property (REO) often involve a long closing process and would not be considered currently available.
- For those occupying government subsidized housing before displacement, a dwelling that may reflect similar government housing assistance. Comparable housing is determined by the family composition at the time of displacement and current government housing program criteria, not the size of the unit currently occupied. There is no prohibition against offering or precludes a displaced person from accepting assistance under a government housing program, even if the person did not receive similar assistance before displacement. The agency is obligated to inform the person of his or her options and the implications of accepting a different form of assistance than the assistance that person may currently be receiving. If a person accepts assistance under a government housing program, the rules of that program apply, and the rental assistance payment is computed based on the displaced person's actual out-of-pocket cost for the replacement housing and associated utilities after the applicable government housing program has been applied. In determining comparability of government housing refer to the federal regulations.



[49 CFR 24.2\(a\) Comparable Replacement Housing \(ix\)](#)

Under special circumstances, modified methods of providing replacement Housing of Last Resort allow for considering replacement housing based on space and physical characteristics that differ from those in the displacement dwelling, including upgraded but smaller replacement housing that is DSS and adequate to accommodate individuals or families displaced from marginal or substandard housing.

In no event will a displaced person be required to permanently move into a dwelling that is not functionally equivalent.

Comparable housing used to calculate the RHP should be physically inspected for DSS standards prior to final approval of the maximum calculated RHP and delivery of the notice of eligibility. This means conducting a walkthrough of the interior and exterior of the dwelling. Reliance on an exterior visual inspection or viewing online listings and photos does not constitute a complete DSS inspection. A diligent effort must be made to physically inspect the interior and exterior of the comparable homes used to compute the RHP; it is not sufficient to call or email a listing agent once on short notice to schedule an interior inspection. A physical inspection not only informs the agency of whether the home is DSS but also assists in determining the functional similarities between the comparable and the subject home.

If the relocation agent is unsuccessful in scheduling an interior inspection of comparables, the agent must clearly document the efforts made in the relocation diary and in the housing comparison worksheet recommendation. Such documentation must include a written explanation in the notice of eligibility notifying the displaced person(s) the home(s) were not inspected and why they were not inspected. If the displaced person(s) purchase or rent one of these comparables, a replacement housing payment cannot be made unless the home is subsequently inspected and determined to be DSS.

Whenever possible, reasonable opportunities for minority persons to relocate to DSS replacement dwellings not located in an area of minority concentration that are within their financial means should be made available. This policy, however, does not require the agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.



[49 CFR 24.2\(a\) "Comparable replacement dwelling"](#)

[Appendix-A "Section 24.2\(a\) Comparable replacement dwelling, \(ii\)"](#)

[Appendix-A "Section 24.2\(a\) Comparable replacement dwelling, \(vii\)"](#)

[Appendix-A "Section 24.2\(a\) Comparable replacement dwelling, \(ix\)"](#)

[49 CFR 24.204\(a\)](#)

[49 CFR 24.205\(c\)](#)

[Appendix-A "Section 24.205\(c\)\(2\)\(ii\)\(C\)"](#)

[Appendix-A "Section 24.205\(c\)\(2\)\(ii\)\(D\)"](#)

[49 CFR 24.403\(a\)\(1\)](#)

[Appendix-A "Section 24.403\(a\)\(1\)"](#)

49 CFR 24.404

Appendix-A “Section 24.404 Replacement housing of last resort”



RCW 8.26.020(7)

RCW 8.26.075(2)



WAC 468-100-002(6)

WAC 468-100-205(4)(b)(iii)



FHWA FAQ #7, #8, #84, #85, & #103

Non-Regulatory Supplement Subpart A #5 & #6

Non-Regulatory Supplement Subpart D #6, #12, & #19

#### 5.4.3.4 Decent, Safe, and Sanitary Dwelling (DSS)

A DSS dwelling must meet the requirements of this chapter or the most stringent of the local housing code or federal regulations found in 49 CFR Part 24.



49 CFR 24.2(a) “Decent, safe, and sanitary (DSS) dwelling”



WAC 468-100-002(8)

DSS requirements include all of the following:

**Local Codes:** A DSS dwelling is one which conforms with all applicable provisions for existing structures that have been established under state or local building, plumbing, electrical, housing, and occupancy codes and similar ordinances or regulations.

**Minimum Standards:** For those cases in which local codes do not exist, do not address, or are less restrictive than the minimum standards listed hereinafter, the following minimum housing/dwelling standards shall apply:

- **Water:** The replacement dwelling, excluding a rental sleeping room, shall have a continuing and adequate supply of potable safe water. If the replacement dwelling has a private well, the agency must obtain documentation indicating when the last water test was done, or if the replacement dwelling has a community well, we must obtain a copy of the Health Department water test results to verify DSS requirements.

- **Kitchen:** When required by local code standards for residential occupancy, excluding a rental sleeping room situation, the replacement dwelling must include a kitchen. Kitchens shall contain:
  - A sink, in good working condition and connected to potable hot and cold water, and an adequate sewer system.
  - Utility service connections, and adequate space for the installation of a stove and refrigerator.
- **Heating System:** The replacement dwelling unit or rental sleeping room must have an adequate heating system in good working order able maintain a minimum temperature of 70 degrees Fahrenheit in the living area.
- **Bathroom Facilities:** The replacement dwelling unit or rental sleeping room shall have a bathroom that is well lit, ventilated, and affords privacy to a person within it; contains a sink, bathtub or stall shower, and a toilet; and is properly connected to an adequate supply of hot and cold running water. All must be in good working order and properly connected to a sewage drainage system. For rental sleeping rooms, the replacement dwelling shall also provide a lockable bathroom door, if such bathroom is separate from the sleeping room.
- **Electric System:** The dwelling unit or rental sleeping room shall have a safe and adequate wiring system for lighting and other electrical services.
- **Structurally Sound:** Each building used for dwelling or rental sleeping room purposes shall be structurally sound, weather-tight, in good repair, and adequately maintained. Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored.
- **Egress:** Each building used for the replacement dwelling or rental sleeping room purposes shall have a safe, unobstructed means of egress leading to a safe open space at ground level. Each replacement dwelling unit in a multi-dwelling building has access either directly or through a common corridor to a means of egress to open space at ground level. In multi-dwelling buildings of three stories or more, the common corridor on each story has at least two means of egress.
- **Accessibility:** If the displaced person has a disability, the replacement dwelling must meet American Disabilities Act (ADA) requirements and be adequate in terms of access and livability with respect to the person's limitations. Accessibility accommodations must be supported and will be approved on a case-by-case basis. Reasonable and necessary costs of approved ADA items are in addition to the replacement housing payment and move costs and considered 100 percent reimbursable.
- **Adequate in Size:** The selected comparable and replacement dwelling must be adequate in size to accommodate the number of family members occupying the dwelling. The number of persons occupying each habitable room used for sleeping purposes must not exceed that permitted by the most stringent of the local housing code, federal agency regulations, or this chapter. In addition, the agency must follow the requirements for separate bedrooms for children based on gender included in local housing codes.

In the absence of local housing codes, the agency adheres to the following standards:

- The replacement dwelling should have the same number of bedrooms as the acquired dwelling unless more are needed to meet DSS standards.
- Except for spouses and couples living together by mutual consent, persons of different gender shall not be required to occupy the same bedroom.
- Children of different genders under the age of ten (10) may occupy the same bedroom.
- One child under the age of four (4) may occupy the parent's bedroom.

**Exceptions:** The Relocation Program Manager, or Local Programs ROW Manager in the case of local agency projects, may grant exceptions to DSS standards when requested in writing by the displaced person. Such exceptions are limited to items and circumstances where adhering to the standards is beyond the reasonable control of the displaced person. Approved exceptions do not affect the computation of the RHP.



[49 CFR 24.2\(a\) "Decent, safe, and sanitary \(DSS\) dwelling"](#)

[Appendix-A "Section 24.2\(a\) Decent, safe, and sanitary, \(i\)\(A\)"](#)

[Appendix-A "Section 24.2\(a\) Decent, safe, and sanitary, \(v\)"](#)

[Appendix-A "Section 24.2\(a\) DSS—Persons with a disability, \(vii\)"](#)



[WAC 468-100-002\(8\)](#)



[FHWA FAQ #9, #84, #85, & #87](#)

[Non-Regulatory Supplement Subpart A #5 & #8](#)

#### 5.4.3.4.1 DSS Inspections

All replacement dwellings require a DSS inspection before the agency pays the RHP to ensure that, to the best of the relocation agent's knowledge, the replacement dwelling meets the minimum standards for qualified replacement housing. This inspection must be performed even if the displaced person is only claiming incidental expenses. The DSS inspection is a brief physical inspection to ensure DSS requirements are met; it is not the same as a full home inspection that a professional home inspector would complete.

The purpose of the DSS inspection on the replacement dwelling is to determine eligibility for the RHP and is not intended to be, nor constitutes, warrants, or guarantees the replacement dwelling is free from defects.

See Section 5.4.3.3 for additional information regarding DSS Inspection requirements before presenting the comparable replacement dwelling and calculating the maximum RHP.



[49 CFR 24.403\(b\)](#)



[WAC 468-100-403\(2\)](#)

### 5.4.3.5 90-day Owner-Occupant Replacement Housing Payments

A lawfully present 90-day owner-occupant is eligible for a Replacement Housing Payment (RHP) that consists of the following items.

- **Price differential** if they decide to purchase a replacement dwelling, or a **rent supplement** if they elect to become a tenant.
- **Mortgage Interest Differential Payment (MIDP).**
- **Incidental Purchase Expenses.**

RHP payments are not to exceed a combined total of \$41,200. If the amount exceeds this maximum, Housing of Last Resort is required.

**Eligibility:** The displaced owner-occupant is eligible for a RHP when they occupy the displacement dwelling as their primary residence for no less than 90 days immediately prior to the initiation of negotiations and purchase and occupy a DSS replacement dwelling within 12 months of the date they vacate the displacement dwelling, or the date they receive final payment for the displacement dwelling in the case of condemnation, whichever is later.

The replacement dwelling used in computing the actual RHP must be comparable to the dwelling acquired by the agency. For example, if an agency acquires a single-family dwelling, and the owner-occupant purchases a duplex as the replacement dwelling, the agency adjusts the RHP computation to account for the multi-family unit.

Occupants that are not lawfully present in the United States are not counted as part of the family in the RHP calculation. *Example: a family of five, one of whom is a person not lawfully present in the U.S., would be counted as a family of four. The comparable replacement dwelling for the family would reflect the makeup of the remaining four persons, and the RHP would be computed accordingly.*



[49 CFR 24.401\(b\)](#)

[49 CFR 24.208\(c\)](#)

[Appendix-A-to-Part-24 "Section 24.208\(c\) Aliens not lawfully present in the United States](#)



[RCW 8.26.045\(1\)\(a\)](#)



[WAC 468-100-401\(2\)](#)

[WAC 468-100-208\(3\)](#)



[FHWA FAQ #88](#)

[Non-Regulatory Supplement Subpart E #13](#)

A replacement dwelling may be considered purchased by the displaced owner in several circumstances, including but not limited to acquiring a new replacement dwelling, or relocating to and/or rehabilitating a replacement dwelling they previously owned.

[49 CFR 24.401\(a\)](#)[49 CFR 24.401\(c\)\(2\)](#)[Appendix-A “Section 24.401\(c\)\(2\)\(iii\) Price differential”](#)[49 CFR 24.403\(c\)](#)[WAC 468-100-401\(1\)](#)[WAC 468-100-401\(3\)\(b\)](#)[WAC 468-100-403\(3\)](#)[FHWA FAQ #91](#)[Non-Regulatory Supplement Subpart E #16](#)

#### 5.4.3.5.1 Price Differential

The price differential payment is determined by the comparable dwelling selected by the agency and sets the upper limit of the reimbursement for replacement housing.

**Calculation:** The price differential is the difference between the acquisition payment of the displacement dwelling and the actual costs the owner-occupant is required to pay for a DSS replacement dwelling or the amount the agency determines is necessary to purchase a comparable DSS replacement dwelling, whichever is less.

Example calculation:

Lesser of actual or agency determined replacement dwelling cost:	\$475,000.00
Final acquisition payment for the subject property:	\$455,000.00
Price Differential Payment:	\$ 20,000.00

If the final acquisition payment is greater than the lesser of actual or agency determined replacement dwelling cost the owner does not qualify for a price differential payment.

[49 CFR 24.401\(c\)](#)[WAC 468-100-401\(3\)](#)

If the replacement dwelling selected by the displaced person does not meet DSS criteria or lacks “major exterior attributes,” (e.g., garage, an outbuilding, or a swimming pool) that were present in the displacement dwelling, the cost to correct such deficiencies or to add such attributes can be reimbursed with remaining Price Differential funds as long as they don’t exceed the Price Differential amount based on the comparable replacement property. DSS deficiencies must be corrected prior to release of the RHP and additions must be completed within the statutory 12-month period.

**Note:** Improvements to the replacement property beyond those reasonable and necessary to replace major exterior attributes are not considered in qualifying for the RHP.

**CFR →** [49 CFR 24.401\(c\)\(2\)\(ii\)](#)

[49 CFR 24.403\(a\)\(2\)](#)

[Appendix-A “Section 24.403\(a\)\(2\) Carve Out of a Major Exterior Attribute”](#)

**WAC →** [WAC 468-100-401\(3\)\(b\)\(ii\)](#)

[WAC 468-100-403\(1\)\(b\)](#)

**FHWA→** [FHWA FAQ #108](#)

[Non-Regulatory Supplement Subpart E #13](#)

A displaced owner-occupant may contract for the construction of a new DSS replacement dwelling on a site which the displaced person owns or acquires. Construction and occupancy must be completed within the statutory 12-month period to qualify for the RHP. At its sole discretion, the agency may grant an extension to this 12-month period for “good cause.”

**CFR →** [49 CFR 24.401\(a\)\(2\)](#)

[49 CFR 24.403\(c\)\(4\)](#)

[49 CFR 24.403\(c\)\(5\)](#)

**WAC →** [WAC 468-100-401\(c\)](#)

[WAC 468-100-403\(3\)\(d\)](#)

[WAC 468-100-403\(3\)\(e\)](#)

**FHWA→** [Non-Regulatory Supplement Subpart E #3](#)

If the displaced owner-occupant elects to construct a replacement dwelling, the base cost of the newly constructed replacement dwelling can be determined by adding the actual cost to construct the dwelling and the value of the land or obtaining an appraisal.

If the displaced owner-occupant elects to retain ownership of, or obtains salvage rights to, the dwelling at the displacement site, and moves it from the displacement site to a replacement site and reoccupies it, a market analysis or appraisal value of the home on the new site is required to determine the final RHP. See Section 5.4.3.9 for additional rules governing replacement housing payments.

**CFR →** [49 CFR 24.401\(c\)\(2\)\(iii\)](#)

[Appendix-A “Section 24.401\(c\)\(2\)\(iii\) Price differential”](#)

**WAC →** [WAC 468-100-401\(3\)\(b\)\(iii\)](#)

#### 5.4.3.5.2 Mortgage Interest Differential Payment (MIDP)

A MIDP compensates the displaced owner-occupant for the loss of favorable financing on their existing mortgage when financing their replacement dwelling. To be eligible for a MIDP the owner-occupant must have a 180-day bona fide mortgage(s) on the displacement dwelling and place a new mortgage(s) on the replacement dwelling. Increased mortgage interest costs are based only on bona fide mortgages that are valid liens, (e.g., equity line of credit) on the displacement dwelling for at least 180-days prior to the initiation of negotiations.

The MIDP calculation is the amount that will reduce the new principal mortgage balance to a sum that could be amortized over the remaining term of the original mortgage and the new mortgage interest rate to allow for the same monthly principal and interest payment as the displacement dwelling. The following considerations apply when computing the MIDP:

- The payment is based on the unpaid mortgage balance(s) on the displacement dwelling. However, in the event the displaced owner-occupant obtains a smaller mortgage than the mortgage balance(s) used to compute the MIDP, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance is that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
- The payment is based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
- The interest rate on the new mortgage used in determining the amount of the payment must not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
- The agency will pay purchaser's points and loan origination or assumption fees, but not seller's points, to the extent:
  - They are not paid as incidental expenses.
  - They do not exceed rates normal to similar real estate transactions in the area.
  - The agency determines them to be necessary.
  - The agency computes such points and fees based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance.

The displaced owner-occupant is advised in writing of the approximate amount of this payment, the factors used to calculate the payment, and the conditions that must be met to receive the payment as soon as the facts relative to the owner-occupant's current mortgage(s) are known. The MIDP can have a significant impact on an owner's ability to purchase a replacement dwelling, as well as the price range financially available to the owner. The MIDP is part of the RHP and is factored into whether Housing of Last Resort is applicable.

The agency makes the payment available at or near the time of closing on the replacement dwelling in order to secure the new mortgage.

The FHWA has an online tool to calculate increased mortgage interest costs for fixed, and interest only loans at [https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/relocation/midpcalcs/](https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/midpcalcs/).



[https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/relocation/midpcalcs/](https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/midpcalcs/).



[49 CFR 24.401\(d\)](#)

[Appendix-A-to-Part-24 "Section 24.401\(d\) Increased mortgage interest costs"](#)



[RCW 8.26.045\(1\)\(b\)](#)



[WAC 468-100-401\(4\)](#)



[FHWA FAQ #92, #94, #94.1, #94.2, #95, & #96](#)

[Non-Regulatory Supplement Subpart E #4, #5, #6, & #7](#)

### 5.4.3.5.3 Reverse Mortgages

The payment for replacing a reverse mortgage (also known as a Home Equity Conversion Mortgage (HECM)) is the difference between the existing reverse mortgage balance and the minimum dollar amount necessary to qualify for a replacement reverse mortgage that provides the same or similar tenure or terms, line of credit, or lump-sum disbursement as the existing reverse mortgage. In addition, payments include other debt service costs, if not paid as incidental costs, and are based only on reverse mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.

The following considerations apply when computing the reverse mortgage payment:

- In the event the displaced owner-occupant obtains a reverse mortgage with a smaller principal balance than the reverse mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. The reverse mortgage balance is the balance that existed 180 days prior to the initiation of negotiations or the reverse mortgage balance on the date of acquisition, whichever is less.
- The interest rate on the new reverse mortgage used in determining the amount of eligibility cannot exceed the prevailing rate for reverse mortgages currently charged by mortgage lending institutions for owners with similar amounts of equity in their dwellings in the area in which the replacement dwelling is located.
- Purchaser's points and loan origination will be paid, but not seller's points, to the extent:
  - They are not paid as incidental expenses.
  - They do not exceed rates normal to similar real estate transactions in the area.
  - The agency determines them to be necessary.
  - The agency computes such points and fees based on the reverse mortgage balance on the displacement dwelling plus any amount necessary to purchase the new reverse mortgage.

The agency advises the displaced owner-occupant in writing of the approximate amount of this payment, the factors used to calculate the payment, and the conditions that must be met to receive the payment as soon as the facts relative to the owner-occupant's current reverse mortgage(s) are known. The reverse mortgage is part of the RHP and is factored into whether Housing of Last Resort is applicable.

The agency makes the payment available at or near the time of closing on the replacement dwelling in order to purchase the new reverse mortgage.



[49 CFR 24.401\(e\)](#)

[Appendix-A "Section 24.401\(e\) Reverse Mortgage"](#)



[RCW 8.26.045\(1\)\(b\)](#)



[WAC 468-100-401\(4\)](#)



[FHWA FAQ #93](#)

#### 5.4.3.5.4 Incidental Purchase Expenses

The amount of the incidental purchase expense payment is the amount necessary to reimburse the displaced owner-occupant for the necessary and reasonable costs actually incurred incidental to the purchase of the replacement dwelling or a comparable dwelling, whichever is less. These costs are customarily paid by the buyer.

Eligible expenses are solely the incidental expenses incurred in connection with a displaced owner-occupant's acquisition of a replacement dwelling. Some of the below expenses may not be 100% reimbursable if the displaced owner-occupant purchases a home that is more expensive than the comparable dwelling used to calculate the RHP. Reoccurring expenses typically paid at closing are not incidental to the purchase of the home, and therefore not eligible for reimbursement.

Eligible expenses include the following:

- Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
- Lender, FHA, and/or VA application fees – limited to amount necessary to purchase the comparable used to establish the Price Differential.
- Appraisal fees.
- Loan origination or assumption fees that do not represent prepaid interest.
- Professional home inspection, certification of structural soundness, pest and termite inspection.
- Credit report.
- Owner's and mortgagee's evidence of title (e.g., title insurance) not to exceed the costs for a comparable replacement dwelling.
- Escrow agent's fee, not to exceed the costs for a comparable replacement dwelling.
- State revenue or document stamps, sales, recording fees, or transfer taxes, not to exceed the costs for a comparable replacement dwelling.
- Other costs that the agency determines to be incidental to the purchase.

Incidental purchase expenses do not include:

- Prepaid expenses, such as purchaser's advance payment into a reserve account for payment of future property taxes or insurance.
- Fees, costs, charges, or expenses determined to be a part of the debt service or finance charge payable as part of the mortgage interest differential payment.
- HOA dues or any other reoccurring expenses.



[49 CFR 24.401\(f\)](#)



[RCW 8.26.045\(1\)\(c\)](#)



[WAC 468-100-401\(5\)](#)



[FHWA FAQ #97, #98, & #99](#)

[Non-Regulatory Supplement Subpart E #1, #4, & #8](#)

#### 5.4.3.5.5 Rent Supplement for an Owner-Occupant

A displaced owner-occupant who is eligible for a RHP but who elects to rent a replacement dwelling is eligible for a rent supplement payment if they rent and occupy a DSS replacement dwelling within one year of the date they vacate the subject home or the date they receive final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited into the court, whichever is later.

A price differential payment must be calculated before a rent supplement can be calculated for an owner-occupant. Under no circumstances can a rent supplement exceed the maximum price differential payment the displaced person would have received as an owner-occupant who elected to purchase and occupy a comparable replacement dwelling.

When computing the rent supplement, the base rental rate of the displacement dwelling is the market rent indicated in the appraisal, plus utilities.

The rent supplement for an owner-occupant is computed in the same manner as for a 90-day tenant who rents, except the \$9,570 limit and down payment assistance does not apply.



[49 CFR 24.401\(g\)](#)



[WAC 468-100-401\(6\)](#)



[FHWA FAQ #100](#)

#### 5.4.3.6 90-day Tenant Replacement Housing Payments

The displaced tenant is eligible for relocation services if they lawfully occupy the displacement dwelling as their primary residence for at least 90-days immediately prior to the initiation of negotiation and rent or purchase and occupy a DSS dwelling within one year from the date they move from the displacement dwelling.

A 90-day tenant is eligible for a rent supplement if they remain a tenant, or down payment assistance if they purchase and occupy a replacement dwelling as their primary residence. RHPs are not to exceed \$9,570. If the amount exceeds this maximum, Housing of Last Resort is required.



[49 CFR 24.402](#)



[RCW 8.26.055](#)



[WAC 468-100-402](#)

The rent supplement is the amount the agency determines necessary to compensate an eligible displaced tenant for the increased cost of renting a comparable replacement dwelling. Rent supplement payments are calculated by multiplying the base monthly rental payment differential by 42 months. The cost of utilities is included in the base monthly rental amount and the calculation. Utilities include electricity, gas, other heating and cooking fuels, water, and sewer. Garbage, cable, and internet are not considered utilities for the purpose of calculating the rent supplement and are not included in the rent supplement computation.

Example calculation:

Displacement dwelling base monthly rent and utilities	\$2,100/month
Lesser of actual replacement or WSDOT's comparable dwelling rent and utilities	\$2,200/month
Rent differential	\$100/month
\$100 differential X 42 months =	<b>\$4,200 Rent Supplement</b>

The base monthly rental amount for the displacement dwelling is determined from the lesser of:

- The agency's determination of the actual monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement. For a tenant who pays little or no rent for the displacement dwelling, WSDOT uses fair market rent as indicated in the appraisal plus utilities, unless its use would result in a hardship because of the person's income or other circumstances; or
- Thirty (30) percent of the displaced family's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. Current US HUD limits can be found here <https://www.huduser.gov/portal/datasets/il.html>. To qualify as low income, the displaced tenant must furnish documentation (e.g., pay stubs, income tax returns, bank statements) of income to support monthly income figures. Household income does not include income received or earned by dependent children under 18, or full-time students who are students for at least five months of the year and are under the age of 24.

**NOTE:** Social Security is a government program that is considered income by federal law, therefore, social security is considered family income even if the benefits are for dependent children. Food stamps are not considered income.

- For persons refusing to provide appropriate evidence of income the agency establishes the base monthly rent using their actual monthly cost for rent and utilities or fair market rent for those who pay little or no rent, and utilities.
- If a person who is a member of a family being displaced is not eligible for and does not receive Uniform Act benefits because he or she is not lawfully in the United States, that person's income shall not be excluded from the computation of family income. To exclude the ineligible person's income would result in a windfall by providing a higher relocation payment. The person's income is counted unless the agency is certain that the ineligible person will not continue to reside with the family.
- Each 90-day tenant file should include a copy of the HUD Low Income Limits documentation for the area of the project. Additionally, each diary should include a discussion explaining whether the family qualifies as low income or not, and the advisory services provided by the agent to explain this benefit.
- Occupants that are not lawfully present in the United States are not counted as part of the family in the rent supplement calculation. See Section 5.4.3.5 for additional information on how to calculate the RHP for this situation.
- The total of the amounts designated for shelter and utilities if the displaced person(s) is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

**CFR →** [49 CFR 24.2\(a\) "Household income"](#)

[Appendix-A "Section 24.2\(a\) Household income \(exclusions\)"](#)

[Appendix A "Section 24.402\(b\)\(2\) "Low-income calculation example"](#)

[Appendix-A-to "Section 24.208\(c\) Aliens not lawfully present in the United States—computing relocation payments if some members of a displaced family are present lawfully but others are present unlawfully"](#)

**RCW →** [RCW 8.26.055\(1\)](#)

**WAC →** [WAC 468-100-002\(14\)](#)

**FHWA →** [FHWA FAQ #56 & #105](#)

[Non-Regulatory Supplement Subpart E #9](#)

#### 5.4.3.6.1 Tenant Application Fees

A displaced tenant is entitled to reasonable reimbursement, as determined by the agency, for actual expenses not to exceed \$1,000 incurred for rental application fees and credit reports required to lease a replacement dwelling. These eligible costs are categorized as moving expenses and should be coded as such on the relocation voucher. Reimbursement for these costs are only for expenses actually incurred and must be adequately documented with proof of payment to support the expense. The agent does not need to request and should not keep a copy of a credit report in the file. See Section 5.4.2.6 for information on claiming a move entitlement.

**CFR →** [49 CFR 24.301\(g\)\(7\)](#)

#### 5.4.3.6.2 Down Payment Assistance

A lawfully present 90-day displaced tenant who elects to purchase a replacement dwelling may receive the full amount of their calculated rent supplement, or \$9,570, whichever is greater, to make a down payment toward the purchase of a DSS replacement dwelling.

This amount must be applied in full to the purchase price of the replacement dwelling and related incidental purchase expenses. It may **not** be applied to prepaid costs, such as taxes and insurance. See Section 5.4.3.5.4 for eligible incidental purchase expenses.

**CFR →** [49 CFR 24.402\(c\)](#)

**RCW →** [RCW 8.26.055\(2\)](#)

**WAC →** [WAC 468-100-402\(3\)](#)

**FHWA →** [FHWA FAQ #97, #104](#)

[Non-Regulatory Supplement Subpart E #8 & #11](#)

#### 5.4.3.7 Less-Than-90-day Occupant

Occupants who have been in occupancy less than 90-days before the initiation of negotiations are still considered displaced persons. Displaced persons failing to meet the length of occupancy requirements continue to be eligible for relocation entitlements under Housing of Last Resort (described in the next section). In such case, they are eligible for either a **Rent Supplement** or **Down Payment Assistance**. See calculations for these entitlement in previous section. A less-than-90-day owner is **not** eligible for a price differential.

**CFR →** [49 CFR 24.403\(d\)](#)

[49 CFR 24.404\(c\)\(3\)](#)

**RCW →** [RCW 8.26.055\(2\)](#)

**WAC →** [WAC 468-100-403\(4\)](#)

[WAC 468-100-404\(3\)\(c\)](#)

**FHWA →** [FHWA FAQ #86 & #104.1](#)

[Non-Regulatory Supplement Subpart E #17](#)

#### 5.4.3.8 Housing of Last Resort

Alternative assistance under Housing of Last Resort must be offered when a program or project cannot proceed on a timely basis because a comparable replacement dwelling is not available within the monetary limits as provided for with the RHP. Any decision to provide last resort housing assistance must be adequately justified.

The following situations may arise that require the application of this section:

- The RHP will exceed the statutory monetary limits set forth as follows:
  - \$41,200 for 90-day owner occupants (the sum of the price differential, MIDP, and incidental expenses)
  - \$9,570 for 90-day tenant occupants (rent supplement)
- There is little, if any, comparable housing available for sale or rent in the entire project area.
- Comparable housing is not available within the financial means of a less than 90-day occupant.
- Under special circumstances modified methods of providing housing of last resort can be applied based on space and physical characteristics different from those in the displacement dwelling, including upgraded, but smaller replacement housing that is DSS and adequate in size to accommodate individuals or families displaced from marginal or substandard housing.

The method selected for providing Housing of Last Resort assistance should be cost effective, considering all elements, which contribute to the total program or project costs. As an example, consider the increased project delay expenses versus waiting for less expensive comparable replacement housing to become available.

There are several methods of providing comparable replacement housing under Housing of Last Resort, including but not limited to:

- Super Payments
  - For a 90-day owner-occupant whose total calculated RHP exceeds \$41,200, the agency can pay the entire calculated RHP towards the purchase of the replacement dwelling.
  - For a 90-day occupant or less than 90-day occupant who's calculated RHP exceeds \$9,570, the agency can pay the entire calculated RHP toward the increased rental and utility costs, or down payment assistance, of a comparable replacement dwelling.
- Rehabilitation or other modifications to an existing dwelling that are necessary to enable the dwelling to meet minimum DSS standards and/or to provide additional bedrooms and other living area.
- Purchase of land and improvements.
- Construction of new dwellings.
- The removal of barriers for persons with disabilities.

The agency may approve other methods of providing Housing of Last Resort.



[49 CFR 24.404](#)

[Appendix-A "Section 24.404 Replacement housing of last resort"](#)

[Appendix-A "Section 24.404\(b\) Basic rights of persons to be displaced"](#)

[Appendix-A "Section 24.404\(c\) Methods of providing comparable replacement housing"](#)



[RCW 8.26.075\(1\)](#)



[WAC 468-100-404](#)

[FHWA FAQ #111 - #114](#)[Non-Regulatory Supplement Subpart E #17 - #19](#)

### 5.4.3.9 Additional Rules Governing Replacement Housing Payments

**Three comparable method** – The RHP is determined by analyzing the asking prices of at least three comparables via a correlated conclusion, based on the most comparable available dwelling that is as good as or better than the dwelling to be acquired. Less than three comparable homes may be used for this determination when sufficient comparables are not available on the market.

[49 CFR 24.403\(a\)\(1\)](#)[Appendix A – “Section 24.403\(a\)\(1\) Determining cost of comparable replacement dwelling”](#)[WAC 468-100-403\(1\)\(a\)](#)

**Carve out** – This term is commonly used to describe the method for determining what portion of the property is to be used in computing a price differential payment for a 90-day owner-occupant. The purpose of a carve out is to “level the playing field” for a displaced person seeking a comparable replacement dwelling. It considers a displacement property with non-typical characteristics for the local market such as either larger than typical site for residential purposes, when property is occupied by or used for non-residential purposes, or when the site has a major exterior attribute (barn, swimming pool, shop).

To calculate the RHP of a carve out, the contributory value of the item being carved out is subtracted from the acquisition price of the displacement dwelling. The displaced person will still receive just compensation for the carved-out item and may decide to use that compensation to replace the item being carved out. The contributory value of the item being “carved out” must be taken from the valuation documents (appraisal and/or appraisal review documents) used to establish just compensation.

The agency identifies if a carve out is warranted based on the following:

- **Major exterior attributes or larger than typical lot** – A carve out is necessary when there are no comparable dwellings on the market for sale that have similar exterior attributes, such as a garage, an outbuilding, a swimming pool, or land in excess of that typical in size for the neighborhood. When searching for comparable homes for sale, the dwelling is the primary focus of the search, not the exterior attribute or excess land.

It is not reasonable to use a “super comparable” home that is excessively superior to avoid doing a carve out. For example, if the displacement home has an inground pool, and there is only one home for sale in the area with an inground pool but is otherwise dissimilar from the displacement home, the agency cannot choose that home as a comparable simply because it has a pool. The dwelling must still need to meet the definition of a “Comparable Replacement Dwelling” as defined in Section 5.4.3.3.

- **Mixed use property or multifamily property**– Any portion of the displacement property that is used for non-residential purposes must be carved out, including multifamily homes rented

to other individuals. Only the portion of the property used by a 90-day owner for their residential purposes can be considered as the acquisition cost when computing the replacement housing payment. A carve out is necessary if the displacement dwelling is part of a property that contains another residential rental dwelling unit, and/or is part of a property that is partially used for non-residential purposes.

- **Remainder offer** – There are different requirements for computing the RHP of a partial acquisition with uneconomic remnants and remnants not identified as uneconomic.
  - *Uneconomic remnants* - The agency is required to offer to purchase uneconomic remnants. The value of the remnant cannot be used in computing the RHP if the owner does not elect to sell it to the agency. However, if the owner does elect to sell the uneconomic remnant to the agency, its value must be included when computing the RHP.
  - *Economic remnant* – This term is intended to describe remainders with an economic value to the owner. WSDOT does not have the authority to purchase a remnant with economic value to the owner, and the value of the remainder may not be used in the RHP computation.



[49 CFR 24.403\(a\)\(2\)](#)

[Appendix-A “Section 24.403\(a\)\(2\) Carve Out of a Major Exterior Attribute”](#)

[49 CFR 24.403\(a\)\(3\)](#)

[Appendix-A “Section 24.403\(a\)\(3\) Additional rules governing replacement housing payments”](#)

[49 CFR 24.403\(a\)\(7\)](#)



[WAC 468-100-403\(1\)\(b\)](#)

[WAC 468-100-403\(1\)\(c\)](#)

[WAC 468-100-403\(1\)\(g\)](#)



[FHWA FAQ's #108 & #108.1](#)

[Non-Regulatory Supplement Subpart E #13 & #14](#)

**Multiple Occupants** – In general, all occupants of a dwelling unit should be considered one family for the purposes of payment calculations. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments. The agency is responsible for determining the number of households in a dwelling based on the use of the dwelling, the relationship of the occupants, and any other information obtained.



[49 CFR 24.403\(a\)\(5\)](#)



[WAC 468-100-403\(1\)\(e\)](#)



[FHWA FAQ's #109](#)

[Non-Regulatory Supplement Subpart E #15](#)

**Computing RHP when highest and best use is not residential** – In computing RHP for an owner-occupant whose residential property has a different highest and best use identified in the appraisal, the acquisition cost of the displacement dwelling used in the computation is the value of the dwelling plus the value of that portion of the acquired land representing a typical residential lot for the area. The dwelling and land values are obtained from the agency's appraisal.

**Replacement dwelling differs from displacement dwelling** – The actual RHP is based on dwellings similar to the displacement dwelling. If the displaced person chooses to purchase a replacement dwelling that is not similar to the displacement dwelling, the RHP may be adjusted accordingly. For example, if a 90-day owner-occupant is displaced from a single-family dwelling and purchases a duplex or mixed-use replacement property, the RHP is based on the portion of the replacement property to be used for the displaced person's residential dwelling.

**Conversion of payment** - A displaced person who initially rents a replacement dwelling and receives a Rental Assistance payment is eligible to receive a payment for a Price Differential or Down Payment Assistance if they meet the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any disbursed portion of the Rental Assistance payment is deducted from the computed Price Differential or Down Payment Assistance payment.



[49 CFR 24.403\(e\)](#)



[WAC 468-100-403\(5\)](#)

**Payment after death** - The RHP is personal to the displaced person; the agency does not pay the undisbursed portion of any such payment to the heirs or assigned beneficiaries upon their death except under one or more of the following:

- The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
- Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.
- Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.



[49 CFR 24.403\(f\)](#)



[WAC 468-100-403\(6\)](#)

**Condemnation** - After a parcel is turned in for condemnation all contact for relocation efforts should continue with the displacee unless directed to cease by either the attorney or the displacee. All appropriate contact with tenants continues.

**Possession and Use Agreements** - During the course of negotiations, a property owner may sign a possession and use (P&U) agreement. See Chapter 4, Section 4.7.2 for more information. Although full legal ownership of the parcel is still held by the property owner until final negotiation or court settlement, a provisional replacement housing payment can be made. If this option is selected, the relocation agent should work closely with the agency's legal staff to ensure all necessary deductions are made to the condemnation settlement for any refund of the advance Replacement Housing Payment (RHP) due to the agency.

**Post-Judgement Price Differential** - A price differential previously calculated and delivered to the displacee by written notice may have to be adjusted if the verdict or judgment differs from the determination of value used as a base for the prior computation of the price differential. Such judgment will be treated as an administrative settlement for purposes of calculating the actual price differential to be paid to the displacee.



[49 CFR 24.3](#)



[WAC 468-100-003](#)



[Non-Regulatory Supplement Subpart A #13](#)

### 5.4.3.10 Claiming Residential Relocation Entitlements

#### 5.4.3.10.1 Moving Claims

Claiming moving entitlements information can be found in Section 5.4.2.6.

#### 5.4.3.10.2 Replacement Housing Payment (RHP) Claims

A 90-day owner must purchase or rent and occupy a DSS replacement dwelling within one year from the date the displaced person receives final payment for the displacement dwelling, the date the full amount of the estimate of just compensation is deposited in court (in cases of condemnation), or the date the displaced person moves from the displacement dwelling, whichever is later.

There are several ways in which a displaced person is considered to have met the requirement to purchase a replacement dwelling for their primary home, including but not limited to:

- Purchasing a dwelling.
- Purchasing and rehabilitating a substandard dwelling.
- Relocating a dwelling which he or she owns or purchases.
- Constructing a dwelling on a site they own or purchase.
- Contracting for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

- Relocating to a dwelling they previously purchased, the valuation of which can be based on the current fair market value.



[49 CFR 24.403\(c\)](#)



[WAC 468-100-403\(3\)](#)



[FHWA FAQ's #110](#)

[Non-Regulatory Supplement Subpart E #10](#)

A 90-day tenant or less-than-90-day occupant must purchase or rent and occupy DSS replacement dwelling within one year from the date the displaced person moves from the displacement dwelling.

All RHP claims must be submitted to the agency by the claim the expiration date and meet the occupancy requirements above. The agency must provide displaced persons with reasonable assistance necessary to complete and file any required claim for payment.

As a general rule, relocation payments, including RHP, are reimbursements paid after the expenses have been incurred. Advanced RHP payments may be necessary when the displaced person is entitled to the RHP but does not have sufficient funds to acquire or gain right of entry to the replacement dwelling. Down payment and rent supplement payment advances are allowed if paying the down payment or rental deposit in advance is a requirement of the contract. Proper safeguards for RHP payment could include; reviewing all terms of the purchases and sale or rental agreement, depositing RHP funds directly into escrow with detailed escrow instruction on how the funds must applied at closing or paying the RHP per the details in the written signed contract on behalf of the displaced person directly to a third party at the displaced person's written request.

In all situations, proper documentation must be submitted with the claim and the agency should review and apply proper safeguards when advancing payments. Agencies must review, respond to, and reimburse submitted claims in an expeditious manner. See Section 5.1.1.1 for more information policy regarding claim expiration date, timely payments, and advanced payments.

If the displaced person has not claimed relocation entitlements promptly, the agency advises the displaced person of the final claim expiration date.



[49 CFR 24.207](#)



[RCW 8.26.045\(2\)](#)



[WAC 468-100-207](#)

## 5.4.4 Residential Mobile Homes Entitlements

A mobile home includes manufactured homes, recreational vehicles (RV), or other personal property used as a primary residential dwelling (e.g., boat, tiny home, yurt, etc.).

This section outlines a mobile home occupant's eligibility for RHP and moving entitlements, how entitlements are calculated, and may be claimed. A person displaced from a mobile home and/or mobile home site is entitled to a moving expense payment and a RHP to the same extent and under the same requirements as persons displaced from conventional dwellings.



[49 CFR 24.2\(a\) "Mobile home \(manufactured home\)"](#)

[Appendix-A "Section 24.2\(a\) Mobile home"](#)

[49 CFR 24.501](#)



[WAC 468-100-002\(17\)](#)

[WAC 468-100-501](#)

### 5.4.4.1 Eligibility

All lawfully present occupants of mobile homes being displaced are eligible for advisory services, the costs to move their personal property located inside the mobile home, and outside on the site. 90-day occupants of mobile homes used as a primary dwelling who meet the other basic eligibility requirements for a residential displaced person may be eligible for a RHP calculated based on the following situations:

- A displaced person **owns the mobile home** and **owns the site** on which the mobile home is located.
- A displaced person **owns the mobile home** and **rents the site** on which the mobile home is located.
- A displaced person **rents the mobile home** and **owns the site** on which the mobile home is located.
- A displaced person **rents the mobile home**, which may or may not include **rent of the site** on which the mobile home is located.

### 5.4.4.2 Mobile Home Situations

#### 5.4.4.2.1 Personal Property Mobile Homes

The relocation entitlement for mobile homes considered personal property is the actual and reasonable cost to move such personal property when it is economically feasible.

In cases where a personal property mobile home **can be moved** to a replacement location:

- The mobile home will not be acquired by the agency.
- The RHP for the mobile home will not be calculated for an owner-occupant. However, a RHP for the site may be computed.
- The owner of the mobile home may be reimbursed for the actual and reasonable costs, which include cost of moving the mobile home from the displacement site to an acceptable

replacement location, cost for making that mobile home meet DSS standards, and per diem costs while the mobile home is being moved and reconnected. See Section 5.4.4.4 for more details.

There are cases in which a personal property mobile home **cannot be moved** to a replacement location, such as the following:

- If the mobile home being displaced does not meet entrance requirements for mobile home parks in the area, a replacement mobile home that does meet park requirements may be made available.
- If the mobile home is determined to be incapable of being moved without complete or substantial irreparable damage, a replacement mobile home may be made available.
- If a mobile home cannot be relocated because there is no available comparable replacement site, a replacement mobile home for sale already located on a site may be made available.
- If the agency authorizes the purchase of the mobile home because it has been determined the mobile home is not and cannot be made DSS and/or determined not to be cost effective to move the mobile home, a replacement mobile home may be made available.

In the above cases if the purchase of the mobile home is authorized, the mobile home will be acquired through the acquisition process according to procedures set forth in Chapter 4.

**NOTE:** Any personal property taxes will be handled by Acquisition and the mobile home cannot be salvaged back to the owner.

The RHP will be calculated depending on occupancy status (owner/tenant) of the unit. This could include both a price differential payment and a rent supplement payment.



[49 CFR 24.502\(d\)](#)



[WAC 468-100-502\(4\)](#)

[WAC 468-100-504](#)



[FHWA FAQ's #116](#)

#### 5.4.4.2.2 Real Estate Mobile Homes

The relocation entitlement for mobile homes considered real estate includes the following considerations:

- Mobile homes considered real estate will be acquired according to the procedures set forth in Chapter 4.
- No payment will be made to the mobile homeowner for moving it to a replacement site.
- If the owner retains salvage of the mobile home, no moving entitlement will be paid. Salvage of the mobile home must be consistent with the ROW Procedures Manual.
- The RHP depends on the occupancy status of the mobile home (e.g., owner or tenant) and site.



[49 CFR 24.301\(a\)\(2\)](#)

[49 CFR 24.502](#)

[49 CFR 24.503](#)



[WAC 468-100-301\(1\)\(b\)](#)

[WAC 468-100-502](#)

[WAC 468-100-503](#)

### 5.4.4.3 Calculations

All RHP calculations for mobile homes are prepared in the same manner as for residential displacements described in Section 5.4.3.

The types of RHPs for the different combinations of ownership and occupancy of mobile homes acquired as either real property or personal property are as follows:

- If the displaced person **owns both the mobile home and the site**, separate price differentials for the mobile home and the site or a single price differential using both the mobile home and site can be calculated. The latter is a more common approach.
- If the displaced person **owns the mobile home but rents the site**, a price differential is calculated for the mobile home and a rent supplement for the site. For a 90-day owner-occupant of a rented mobile home site, their rent supplement may be used to rent a replacement site; applied to the purchase price of a replacement site; or applied, with any RHP attributable to the mobile home, to the purchase of a replacement mobile home or a conventional DSS dwelling.

If a comparable replacement mobile home site is not available, the price differential is computed based on the reasonable cost of a conventional comparable replacement dwelling.

- If the displaced person **rents the mobile home and owns the site**, a rent supplement is calculated for the mobile home and a price differential for the site.
- If the displaced person **rents both the mobile home and the site**, separate rent supplements for the mobile home and the site can be calculated or a single rent supplement can be calculated that includes the lot rent and the mobile home rent. If calculated separately, both rent supplements can be combined toward the purchase of a replacement dwelling. A displaced tenant who elects to purchase a replacement dwelling may receive an amount up to the maximum calculated rent supplements or \$9,570, whichever is greater, to make a down payment toward the purchase of a replacement dwelling.



[49 CFR 24.502\(b\)](#)

[49 CFR 24.502\(c\)](#)

[49 CFR 24.503](#)



[WAC 468-100-502\(2\)v](#)

[WAC 468-100-502\(3\)](#)

[WAC 468-100-503](#)

[WAC 468-100-504](#)



[FHWA FAQ's #114 - #115.4](#)

[Non-Regulatory Supplement Subpart F](#)

**Computation Based on a Superior Dwelling** – When a comparable replacement mobile home is not available, the RHP can be calculated using a superior dwelling (e.g., a higher quality construction mobile home or a conventional dwelling) that is available and meets applicable requirements and standards.

**Trade-In Mobile Home** – If an owner decides to trade in a personal property mobile home instead of selling it to the agency (or transferring the title in the case of a zero value), the price differential payment is not adjusted to make up the difference if the owner takes a loss on the mobile home.

**Taxes** – The transfer of a mobile home is subject to either real estate excise tax or sales tax, depending on the situation, and regardless of whether the mobile home is classified as real or personal property.

The agency will pay sales tax as an incidental expense on the replacement mobile home if one of the following applies:

- The purchase price of the mobile home is the initial retail sale of the mobile home.
- The mobile home is purchased from a dealer's lot, regardless of the mobile home being new or used.
- The removal of the mobile home from the land is a condition of the sale.
- The mobile home is not affixed to the land by a foundation and not connected to utilities.

The buyer pays sales tax when they transfer title. The tax is based on the purchase price and the county taxes where the mobile home is located. The reimbursement is based on the amount necessary to purchase the most comparable replacement dwelling selected by the agency and used to establish the RHP.

Sales tax rates can be obtained by visiting the Washington State Department of Revenue website.



<http://dor.wa.gov/content/findtaxesandrates/salesandusetaxrates/lookupataxrate>.

**Transfer Fees** – There are transfer fees associated with transferring the title of a mobile home into the purchaser's name. Transfer fees are handled as an incidental expense and paid based on the actual cost. The reimbursement is limited to the amount necessary to purchase the most comparable replacement dwelling selected by the agency and used to establish the RHP.

This information can be obtained by visiting the Department of Licensing website at: [www.dol.wa.gov/vehicleregistration/fees.html](http://www.dol.wa.gov/vehicleregistration/fees.html)



[www.dol.wa.gov/vehicleregistration/fees.html](http://www.dol.wa.gov/vehicleregistration/fees.html)



[49 CFR 24.502\(b\)\(2\)](#)

[49 CFR 24.502\(b\)\(3\)](#)



[WAC 468-100-502\(2\)](#)

[WAC 468-100-502\(3\)](#)

[WAC 468-100-504](#)

#### 5.4.4.4 Moving and RHP Entitlements

All moving types and entitlements for residential owners and tenants as found in Section 5.4.2 apply to mobile home displaced persons in addition to the following:

- The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired.
- The actual cost of anchoring of the unit.
- The actual utility “hookup” charges.
- The reasonable cost of repairs and/or modifications so a mobile home can be moved and/or made DSS.
- The actual cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park.



[49 CFR 24.301\(c\)](#)

[49 CFR 24.301\(g\)\(9-11\)](#)



[WAC 468-100-301\(3\)](#)

[WAC 468-100-301\(7\)\(h-j\)](#)

## 5.4.5 Non-Residential Entitlements: Business, Farm, or NPO

This section outlines displaced business, farm, and/or nonprofit organization (NPO) eligibility for moving and reestablishment entitlements, how payments are calculated, and how entitlements may be claimed.

### 5.4.5.1 Eligibility

Non-residential displacements must be in lawful occupancy and must be conducting lawful activities at the displacement site prior to acquisition completion.

The following is a list of documents and items that should be considered in establishing the status of a displaced person that is conducting business activities or claiming to be a business at the displacement address:

- Tax Returns for the operation with specific business income and expenses for the displacement address.
- Taxpayer Identification Number.
- Business License for the subject location.
- Articles of Incorporation.
- Certified Financial Statements.
- Sales Tax Identification Number for the subject location.
- Or other reasonable evidence the operation is a viable and legal business entity such as information from the Secretary of State's office or Department of Revenue.

In some cases where the business activity is obvious, such as a retail operation, a W-9 with Taxpayer Identification Number (TIN) for the subject business might be sufficient, especially if they furnish an employer identification number.

Depending on the clarity or lack thereof, a combination of documents may be needed in order to establish eligibility of a non-residential displacement.

A landlord must provide a certified copy of their most recent year's tax return including the attached Schedule E.

In all cases, this process needs to be completed before a Notice of Eligibility, Entitlements and 90-Day Assurance is delivered.



[49 CFR 24.2\(a\) "Business"](#)



[WAC 468-100-002\(4\)](#)

### 5.4.5.1.1 Determining the Number of Eligible Businesses

While multiple businesses can operate at a single site, not all onsite entities may be displaced and therefore be eligible for relocation assistance.

In order to avoid duplication of payment or unreasonable reimbursement, the agency considers the following criteria to determine whether an entity constitutes one business or multiple businesses:

- The same premises and equipment are shared.
- Substantially identical or interrelated business functions are carried out, and business and financial affairs are commingled.
- The entities present as one business.
- The same person or closely related persons own, control, and/or manage the affairs of the entities.

In most cases where a displaced person(s) owns property and rents it to themselves for a business they also own and operate, the agency considers this one displacement. Other examples include a family situation (e.g., a non-arm's length transaction such as, but not limited to, a son renting to his father below market rent).

However, if the owner can verify through tax returns, they have other property rentals, or the landlord business is under a separate property management entity the agency will evaluate all pertinent factors to determine if it constitutes two displacements.



[49 CFR 24.305\(b\)](#)



[WAC 468-100-304\(2\)](#)

### 5.4.5.2 Specific Advisory Services for Non-Residential Displacements

In addition to the advisory services provided to all displaced persons in Section 5.4.1, the agency must provide non-residential displaced persons with the following services at a level appropriate to the specific complexity of each displaced business, farm, or NPO:

- Through a personal interview, determine the relocation needs and preferences of each business to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining assistance. At minimum, interviews with displaced business owners and operators should include the following items:
  - The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
  - Determining the need for outside specialists or professional services that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
  - Identifying and resolving personalty/realty issues. Every effort must be made to identify and resolve personalty/realty issues prior to, or at the time of, the appraisal of the property.
  - Estimating the time required for the business to vacate the site.

- Estimating the anticipated difficulty in locating a replacement property.
- Identifying any advance relocation payments required for the move, and the agency's legal capacity to provide them.
- Provide current and continuing information on the availability, location, purchase prices, and rental costs of suitable commercial and/or farm properties.
- Assistance in obtaining and becoming established in a suitable replacement location. This should include advice regarding potential moving and reestablishment claims based on the selection of a suitable replacement site. At a minimum, all categories of potential reimbursements available under reestablishment expenses must be explained.
- Advice that professional services obtained by them must be preapproved by the agency as the determination will be made based on what is reasonable and necessary for their type of relocation; not all businesses require professional services. Professional services are categorized into three sections:
  - Professional services to plan the physical move of the personal property, plan the placement of the personal property at the replacement location, and the actual move of the personal property.
  - Professional services performed prior to the purchase or lease of the replacement site to determine suitability of the replacement site.
  - Professional services obtained to reestablish at the replacement site.
- Advice to displaced business owners that prior to entering into a contractual obligation for professional services, a minimum of two "Scopes of Work" estimates must be obtained, which the agency will review to determine which items listed are considered eligible for reimbursement and advise the displaced person appropriately.
- It may be necessary to refer the business to an industry professional for technical or code issues.
- If the displaced person has questions regarding relocation funds not being considered income, advise them to speak with a tax accountant; the agency cannot provide legal or tax advice.
- Clear explanation of Substitute Personal Property (SPP) and Actual Direct Loss of Tangibles (DLT) early in the process and prior to obtaining professional move bids. This will allow the business owner to make informed decisions regarding their relocation.
- Explanation of all move options and the differences between the commercial move and the self-move—based on the lowest acceptable bid, agent estimate, move cost finding, or actual costs supported by receipts/invoices.
- Explanation of the Fixed Payment option for relocation expenses, and advice to the displaced business that if they elect to go with the fixed payment in lieu of all other relocation expenses, they cannot receive payment for any of the other reestablishment, moving, and related expenses.

**CFR →** [49 CFR 24.205\(c\)\(2\)\(i\)](#)

[49 CFR 24.205\(c\)\(2\)\(iii\)](#)

**RCW →** [RCW 8.26.065\(3\)](#)

[RCW 8.26.115](#)

**WAC →** [WAC 468-100-205\(4\)\(a\)](#)

[WAC 468-100-205\(4\)\(c\)](#)

**FWHA →** [FHWA FAQ's #51](#)

[Non-Regulatory Supplement Subpart F](#)

### 5.4.5.3 Moving Entitlements for Non-Residential Displacements

A displaced business, farm, or NPO is entitled to reimbursement of expenses the agency considers actual, reasonable, and necessary moving costs. Use the acceptable methods for obtaining move estimates for non-residential displacements found in Section 5.4.2 when establishing move costs for the entitlements below.

In addition to the items listed in Section 5.4.2, non-residential move costs also include the actual, reasonable and necessary move costs for the following:

- Disconnecting, dismantling, removing, reassembling, reinstalling, and connecting equipment, machinery, and other personal property to available utilities.
- Actual direct losses of tangible (DLT) payment is available if an item of personal property will not be moved or replaced as a result of moving or discontinuing a business, farm or NPO. The DLT payment calculation method is dependent on if the item is in use at the displacement site or if it is not in use.

If the item is not in use, the payment consists of the estimated cost of moving the item 50 miles, as-is, with no allowance for reconnection or storage.

If the item is in use, the payment consists of the lesser of the following two options:

- The estimated cost of moving the item up to 50 miles and reinstallation, but no allowance for code required or other improvements not at the displacement site; or
- The fair market value in place of the item, as-is for continued use, less the proceeds from its sale or trade-in. The value in place can be obtained from a variety of resources, including an industry specialist, Fixtures, Furniture & Equipment (FF&E) appraisal, personal property appraisal, etc. The type of documentation needed will depend on the complexity of the personal property.

To be eligible for payment, the displaced person must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary. The owner must provide the agency with a copy of the bill(s) of sale or similar documents and copies of any advertisements, offers to sell, auction records, and other data supporting the bona fide nature of the sale.

If a bona fide sale is not completed because no offer is received for the eligible item and the item is abandoned, the DLT payment is available and calculated considering zero proceeds from sale. When personal property is abandoned with no effort being made by the owner to dispose of such property by sale, the owner is not entitled to moving expenses or losses for the items involved. See section 5.4.2.5 for more information on how to process abandoned property.

When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices.

- Purchase of substitute personal property (SSP). If an item of personal property used as part of a business, farm or NPO is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of the following two options:
  - The estimated cost of moving and reinstalling the personal property, not including costs for storage; or
  - The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item. To be eligible for payment, the displaced person must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary. The owner must provide the agency with a copy of the bill(s) of sale or similar documents and copies of any advertisements, offers to sell, auction records, and other data supporting the bona fide nature of the sale.

If a bona fide sale is not completed because no offer is received for the eligible item and the item is abandoned, the SPP payment is available and calculated considering zero proceeds from sale. When personal property is abandoned with no effort being made by the owner to dispose of such property by sale, the owner is not entitled to moving expenses or losses for the items involved. See Section 5.4.2.5 for more information on how to process abandoned property.

When payment for substitute property is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices.

If the technology for the item in question has changed and it would not be adaptable for installation or reconnection at the replacement site, one option would be to obtain an estimate to install/reconnect a substitute item that most nearly matches the item in question but conforms to current technology.

- The reasonable cost incurred in trying to sell an item that is not to be relocated through DLT or SPP is reimbursable as a separate move cost and is not included in the DLT or SPP calculation (e.g. advertising expense).
- License, permit, fee, or certification required that is associated with the operation of the business at the replacement site (not construction related permits or licenses), deemed actual, reasonable, and necessary. The amount of this payment may be based on the remaining useful life of the existing license, permit, or certification. The intent of this category is related to occupancy or operational items.
- Professional services determined to be reasonable and necessary by the agency for move planning, moving, and reinstalling personal property. See section 5.4.5.2 for additional information on professional services. Request for professional service expense reimbursement must be preapproved by the agency. All requests must be justified and documented with at least two estimates. Only work performed in relation to relocating the personal property will be eligible for reimbursement. The displaced business must hire a professional in order to be eligible for reimbursement.
- Replacing inventory of printed materials such as stationery and business cards made obsolete by the move. This includes replacing printed materials and making reasonable and necessary updates to other media such as digital media, website, CD, DVDs. This category is limited to updates necessary to reflect the new business address, not recreate or redesign a website, logos, or marketing pieces.
- Expenses for searching for a replacement location, including transportation costs, meals and lodging, time or labor costs based on reasonable salary or earnings, fees paid to real estate agents or brokers to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites, time spent in obtaining permits and attending zoning hearings, and time spent negotiating the purchase or lease of a replacement site based on a reasonable salary or fee, including actual, reasonable and necessary attorney's fees. This payment shall not exceed \$5,000 with documentation of actual expenses. The search area is limited to within 50 miles of the displacement location, unless the agency determines, in advance and in writing, that a broader search area is warranted.
  - As an alternative, a displaced business, farm, or NPO is eligible for a \$1,000 payment in lieu of providing documentation to support a replacement site search claim. This payment can be made as soon as a replacement site has been secured (i.e., signing of a lease or purchase agreement) and documented with the agency. If this alternative payment is made, the business, farm, or NPO may still claim actual expenses in addition to the \$1,000 previously paid up to the balance of the \$5,000 maximum Site Search expense (i.e., \$4,000).
- Actual direct losses of an advertising sign that is considered personal property. The amount of the payment is the lesser of the depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; or the estimated cost of moving the sign with no allowance for storage.

- If the agency determines the cost of moving low value/high bulk personal property (e.g., stockpiled sand, gravel, minerals, metals, and other similar items) disproportionate to its value, the allowable moving cost payment must not exceed the amount that would be received if such personal property were sold at the site, or the replacement cost of a comparable quantity delivered to the new business location, whichever is less. Any materials left on site becomes the property of the agency.
- The agency will not generally pay disposal costs for personal property in addition to move costs. If the displaced person wishes to dispose of personal property, any amounts that exceed the calculated move costs will not be reimbursed.
- Hazardous materials that are considered personal property are eligible for the moving cost reimbursement, and the following guidelines are used to calculate payment:
  - If a business is reestablishing, the eligible reimbursement amount is determined by bid, estimate, or other procedural process for moving these materials to the replacement site.
  - If the displaced person voluntarily elects to dispose of these materials at a dump or other authorized disposal site, they can be reimbursed for the actual costs to transport and dispose, not to exceed the costs of transporting the materials to the replacement site to which the business is relocating. (e.g., if the estimated cost to move the materials to the replacement site is \$5,000 and the cost to transport to a disposal site plus the disposal fees are \$10,000, the reimbursement will be limited to \$5,000 if the displaced person used the disposal option).
  - If the displaced person must transport hazardous materials to a dump or disposal site based on federal, state, or local law, code, or ordinance that precludes them from moving the materials to the replacement site, the costs of transport and disposal are eligible. Such law, code, or ordinance must be adequately documented in the official relocation file.
  - If the displaced person cannot move these materials to the replacement site because of inadequate storage space, the agency must determine whether there were reasonably available sites to which the displaced person could have moved that would have allowed storage space for these materials.
    - If the agency determines alternate sites were not reasonably available, the agency can reimburse the displaced person for the costs of transporting and dumping of these materials at a disposal site.
    - If the agency determines alternate sites were reasonably available, reimbursement for the costs of transporting and disposing of the materials will be limited to the estimated cost to move the materials to the replacement site or, if there is any appreciable difference, the cost of moving the materials to a reasonably available alternate site.



[49 CFR 24.301\(g\)](#)

[Appendix-A "Section 24.301\(g\)\(14\) Re-lettering signs and replacing stationery"](#)

[Appendix-A "Section 24.301\(g\)\(15\)\(i\) Direct Loss of Tangibles"](#)

[Appendix-A "Section 24.301\(g\)\(18\) Searching expenses"](#)



[RCW 8.26.035](#)



[WAC 468-100-301\(7\)](#)



[FHWA FAQ #57, #58, #60 - #68](#)

[Non-Regulatory Supplement Subpart D #4 - #9](#)

#### 5.4.5.3.1 Ineligible Moving and Related Costs

In addition to the ineligible move expenses in Section 5.4.2.1 a displaced business, farm, or NPO is not entitled to payment for:

- The cost of moving any structure or other real property improvement in which the displaced person retained salvage rights.
- Interest on a loan to cover moving expenses.
- Loss of goodwill.
- Loss of profits.
- Loss of trained employees.
- Any additional operating expenses incurred because of operating in a new location, except as provided as a reestablishment expense.
- Any other impact fee that is not a utility fee.
- Utilities expenses not associated with the eligible personal property or not specifically eligible in section 5.4.5.4.1.
- Capital improvements to the property, including but not limited to onsite well, septic, detention vaults and/or ponds.
- Physical changes to the real property of a business or farm operation, except as provided as a reestablishment expense.
- Personal injury.
- Cost for storage of personal property on real property already owned or leased by the displaced person.
- Refundable security and utility deposits at the replacement location.
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the displaced person before WSDOT.



[49 CFR 24.301\(h\)](#)



[WAC 468-100-301\(8\)](#)

### 5.4.5.4 Related Non-Residential Moving Expenses

Other actual, reasonable, and necessary costs for which a displaced business, farm, or NPO may be eligible for payment include utility connection, impact fees for heavy utility usage, and professional services to determine replacement site suitability performed prior to the purchase or lease of the replacement site.

**RCW →** [RCW 8.26.035\(1\)](#)

#### 5.4.5.4.1 Utility Connection

The agency may reimburse the actual expenses for connecting to available utilities if the expenses are reasonable and necessary. Expenses only include costs from the replacement site's property line to the improvements on the replacement site. All utility costs outside of the replacement site's property lines are ineligible.

This does not include the costs of installing/connecting an onsite well, self-contained septic system, or stormwater pond or vault at the replacement site. These constitute the purchase of a capital asset and are ineligible for reimbursement.

For example, if a displaced business must run utilities across or past multiple parcels, the full connection expense would not be eligible for reimbursement. Eligibility would be limited to expenses associated with making the connection from the replacement site property line to the improvements only.

In some cases, the agency may consider it reasonable to reimburse a displaced business, farm, or NPO for the expenses associated with bringing the utility from the central connection point to the ROW adjacent to the replacement property as a reestablishment expense under [WAC 468-100-306\(1\)\(g\)](#), which addresses other items the agency considers essential to the reestablishment of the business. See Section 5.4.5.6 for additional information on eligible reestablishment expenses.

**CFR →** [49 CFR 24.303\(a\)](#)

[Appendix-A Part-24 "Section 24.303\(a\) Utility Connections"](#)

**WAC →** [WAC 468-100-303\(1\)](#)

#### 5.4.5.4.2 Heavy Utility Usage

Impact fees or one-time assessments for anticipated heavy utility usage that the agency determines necessary are reimbursable. The term "impact fees," as it appears in [federal regulations](#), pertains strictly to heavy utility usage. This payment is only for utilities, such as power, gas, sewer and water. It does not include such things as access roads, fire, or school district fees/assessments.

**CFR →** [49 CFR 24.303\(c\)](#)

[Appendix-A "Section 24.303\(c\) Impact fees and one-time assessments for anticipated heavy utility usage"](#)

**WAC →** [WAC 468-100-303\(3\)](#)

**FHWA →** [FHWA FAQ #75](#)

[Non-Regulatory Supplement Subpart D #4 - #13](#)

#### 5.4.5.4.3 Replacement Suitability

Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation. Such services include but are not limited to soil testing, feasibility, and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).

**CFR →** [49 CFR 24.303\(b\)](#)

**WAC →** [WAC 468-100-303\(2\)](#)

**FHWA →** [FHWA FAQ #74](#)

#### 5.4.5.5 Reestablishment Expenses

A small business, farm, or NPO may be eligible to receive a reestablishment payment, not to exceed \$50,000, for expenses incurred in reestablishing their operations at a replacement location. Claims for reestablishment expenses must be actual, reasonable, and necessary, as determined by the agency. Determining whether reestablishment expenses are reasonable and necessary may require comparing or matching amenities or characteristics of the replacement site against the displacement site.

- The agency determines “reasonable” costs as the costs typical in the geographic area in which the displacement occurred for the type of goods or services being purchased. In a situation where a displaced business selects a larger replacement site or a betterment, the agency must set a reasonable threshold for reimbursement based on the size or quality of the displacement site.
- The agency determines “necessary” as such goods or services that are needed to reestablish the present operation of the business. A business owner may change business use at the replacement site, however, expenses for improvements, things that allow it to enter new markets, or other such things that the operation should have done itself or wanted to do at the displacement location, are not considered necessary. Displacement provides an excellent opportunity for an operation to do all those things itself, but public funds cannot be used to do so.

If the displaced business received a payment through acquisition, such as a “cost-to-cure,” that duplicates an eligible item under reestablishment, the reestablishment option **cannot** be used for such an item, as this would represent a duplication of payment. However, if deemed reasonable and necessary, all or part of the difference between the actual cost and what was previously paid as a cost-to-cure by the agency or any other funds paid by another agency for that purpose could be an eligible reestablishment expense.

**CFR →** [49 CFR 24.2\(a\) “Small business”](#)

[49 CFR 24.304](#)

**RCW →** [RCW 8.26.035\(1\)\(d\)](#)

**WAC →** [WAC 468-100-002\(24\)](#)

[WAC 468-100-306](#)

#### 5.4.5.5.1 Eligible Reestablishment Expenses

Eligible reestablishment expenses include the following:

- Repairs or improvements to the replacement property as required by law, code, or ordinance.
- Modification to the replacement property to enable the business to operate. Permits associated with modifications to the replacement are reimbursable.
  - When a replacement property already contains a structure, costs for structure modifications necessary to accommodate the business operation (e.g., moving walls, changing doors, modifying lighting) may be eligible.
- Construction and installation of new exterior signage to advertise the business.
- Advertisement of the replacement location (but not the services provided by the business).
- Redecoration or replacement of soiled or worn surfaces, such as carpeting, paint, or paneling.
- Estimated increased cost of operations for two years at the replacement site for items such as rent, taxes, insurance, and utility costs.
- Other items the agency considers essential to the reestablishment of the business that are not listed as ineligible.

**CFR →** [49 CFR 24.304](#)

**WAC →** [WAC 468-100-306](#)

**FHWA →** [Non-Regulatory Supplement Subpart D #10 & #11](#)

#### 5.4.5.5.2 Eligible Reestablishment Expenses for Non-occupant Owners

A non-occupant owner (i.e., landlord) whose sole activity at the site is providing space to others, is eligible for a Reestablishment Expense Payment up to \$50,000. The owner does not have to own personal property that must be moved in connection with the displacement.

Typical examples of leased space are:

- Mobile home parks.
- Business properties (e.g., warehouses, office space) including bare land used for storing equipment.
- Farms and ranches (or any bare land used for agriculture or livestock grazing).
- Coin operated laundries or any other vending operation (newspapers).
- Residential units.

To be eligible for this payment, the displaced non-occupant owner must establish that the leasing of space is a bona-fide business activity as supported by the displaced person's income tax records. The non-occupant owner must acquire a replacement property before the expiration of the time period, provide evidence of the new lease and/or purchase and sale agreement, and verify the replacement site is for business purposes and will not be occupied by the owner. See Section 5.4.5.1.1 for additional information on determining landlord status for owners leasing to themselves or other non-arm length transactions.

FHWA has determined that a lessee who subleases space is not eligible for a Reestablishment Payment as a landlord.



[FHWA FAQ #79](#)

[Non-Regulatory Supplement Subpart D #12](#)

#### 5.4.5.5.3 Ineligible Reestablishment Expenses

- Construction costs for a new building or costs to construct, reconstruct, or rehabilitate an existing building.
- Purchase of capital assets, such as office furniture, machinery, trade fixtures, appliances or real estate.
- Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of business.
- Interior or exterior refurbishments at the replacement site for aesthetic purposes.
- Interest on money borrowed to make the move or purchase the replacement property.
- Payment to a part-time business in the home that does not contribute materially to the household income.



[49 CFR 24.304\(b\)](#)

[Appendix-A "Section 24.304\(b\)\(5\) Ineligible expenses"](#)



[WAC 468-100-306\(2\)](#)

### 5.4.5.6 Fixed Payments for Nonresidential Moving Expenses

A business, farm, or NPO may be eligible to choose a fixed payment in lieu of all payment(s) for moving and reestablishment. This payment is also referred to as an “In Lieu” payment. Non-occupant owners (landlords) are not eligible for the fixed payment. This optional payment is a one-time payment that represents a full and final payment for all relocation expenses. The minimum payment is \$1,000 and the maximum payment cannot exceed \$53,200 depending on the net earnings of the business, farm, or NPO. See Section 5.4.5.1.1 for additional information on determining the number of eligible businesses.



[49 CFR 24.305](#)



[RCW 8.26.035\(3\)](#)

#### 5.4.5.6.1 Fixed Payment Eligibility—Business

The displaced business is eligible for the fixed payment if the agency determines all of the following:

- The business is not part of a commercial enterprise having more than three other establishments (not being acquired by the agency) engaged in the same or similar business activities.
- The business is not operated at the displacement dwelling and/or site solely for the purpose of renting the dwelling and/or site to others.
- The business cannot be relocated without a substantial loss of its existing patronage, including loss of support or loss of business from customers, patrons, clients, or paying guests. Unless the agency determines otherwise, a business meets the requirement for loss of existing patronage if the agency reasonably presumes that the net income of the business for the 12-month period after relocation will be less than the net income of the business before relocation.
- The business contributed materially to the income of the displaced person during the two taxable years prior to the displacement.
- The business would incur an expense to move personal property it owns or rents that must be moved as a result of the agency’s acquisition.



[49 CFR 24.2\(a\) “Contribute materially”](#)

[49 CFR 24.305\(a\)](#)

[Appendix-A “Section 24.305\(a\) Business”](#)



[WAC 468-100-002\(7\)](#)

[WAC 468-100-304\(1\)](#)



[Non-Regulatory Supplement Subpart D #14](#)

#### 5.4.5.6.2 Fixed Payment Eligibility—Farm

The owner of a displaced farm operation may be eligible for a fixed payment if all of the following requirements are met:

- The farm operator has discontinued the entire farm operation at the present location or has relocated the entire farm operation.
- In the case of a partial acquisition, the operator is considered displaced from a farm operation whenever any one of the following applies:
  - The agency determines the property remaining after the acquisition will not be an economic unit for the same farm operation.
  - The acquisition caused the operator to be displaced from the farm operation on the remaining land.
  - The acquisition caused such a substantial change in the principal operation or the nature of the existing farm operation as to constitute a displacement.



[49 CFR 24.305\(c\)](#)

[Appendix-A “Section 24.305\(c\) Farm operation”](#)



[WAC 468-100-304\(3\)](#)

#### 5.4.5.6.3 Fixed Payment Eligibility—NPO

A displaced NPO may be eligible for a fixed payment if the NPO cannot be relocated without a substantial loss of its existing patronage, membership, or clientele.



[49 CFR 24.305\(d\)](#)



[WAC 468-100-304\(4\)](#)

#### 5.4.5.6.4 Fixed Payment Determination

The minimum payment is \$1,000 and the maximum payment is \$53,200.

For business and farm operations, the amount of the payment is based on average annual net earnings rather than actual moving costs. “Average annual net earnings” means one-half of the net earnings of the business or farm before federal, state, and local income taxes, during the two taxable years immediately preceding the taxable year in which the business relocated. “Average annual net earnings” includes any compensation paid by the business or farm to the owner, the owner’s spouse, or dependents. If a business or farm has been in operation for less than two taxable years prior to displacement, the average annual net income is determined by averaging the monthly net income and prorating this amount for 24 months.

For a NPO, the amount of the payment is the average of two years annual gross revenues less administrative expenses. “Gross revenues” may include titles, membership fees, or other forms of fund collection. Administrative expenses include rent, utilities, salaries, as well as fundraising expenses.

For the owner of a business to be eligible for this payment, the business must provide information to support its net earnings. This may include certified copies of income tax returns for the last two years. If tax returns are not available, other forms of information commonly used for official business purposes may also be accepted such as financial statements certified by a qualified practicing professional (such as a CPA or an attorney).

The agency maintains strict confidentiality regarding tax returns and does not use them other than to determine a fixed payment. **All financial records are destroyed once the review is completed and approved.**



[49 CFR 24.305\(e\)](#)

[Appendix-A "Section 24.305\(e\) Average annual net earnings of a business or farm operation"](#)

[Appendix-A "Section 24.305\(d\) Nonprofit organization"](#)



[RCW 8.26.035\(3\)](#)



[WAC 468-100-304\(5\)](#)



[FHWA FAQ #80 - #82](#)

[Non-Regulatory Supplement Subpart D #15-17](#)

#### 5.4.5.7 Claiming Non-Residential Entitlements

All non-residential relocation claims must be submitted to the agency by the claim expiration date. Moving cost payments, reestablishment payments, and fixed payments are made after move completion and/or expenses are incurred. The agency must provide displaced persons reasonable assistance to complete and file any claim for payment. Agencies must review, respond to, and reimburse submitted claims in an expeditious manner. Advance payments can be issued in hardship cases. See Section 5.1.1.1 Time for Filing, Timely Payment, and Advanced Payments for additional information.

Relocation payments for non-residential claims can be made directly to the displaced business, directly to a commercial mover or third party on behalf the displaced business owner, or a combination of both.

If the displaced person has not claimed relocation entitlements promptly after moving or incurring the expense, the agency advises the displaced person of the final claim expiration date.



[49 CFR 24.207](#)



[WAC 468-100-207](#)

### 5.4.5.7.1 Moving Claims

Claims for moving payments are submitted when the work is completed and documentation supporting the actual costs have been received. Payment can be made to the displacee or requested to be paid directly to the commercial mover with a supplied invoice. See Section 5.4.2.3 for more information on move monitoring requirements and Section 5.4.2.4 for vacate inspection details.



[49 CFR 24.301\(i\)](#)



[WAC 468-100-301\(9\)](#)

### 5.4.5.7.2 Reestablishment Claims

In order to provide adequate advisory services, the agent works closely with the business owner to discuss potential claims and the business owner's plans to reestablish the site. Whenever possible, the agent should physically view the replacement site prior to any reestablishment expenses being incurred. The agent should be working with the displaced person throughout the reestablishment process documenting actual work and modifications made. This includes ongoing site visits, monitoring work progress, and photographing the replacement site before, during, and after any reestablishment work completed. This documentation should be part of the agent diary and included in the reestablishment claim .

Claims for reestablishment payments are eligible to be submitted when the work is documented as complete and paid or requested to be paid directly to the vendor with a supplied invoice.

Documentation should support the claim as an eligible expense and may include proof of payment, if necessary, and supporting documents that the payment amount was reasonable.

Acceptable documentation will be dependent on the claim, but standard documentation to verify eligibility, proof of payment, and reasonableness could include:

**Eligibility** – Statement of what the claim is for and reference to the regulation that allows for reimbursement. See Section 5.4.5.5 for eligible reestablishment expenses.

**Proof of Payment** – If the claim includes reimbursement of actual expenses incurred, proof of payment is necessary. Documentation could include a paid invoice, copy of cleared check or bank register, a paid receipt, credit card receipt, screen shot of a text receipt, or other documentation the agency finds reasonable to validate the actual amount and that payment was made. This documentation should be reviewed for accuracy and may need to be line itemed out to insure eligibility for the full amount.

**Estimated Increased Operating Expenses** -For tenant claims of estimated lease or rental charges the agency must obtain a copy of the displacement site lease and the replacement site lease. For claims of increased personal or real property taxes, insurance premiums, and/or utility charges documentation should include actual tax statements, insurance invoices, utility invoices from the displacement site and documentation of estimated expenses at the replacement site. This could include county tax records, insurance estimate or invoice, and/or utility estimates from the utility companies at the replacement site.

**Reasonableness** – All claims must be reviewed and documented for reasonableness of cost. This could include referencing estimates from specialists, documenting the hours and rates are standard for the industry and work completed, gaining copies of any tangible work completed or items received (i.e. leases, as build plans, copies of laws or codes applicable to the modifications, before, during, after photographs). For tenant displacements, replacement site leases should always be obtained and reviewed. Many times, a landlord will participate in or pay for tenant improvements. To avoid duplication of payment, verify of who is paying for claimed reestablishment items. The amount reimbursed should represent what is determined reasonable to achieve the claimed items.

#### 5.4.5.7.3 Fixed Payment Claims

Claims for fixed payments are eligible to be submitted when the displacement site has vacated. See Section 5.4.2.4 for vacate inspection details.

The fixed payment claims must include proper supporting income documentation. See Section 5.4.5.7 for addition information of Fixed Payment determination.

### 5.4.6 Personal Property Only Entitlements

This section outlines eligibility and entitlements provided for Personal Property Only relocations, which are moves of personal property from property acquired for project purposes where there is no need to fully relocate a residence, business operation, farm operation, or NPO from the acquired property.

PPO relocations include the following types:

- Personal property stored somewhere other than a residence or business.
- Personal property stored at seasonal residences/belonging to displaces who own seasonal residences.
- Personal property located on a portion of property that is being acquired but where the residential structure located on the property will not be acquired or impacted by the project.
- Personal property located on a portion of property that is being acquired but where the business located on the property can still operate and where the business will not incur reestablishment expenses.
- Personal property located in a storage facility being acquired in whole or in part.
- Vehicles, trucks, recreational vehicles, boats, and other miscellaneous trailers, either operational or not, that are located on property being acquired.



[49 CFR 24.301\(e\)](#)

[Appendix- A "Section 24.301\(e\) Personal property only"](#)



[FHWA FAQ #59](#)

### 5.4.6.1 PPO Eligibility

Lawfully present owners of personal property that must be moved from the acquired property are eligible for reimbursement of moving expenses that the agency considers actual, reasonable, and necessary moving costs.

**CFR →** [49 CFR 24.2\(a\) “Displaced person”](#)

[49 CFR 24.301\(e\)](#)

**RCW →** [RCW 8.26.035\(1\)\(a\)](#)

**WAC →** [WAC 468-100-002\(9\)](#)

[WAC 468-100-301\(5\)](#)

### 5.4.6.2 PPO Moving Entitlements

A displaced PPO owner is entitled to reimbursement for moving costs via a commercial, self, actual cost self-move, or combination of these methods. See Section 5.4.2 for additional information on move types. The payment shall be limited to expenses for moving within a 50-mile distance from the displacement location. See Section 5.4.2.1 for eligible actual moving and related expenses.

PPO moves may also be eligible for direct loss of tangible (DLT) personal property, substitute personal property (SSP), and low-value, high bulk as described in Section 5.4.5.3.

**FHWA →** [FHWA FAQ #58](#)

#### 5.4.6.2.1 Commercial Move

Owners of personal property that must be moved can hire a commercial mover and pay that mover directly. At the request of the owner, the agency can pay the commercial mover directly on their behalf. See Section 5.4.2 for more commercial move details.

#### 5.4.6.2.2 Self-Move

A self-move is a move performed by the displaced person and their move costs are reimbursed directly to them. See Section 5.4.2 for details on self-move options and move cost determinations.

In addition to the self-move payment types in Section 5.4.2 PPO self-moves can use the following move cost schedules as applicable.

- The move of personal property from a commercial storage facility shall be based on the following schedule:

Size of Storage Unit	Move Cost
5' by 5' (25 sq. ft.)	\$300
5' by 10' (50 sq. ft.)	\$600
5' by 15' (75 sq. ft.)	\$900
10' by 10' (100 sq. ft.)	\$1,200
10' by 15' (150 sq. ft.)	\$1,800
10' by 20' (200 sq. ft.)	\$2,400
10' by 25' (250 sq. ft.)	\$3,000
10' by 30' (300 sq. ft.)	\$3,600
10' by 40' (400 sq. ft.)	\$4,800
15' by 30' (450 sq. ft.)	\$5,400
20' by 40' (800 sq. ft.)	\$9,600

- The move costs for vehicles, trailers not connected to utilities, etc., shall be based on the following schedule:
  - Operational vehicles and motor homes: \$300 each
  - Boats w/trailers, utility trailers, car trailers, travel trailers, and fifth-wheel trailers: \$300 each
  - Non-operating vehicles and motor homes that require towing: \$300 each
- Move costs for appliances shall be based on a fixed rate of \$300 for the first appliance and \$100 for each additional appliance, which includes the cost to disconnect and reconnect.

Occupants of seasonal residences can receive a moving payment as described in Section 5.4.2 including a payment based upon the Fixed Residential Move Cost Schedule.

Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than personal property moving expenses.



[49 CFR 24.302](#)

[Appendix-A Part-24 "Section 24.302"](#)



[WAC 468-100-302](#)



[FHWA FAQ #73](#)

[Non-Regulatory Supplement Subpart D #1](#)

### 5.4.6.3 Claiming PPO Relocation Entitlements

All moving claims must be submitted to the agency by the claim expiration date. Claims for moving payments are submitted when the move is completed and documentation supporting the actual or preapproved costs has been received by the agency. See Section 5.4.2.6 for more information on what is required when claiming move entitlements. Agencies must review, respond to, and reimburse submitted claims in an expeditious manner. Advance payments can be issued in hardship cases.

See Section 5.1.1 for more information policy regarding claim expiration date, timely payments and advanced payments.

Payment can be made to the displacee or requested to be paid directly to the commercial mover with a supplied invoice.

See Section 5.4.2.3 for more information on move monitoring requirements.

See Section 5.4.2.4 for vacate inspection details.

If the displaced person has not claimed relocation entitlements promptly after moving or incurring the expense, the agency advises the displaced person of the final claim expiration date.

 [49 CFR 24.207](#)

 [WAC 468-100-207](#)

## 5.4.7 Temporary Relocations

The acquisition of some property rights does not require permanent displacement but do require a temporary move of occupants or personal property. Such occupants are “displaced persons” by definition and must be treated consistently, fairly, and equitably.

A relocation of fewer than 12 months is considered temporary. If a temporary relocation extends beyond 12 months, it is then considered a permanent displacement and the agency must inform the displaced person they are eligible to receive permanent relocation and moving entitlements based on their occupancy status. The agency cannot deduct any temporary relocation assistance benefits previously provided when determining permanent relocation benefits eligibility.

### 5.4.7.1 Eligibility

Lawfully present residential and non-residential occupants who move temporarily and those who move personal property temporarily (less than 12 months) due to the project are eligible for temporary relocation benefits.

If a temporary move is authorized by the agency for a residential or non-residential displacement and later withdrawn or revised, the agency will reimburse the displaced persons for all actual, reasonable, and necessary out-of-pocket expenses incurred in connection with the temporary relocation.

 [49 CFR 24.2\(a\) “Displaced person” \(ii\)](#)

[49 CFR 24.202\(a\)](#)

### 5.4.7.2 Requirements

Appropriate notices must be provided in accordance with Section 5.3 and appropriate advisory services must be provided in accordance with Section 5.4.

Please also see Chapter 4, Section 4.2.4, for more information.

In addition to the 90-Day Assurance provided as described in Section 5.3, the agency must also provide a minimum of 30-day written notice of the move-out date and duration of the temporary relocation.

#### 5.4.7.2.1 Temporary Residential Entitlements

The project must consider that temporary residential displacements can cause a variety of issues and impacts for the occupants. The following are examples of potential consideration: (this is not a comprehensive list; every situation is unique, and all potential issues must be considered)

- Access and utilities availability through construction.
- Ongoing maintenance of property.
- Loss of perishable foods.
- Security.
- Boarding pets.
- Feeding livestock.
- Crop harvesting.
- Seasonal considerations (e.g. boat/RV access, holidays, etc.).
- Mail delivery and access.

Except for in the case of emergency moves as described in Section 5.1.1.2, the agency must make at least one comparable dwelling available prior to requiring a person to move. All temporary housing must be DSS and suitable for the displaced family's needs. Each household must be considered on a case-by-case basis to determine appropriate temporary housing options suitable to the family.

Considerations include, but are not limited to:

- Length of the temporary move.
- Number of individuals living in the home.
- Number of pets, if any.
- Whether a kitchen is required or whether a per diem for meals is acceptable.
- Whether any family members are in school or childcare.
- Distance to employment and remote work needs.
- ADA requirements or health considerations.
- Transportation needs or availability.

For a short-term residential temporary displacement of fewer than 30 days, a hotel or extended stay hotel, or other DSS short term rental option may be acceptable for housing. Relevant considerations might include multiple adjoining rooms, suites, and/or kitchenette to accommodate the family's needs.

For longer term temporary residential displacements, more traditional dwellings need to be made available, such as a short-term rental. A DSS inspection is required on temporary replacement dwellings.

Payment must be provided for all actual, reasonable, and necessary out-of-pocket expenses incurred in connection with selecting, securing, and moving to a temporary relocation dwelling. Such payments may include the costs of temporarily moving personal property from the displacement site and returning it back to the site at a later date. The payment should be commensurate with the comparable dwelling offered, the duration of the move, and the personal property to be moved. The agency may consider storage of personal property necessary.

#### 5.4.7.2.2 Temporary Non-Residential Entitlements

If a project requires a business to vacate the property or denies physical access to the property for less than 12 months, it may be temporarily relocated and reimbursed for all reasonable out-of-pocket expenses.

If temporary relocation is too complex or costly, the agency may determine that a non-residential temporary displacement can be designated as a permanent displacement, or that temporary site reconfiguration may enable a business to maintain operations without a permanent displacement.

Non-residential temporary displacements can cause a variety of issues for the occupants that the project must consider, including but not limited to:

- Time and cost to temporarily reestablish the business.
- Time and cost to move back to the displacement site.
- Specialists needed to move complex personal property.
- Utility needs.
- Availability of replacement sites.
- Notifying clientele of changes.
- Reconfiguration of business operations on the current parcel.
- Seasonal business considerations.
- Access availability through construction.
- Ongoing maintenance of property.
- Ongoing Security.

#### 5.4.7.3 Claiming Temporary Relocation Entitlements

All claims for temporary relocation expenses must be made no later than 18-months after:

- For tenants: the date they move back into the subject site.
- For owners: the date they move back into the subject site or the date the final payment for the acquisition of the real property, whichever is later.

The agency provides displaced persons reasonable assistance necessary to complete and file any required claim for payment. In hardship cases, the agency can, at its sole discretion, issue advanced payments if it determines there is a justifiable need, implementing appropriate safeguards to ensure that the objective of the payment is accomplished, and no double payments occur.

All relocation payment claims must be supported by appropriate documentation to validate the expenses incurred, such as receipts for payments, paid invoices, copies of payment documents, time sheets of people hired to perform the move, etc.

The agency reviews claims in an expeditious manner and notifies the claimant as to any additional documentation required to support the claim.

The agency makes payment for a claim as soon as feasible following receipt of sufficient documentation to support the claim.



[49 CFR 24.207](#)



[WAC 468-100-207](#)

### 5.4.8 Voluntary Transactions

WSDOT does not have the authority to acquire property by means of voluntary acquisition.

WSDOT's authority is limited to acquiring lands or interests in lands necessary for an intended, planned, or designated project area, therefore does not meet the requirements for voluntary acquisition. Any other agency acquiring property on a voluntary basis must ensure tenants are offered relocation assistance as outlined in 49 CFR Part 24.

## 5.5 Agency Reconsiderations and Appeals

Any person aggrieved by a relocation assistance eligibility determination, or the amount of any payment, has the right to request an informal reconsideration of the determination and/or an appeal through an adjudicative hearing before an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH).

A written request for reconsideration must be made within 30 calendar days after receipt of any determination.

The Relocation Program Manager reviews request for informal reconsideration. The aggrieved displaced person doesn't need to send an informal request for reconsideration before requesting an appeal. If the Relocation Program Manager was directly involved in the action being reconsidered or appealed, the RESPA must conduct the review.

A written appeal must be made within 60 calendar days after receipt of any determination. Appeals are an official process heard before an ALJ at OAH.



[49 CFR 24.10](#)



[RCW 8.26.085\(1\)\(c\)](#)

[RCW 34.05](#)



[WAC 468-100-010](#)

[WAC 468-10](#)

[WAC 10-08](#)



# 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

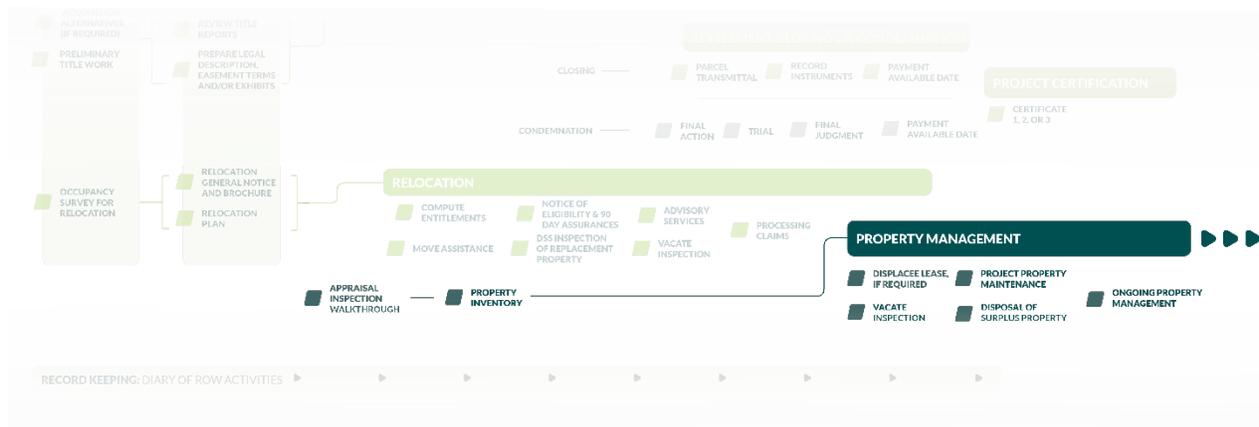
For WSDOT projects, the project is certified when the appropriate approving authority signs or approves the certification statement. For federally funded projects, the certification date is the date the concurrence is received in the FHWA official mailbox. For conditional certificate 3s, the date of 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"> <li>All rights acquired</li> <li>Occupants vacated *</li> </ul>	Region or Program	RES Headquarters Concurrence	RES Headquarters Concurrence
Certification 2	<ul style="list-style-type: none"> <li>Not all rights acquired</li> <li>Right of entry or possession only</li> <li>Occupants vacated</li> <li>Right to remove improvements</li> </ul>	Region or Program	RES Headquarters Concurrence	RES Headquarters Concurrence
Certification 3 Time-Based	<ul style="list-style-type: none"> <li>Not all rights acquired</li> <li>Agreement has been reached</li> <li>Occupants will be vacated and payment and possession will occur prior to Bid Opening</li> </ul>	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"> <li>Not all rights acquired</li> <li>Occupants remain</li> <li>Right of way will not be clear prior to construction (for DB, Prior to construction for each phase or segment)</li> <li><b>Prior approval of HQ and/or FHWA is required</b></li> </ul>	RES Headquarters Concurrence	FHWA Approval Letter	FHWA Approval Letter
Preliminary Design Build Certification	<ul style="list-style-type: none"> <li>Issued prior to RFP for design-build projects</li> <li>Right of way may or may not be acquired at this time</li> <li>A cert 1,2,3 is required prior to physical construction</li> </ul>	RES Headquarters Concurrence	RES Headquarters Concurrence	RES Headquarters Concurrence

\*Exemption for TE, see section 6.1.2

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# Chapter 7

## 7. Property Management

This chapter sets forth the requirements for managing all properties owned and operated by WSDOT or properties that were purchased for a federally funded project by an agency. It establishes the requirements for the disposal or lease of properties and/or property rights that are no longer needed for highway purposes.

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## 7.1 Chapter Overview

### 7.1.1 Property Management Authority, Roles, and Responsibilities

#### 7.1.1.1 Authority

WSDOT is authorized to purchase, lease, exchange, and transfer real property, execute deeds, easements, and agreements for all real estate property transactions on behalf of the Washington State Secretary of Transportation.

WSDOT's property management actions conform with the legal authorities listed below:

- [23 CFR § 1.23](#)—Rights-of-way
- [23 CFR §635.309](#)—Authorization
- [23 CFR § 710.403](#)—Right-of-Way and Real Estate Management
- [23 CFR 710.409](#)—Disposal of Excess Real Property
- [23 CFR 620.203](#)—Procedures
- [23 CFR 710-703](#)—Definitions
- [23 CFR § 710.405](#)—ROW use agreements
- [FHWA Real Property Management FAQ's](#)
- [RCW 17.10](#)—Noxious Weeds—Control Boards
- [RCW 36.75](#)—Roads and bridges—General provisions.
- [RCW 39.33](#)—Intergovernmental Disposition of Property
- [RCW 47.04](#)—Public Highways and Transportation General Provisions
- [RCW 47.12](#)—Acquisition and Disposition of State Highway Property
- [RCW 47.24](#)—City streets as part of state highways
- [RCW 47.32](#)—Obstructions of Right-of-Way
- [RCW 47.50](#)—Highway access management
- [RCW 47.52](#)—Public Highways and Transportation—Limited Access Facilities
- [RCW 47.68](#)—Aeronautics
- [RCW 47.76](#)—Rail Freight Services
- [RCW 64.04](#)—Conveyances
- [RCW 65.08](#)—Recording
- [RCW 90.58](#)—Shoreline Management Act of 1971
- [WAC 240-15](#)—Office of the Governor— Log export restrictions.
- [WAC 468-18](#)—City/County Project Coordination
- [WAC 468-30](#)—Highway Property

### 7.1.1.2 Responsibilities

WSDOT's Property Management program is responsible for ensuring effective management and security for all agency owned properties that are not part of Capital Facilities or active right-of-way, including but not limited to surpluses, disposals, and leases.

The agency must ensure fair market value is received for all surplus properties and fair market rent/economic rent for all leases, unless otherwise authorized. It also ensures all disposal actions, including disposals of access control, and ROW use agreements, including leasing actions, comply with environmental requirements outlined in 23 CFR Part 771.



[23 CFR Part 771](#)

To the greatest extent practical, the agency eliminates hazards and public nuisances originating on agency-owned land or improvements.

## 7.2 Management

### 7.2.1 Preparation for Management

#### 7.2.1.1 Real Estate Services System and Inventory

The agency must inventory all property rights purchased and managed. Common property rights inventoried include:

- All real property and real property rights inside and outside of the operating ROW.
- Agency-owned/managed airports and rail lines.
- Rental properties, including all leases (e.g., airspace, ground, residential).
- Real estate contract sales.
- All improvements acquired, whether inside or outside of the operating right of way.

All property rights acquired are assigned an Inventory Control Number (ICN). A separate ICN is assigned to each type of property right acquired for the parcel (e.g., fee, easement, temporary right, etc.)

The agency's inventory system includes information on property status and activities, reporting capability for various informational needs, and payment information related to leases and contract sales.

#### 7.2.1.2 Property Management Diary

In addition to the requirements in Chapter 2, Section 2.3.9.1, the agency must create a property management diary of ROW activities for each ICN.

The diary is an official record containing a summary of every activity related to each ICN created for the parcel. It references an acquisition parcel number, ICN, lease number or contract number, federal aid number (FA), plan title, tenant or grantee name, contact information, and all other pertinent information as required to identify the property.

Diary entries must be made whether the parcel is improved or unimproved and whether it is operating or non-operating ROW.

Diary entries for property management activities must include, but are not limited to, the following:

- The date of the assignment.
- The date, time, telephone number, email, and full name (e.g., Mr. John F. Jones, not Mr. Jones) of any party of interest who is contacted by telephone or email.
- The date, time, address, and place of every meeting or site visit with any party.
- The full names of anyone in attendance at a meeting or a site visit.
- A summary of every property management activity related to the parcel. This includes inspections, telephone conversations, letters, approvals, sales, leases, maintenance, emails, etc.

### 7.2.1.3 Project Inspection

As soon as practical, after receiving the approved plans, the agency inspects all real property and improvements to be acquired on the project. The agency identifies the following information for each parcel and enters the information into the ROW database for property management purposes:

- Number and type of improvements (e.g., house, detached garage, shed, out buildings).
- Property dimensions in square feet or acres.
- Physical location (i.e., property address and tax/assessor parcel number).
- Property condition and environmental concerns, such as underground storage tanks (UST).
- Presence of septic, well, and/or utilities.
- Presence of hazardous materials.

Photographs of the property, all improvements, and any other conditions of the property worth noting (e.g., damage, vandalism, illegal dumping, etc.), if any were taken.

### 7.2.1.4 Initiating Management

Legal control (ownership) of properties purchased begins on the payment available date. The Acquisition and Property Management specialists should coordinate and communicate the payment available date.

If the property is unoccupied, whether it is improved or unimproved, the agency takes physical possession on the payment available date. See Chapter 4, Section 4.12.1, for more information.

If the property is occupied, physical possession is not taken until the occupant has vacated the property. Relocation and Property Management specialists should coordinate and communicate the vacate date.

### 7.2.1.5 Inspection of Agency-Owned Property

The agency inspects its properties to guard against trespass, encroachments, theft, pest control, dumping of debris, and hazardous materials. The agency ensures that local building, fire, housing, and occupancy codes are satisfied.

The inspections also provide an opportunity to evaluate the condition of the property and develop a management strategy for future use or development of improved properties. The property is considered vacated when all the personal property is removed, and keys are surrendered to a Property Acquisition Specialist.

The property and all improvements are photographed to portray a complete visual inventory of the parcel. This is to ensure that the agency is getting what the appraisal depicted; appraisal will indicate what is real property or personal property (e.g., range, refrigerator, woodstoves, window coverings, shelving, doors, windows, garage door openers, hot tubs, light fixtures, dishwashers). The photographs also verify that the property is in the condition in which the agency purchased it (normal wear and tear is acceptable). If there are discrepancies, a detailed report describing the missing items, their value, and any opinion as to the reasons for the discrepancies should be documented for further action.

If the property is occupied at time of possession, a Displacee Lease is required. Every displaced person should be approached with a Displacee Lease with a term no less than 90 days from the date Relocation staff present the "Notice of Relocation Eligibility, Entitlements and 90-day Assurance." Multiple attempts to obtain a lease may be necessary. If the displacee refuses to sign a lease, notes are made in the diary and in ROW database to assure that the landlord-tenant relationship is properly documented.

If the property is vacant at the time of inspection, all personal property should have been removed from the premises, including salvaged items. If personal property remains on the premises, the PM Specialist verifies with the Relocation Specialist that the Abandonment Information section of the Vacate Inspection of Displacement Dwelling (RES-517) is completed and signed by the personal property owner. If the form was not obtained or signed, the PM Specialist coordinates with the Relocation Specialist for possible reduction of the Relocation Moving Entitlements.

Upon completion of the inspection, a Property Inspection Report (PIR) (DOT Form 263-007) is completed.

### 7.2.1.6 Maintenance and Repair of Improved Properties

The agency inspects each improvement to develop a strategy for continued use or demolition. A number of factors are considered during this process, including the suitability of the improvement for continued occupancy, length of time until removal for construction, cost of repairs vs. income, and relocation assistance rights. Repairs to improvements may be accomplished by private contractor, rent credit, or agency employees. The agency ensures that any building permits and/or local government inspections required for the repair are obtained.

Emergency repairs may be authorized based upon individual circumstances.

If the agency has acquired the property prior to receiving the appropriate environmental documentation/decision, the agency must check with the Environmental Office or appropriate environmental staff before allowing demolition to ensure there are no concerns.

### 7.2.1.7 Removal of Improvements within Right of Way

The agency may remove improvements or authorize their removal, including timber and crops, as listed below:

- Salvage sale (i.e., sale to grantor through the acquisition process or by post-acquisition auction).
- Demolition contract.
- Inclusion in the project construction contract.
- For use by the agency.

The factors of economic feasibility and project schedule are the primary concerns.

**Removal of Improvements by Salvage Sale Auction** – The agency may elect to sell any “structures, timber, or other things of value attached to the land and sell as personal property.”

Merchantable timber is considered to be an improvement. The agency can sever and sell timber and other personalty, or by permit through Developer Services. For more information on the sale of timber, see Section 7.3.5, Disposal of Timber.

Election to sell these items must consider any tenant occupancy rights, as well as the economic advantage of conducting an auction.

The agency establishes a salvage value for the items to be sold and prepares appropriate documentation to proceed with an auction of salvageable improvements, including a Personal Property Sale and Removal Agreement for each item on the auction notice.

The agency must publish the Notice of Auction twice with an interval of one week between publications.

**Removal of Improvements by Grantor-Retained Salvage** – The agency may allow the grantor to retain the salvage rights to any improvement on the property acquired through a Fixtures and Improvements Agreement. Salvage value must be determined prior to completion of acquisition.

***Once acquisition is complete, items cannot be salvaged.***

The agency considers the occupancy rights of any tenant on the property and that there must be sufficient time after the tenant vacates to complete the salvage removal before demolition of improvements and construction begins. The complications that can arise from salvaging tenant occupied improvements can be significant and should be carefully considered.

It may be in the agency’s best interest to work with the grantor regarding salvageable items and removal of those items. The removal period must be reasonable. Some salvage items must remain for DSS compliance, e.g., refrigerator, range, water heater.

For example, a tenant-occupied property and the grantor wishes to salvage example items above. The project saves money by allowing the property owner time to salvage these items **after** the tenants vacates the property by not having to purchase, rent, and/or install these items for use while the tenant is still in occupancy.

The grantor is required to continue to lease the property and pay fair market rent throughout the time needed to salvage the improvements.

The grantor is required to pay all salvage moving costs.

Any salvage purchased by the grantor must be deducted from the Real Property Voucher and the performance bond processed appropriately. The Fixtures and Improvements Agreement must provide a clear understanding and agreement between the agency and the grantor as to when the improvements are to be removed, and that the performance bond will be forfeited if the improvements are not satisfactorily removed by the agreed upon date.

Upon successful completion of the salvage activities, a PIR is submitted requesting a release of the performance bond and termination of any existing lease. If salvage activities are not successful, a PIR is submitted recommending forfeiture of the performance bond.

**Removal of Improvements by Demolition Contract** – If a contractor will demolish the improvement, the agency follows the procedures set forth in Purchasing Manual M 72-80 and other procedures as required by the Contract Ad and Awards Office. The agency ensures the property is posted with no trespassing signs.

**Removal of Improvements by Project Contractor** – The agency determines if the project contractor will remove the improvement(s). The agency then secures the improvement(s) and monitors the property until the contractor takes possession and updates the ROW database accordingly.

**Removal of Improvements for Agency Use** – Improvements and personal property may be removed for agency use. If the improvements and/or personal property are removed from a federal participating project and are not used for another federal project, the agency must determine the value of the items and credit the Federal Highway Administration (FHWA) accordingly.

#### 7.2.1.8 Removal of Personal Property Mobile Homes

The agency may come into possession of mobile homes as real or personal property. The appropriate acquisition documentation must be provided to Region Property Management, which will handle the ongoing management and disposition of the mobile home.

The agency does not have the authority to sell mobile homes acquired as personal property; The agency must contact the Department of Enterprise Services (DES) to facilitate sales. Once the sale and associated documentation is complete and monies received, the necessary documentation to transfer title is provided to the new owner. Any monies received are deposited into the Motor Vehicle Fund.

The agency determines whether to dispose of or demolish any mobile homes that remain unsold.

### 7.2.1.9 Sale of Improvements/Personal Property by Auction

Region Real Estate Services Offices are responsible for salvage sales and completion of the appropriate salvage valuation for those improvements, including timber and crops, which may be sold as salvage. The agency may elect to sell any “structures, timber, crops, or other things of value attached to the land and sell as personal property.” Any tenant occupancy rights are also considered.



[47.12.140](#)

### 7.2.1.10 Preparation for sale.

The agency establishes a salvage value for each item to be sold at auction and prepares a Salvage Valuation for each item to be sold. See Chapter 3, Section 3.5.3 Salvage Valuations, for more information.

If the purchaser requests an extension to the removal date established by the agency for a structure (e.g., home, shed, garage) that will be auctioned, the purchaser must lease the property on which the structure is located for fair market rent. The purchaser must contact the city or county and meet all requirements to move the structure. The agency must verify with the city or county that the structure can be moved from the property; there may be restrictions on height, distances, time, building codes, site development plan, etc.

### 7.2.1.11 Right of Entry

A right of entry to agency-owned or operated property may be requested and arranged to provide reasonable access for specified purposes.

These include, but are not limited to, the following:

- Random soil testing for chemical contaminants.
- Ground water tests for contaminants.
- Test boring to determine soil bearing capacity.
- Determination of highest and lowest groundwater levels for impact to foundations, drain fields, and water wells.
- Inventory level assessment for wetlands, endangered species, and biology.
- Appraisal activities for lease or disposal.
- Property inspection.
- Property survey.
- Archaeological conditions.
- Environmental conditions.

Right of entry to agency-owned or operated property is allowable under the Right of Entry Agreement (RES 439). The right of entry is a non-exclusive right, it is limited to a visual walkthrough, and/or for other items such as those listed above. The Right of Entry is only for the property identified in the agreement and is valid for 180 calendar days.

## 7.3 Disposal

The agency may dispose of any real property it owns and under its jurisdiction if the agency determines that it is no longer required for highway purposes and that disposal is in the public's interest. Other common disposals include Aviation, Rail, Ferries, and Capital Facilities properties.

**CFR →** [23 CFR 710.403\(e\)\(1\)-\(6\)](#)

[23 CFR 710.409](#)

**RCW →** [RCW 47.12.063](#)

[RCW 47.12.080](#)

[RCW 47.12.283](#)

[RCW 47.12.370](#)

[RCW 39.33.015\(3\)](#)

**WAC →** [WAC 468-30-130](#)

Proceeds from any sales are deposited into the appropriate fund.

Auction sales of real property may be conducted by public auction.

Final approval for disposal and method of disposal will be determined by RES Headquarters Property Management.

### 7.3.1 Disposal of Surplus Property

The agency provides surplus property appraisals for surplus real property and/or real property rights to be sold or exchanged. Please see Chapter 3, Section 3.3.3 Surplus Property Appraisals, for more information.

Mobile homes acquired as real property are handled by this process as well.

#### 7.3.1.1 Required Reviews

##### 7.3.1.1.1 Engineering Reviews

An engineering review is required to determine if a property is not needed for highway purposes and eligible for disposal.

The engineering review includes, but is not limited to, the following items:

- Application/Surplus request, if disposal action was requested outside of the agency.
- Title verification/title report or acquisition documents.
- Real Estate maps and postings.
- Legal description.
- Value determination.
- ROW Plan Sheet, marked up showing the property to be disposed of.

- Revised ROW Plan.
- Vicinity map.
- Abutter map and abutter information, if applicable.
- County parcel map.
- County Assessors' information.
- Property photos and Aerial View photos.
- Environmental Checklist/NEPA documentation.
- 60 Day Notice, if applicable.
- Region Diary and any pertinent correspondences (emails, letters, etc.)
- Grantee contact information, if applicable and not noted in the diary.
- Disposal Checklist.
- Surplus Property Report.
- FHWA Approval, if applicable (required if on Interstate/within Limited access or disposals for less than fair market value).
- Access modification approval, if applicable.

**Non-Limited Access Facilities and Specific Sundry Sites (Pit Sites, etc.)** – Reviewed and approved by region staff and Headquarters (HQ) Access with no HQ Approving Authority required. Every review must be reviewed by agency for each of the following disciplines:

- Environmental.
- Public Transportation/Planning.
- Roadside Services/Landscape.
- Local Programs (as determined by region).
- Area Operations Manager for specific county (primarily NWR).
- Developer Services (as determined by region).
- Region Access.
- HQ Access.
- Utilities.
- Maintenance.
- Hydraulics (Hillsides, Slopes, Water issues.).
- Traffic (in NWR ARA Maintenance/Traffic, Maintenance).
- Region ROW plans.

Some reviews may also require review by the Special Circumstance Reviewers shown below if the region does not have staff who specialize in the needed discipline:

- Foundations (bridge structures, retaining walls, sloping issues, tiebacks and similar situations)
- Bridges.
- Homeland Security (Infrastructure and Bridges).
- Ferries.
- Bicycle and Pedestrian Coordinators, or Active Transportation Coordinators.
- ITS Communication, Wireless, and Technology.
- Aviation.
- Project-specific engineers (or field experts), as determined by the agency.
- Facilities - Pit Sites, Stockpile Sites, Quarry Sites, Rest Areas, Waste Sites, and Capital Improvements. In the case of a Facilities site, HQ Facilities must be included in the review.

**Limited Access Facility (Non-Interstate – Established or Planned)** – Standard Reviewers shown above as well as:

- HQ Access

**NOTE:** This review will automatically go to the following queues. Do not choose the following as reviewers:

- HQ Approving Authority
- HQ Plans

Region staff will facilitate the entire review, including any HQ reviewers.

**Interstate Facilities** – All standard reviewers, Special Circumstance Reviewers, HQ Access, HQ ROW Plans, as shown above, as well as FHWA.

**NOTE:** Should a reimbursable agreement be utilized to cover the expense of the review and disposal process, include the appropriate “J” account information in the PMA Comments field found on the General Information Tab of Real Estate Services-Electronic Review (RES-ER).

#### 7.3.1.1.2 FHWA Reviews

FHWA review and approval is required on interstates, within limited access, on any federally funded projects, and if there is a federal nexus. All FHWA reviews require appropriate NEPA documentation. NEPA is required if the property being considered for surplus is located on the interstate highway, or if the parcel was purchased with federal funds and the parcel will be sold for less than fair market value.

The FHWA review consists of all items required in the engineering review listed Section 7.3.1. above, as well as the RES-ER Reviewer Comments Report, RES-ER Property Details Report, and the letter to FHWA requesting review and approval of the disposal of the property.



[23 CFR 771.117\(d\)\(6\)](#)

[23 CFR 710.409](#)

The agency may dispose of surplus property by trade, exchange, turnback, transfer, direct sale, or auction. The agency may sell or exchange the property, in full or in part, for fair market value with consideration for land or building improvements or for construction of highway improvements. Sales or exchanges may be made directly to any of the entities listed in RCW 47.12.063.



[RCW 47.12.063](#)

The agency may transfer, lease, or dispose of such property for less than fair market value to agencies or uses that qualify for public benefit or community purposes, such as affordable housing, subject to appropriate deed or lease restrictions, and as defined under state statute and rule.



[RCW 39.33.015](#)



[WAC 468-30-130](#)

### 7.3.1.1.3 Attorney General Reviews

The Attorney General's Office review and approval is required on all conveyance documents.

## 7.3.2 Conveyance of Real Property for Less Than Fair Market Value

The agency is required by Washington State law to receive fair market value (FMV) consideration, or its equivalent, when it conveys real property for non-highway use. There are exceptions to these requirements, such as when the use of property is for affordable housing.

Federal law requires that, "current fair market value must be charged for the use or disposal of all real property interests." There are several exceptions to this requirement. When charging less than FMV, the agency must demonstrate that all instances are "in the overall public interest based on social, environmental, or economic benefits" and ensure that the public will receive these benefits. An agency may also charge less than FMV "for a non-proprietary governmental use."

**Definition of "Community Purpose."** – The agency utilizes "Community Purpose" as defined under state statute and rule.

- The agency requires the applicant to submit a Public Purpose Statement (PPS) for each parcel of real property sought to be conveyed for less than FMV.
- The applicant must provide a statement of the public need for the real property in the PPS and describe how the proposed conveyance will address the public need, including a description of the benefits the public will receive by the agency conveying the real property at less than FMV.
- The Region will prepare a Public Interest Finding (PIF) based off the information in the application and the PPS.
- In the PIF, the Region must explain how the proposed conveyance will address the public need, including a description of the benefits the public will receive by the agency conveying the real property at less than FMV.
- WSDOT's Property Management Program Manager will review and approve the PIF. For approval of the PIF, the agency must evaluate and justify the conveyance at less than FMV based on a determination that the conveyance is in the public interest based on social, environmental, or economic benefits to the public, or for non-proprietary governmental use. Additionally, the agency must ensure that the public will receive the benefits used to justify the conveyance at less than FMV.
- Following approval of the PIF, the agency will submit the PIF to FHWA for review and approval, if applicable. FHWA may approve the PIF on a parcel-by-parcel basis.

The deed conveying the real property for less than fair market value shall contain a reversionary clause stating that in the event the property ceases to be used for public or non-proprietary purposes, title reverts to, and vests in, the granting agency.

Property may be conveyed to another governmental agency without monetary consideration, only if the property will be used for transportation purposes or for public benefit, such as continued road and street purposes, continued park and ride use, continued wetland mitigation site, etc. Conveyance of any such property is subject to reversionary clauses or deed restrictions as to use.

The agency also has the ability to enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations as defined in [RCW 64.04.130](#), to convey properties under agency jurisdiction that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.



[RCW 64.04.130](#)

[RCW 47.12.370](#)

[RCW 39.33.015](#)

[RCW 39.33.020](#)

[RCW 47.12.080](#)

### 7.3.3 Sales Terms

All sales will be negotiated by Headquarters Property Management and sold in accordance with the approved Surplus Property Report. Under special circumstances, the file may be directed to the Region or Mega Program for negotiation of the sale. If a parcel is assigned to the Region or Mega Program for negotiation, they must consult with Headquarters Property Management for proper procedures for payment, processing, and file documentation.

#### 7.3.3.1 Cash Sale Terms

If the agreed upon sale price is \$1,000 or less, the purchaser must pay the full amount at the time of sale. If the agreed upon sale price is \$2,500 or less, a deposit of 10-percent of the sale price on unimproved properties and 15-percent of the sale price on improved properties must be paid at the time of sale with the remaining balance to be paid within 60 calendar days.

Upon receipt of full payment, title will be conveyed by Quitclaim Deed.

If the purchaser decides not to complete the transaction, their deposit will be forfeited.

### 7.3.3.2 Contract Sale Terms

- Contract terms may be offered on a purchase balance of \$2,500 or more upon approval of the purchaser's credit. A copy of the credit report will not be kept in the disposal file.
- A deposit of 10-percent of the sale price for unimproved property and 15-percent for improved properties may serve as the down payment. A larger down payment is required if payments other than monthly are requested:
 

Quarterly	15% Unimproved	20% Improved
Semi-Annual	20% Unimproved	25% Improved
Annual	25% Unimproved	30% Improved
- If the purchaser decides not to complete the transaction, their deposit will be forfeited.
- The contract term may not be for less than one year or more than 20 years.
- The interest rate will be established by Headquarters Property Management.
- Contracts may be assigned only upon approval by Headquarters Property Management. A fee of one percent of the principal balance, or \$500.00, whichever is greater, will be charged at the time of the assignment. If an assignment of the contract occurs without Headquarters Property Management approval, this fee will be charged and collected at the time of payoff and before a Quitclaim Fulfillment Deed is processed.
- The agency will not refinance or renegotiate terms of executed contracts.
- A purchaser may request a Partial Fulfillment Deed. Only one Partial Fulfillment Deed will be processed per contract.
- Should the purchaser default on a real estate contract, Headquarters Property Management will proceed with remedies as outlined in the contract.
- Upon receipt of full payment of the sale price in fulfillment of a real estate contract, Headquarters Property Management will prepare the appropriate conveyance document for review, approval, and signature. The purchaser is responsible for payment of recording fees and an excise tax fee.
- After the document is returned from recording, the original is sent to the grantee.

### 7.3.4 Auction Sales of Real Property

Auction sales may be conducted by either oral bidding or sealed bids in accordance with RCW 47.12.283. Headquarters Property Management will determine the type of auction sale and will schedule, and conduct said sale.



[RCW 47.12.283](#)

- Bid for Purchase of Surplus Real Estate form must be completed when submitting a bid. All bids must be mailed and received at the Headquarters Real Estate Services office by the date and time determined by Headquarters Property Management. Bids received after the scheduled time and date will not be accepted or read.

- All bids must be accompanied by a surety deposit to be considered. For bids of \$1,000.00 or less, the deposit must equal the amount of the bid.
  - For bids of more than \$1,000.00, the deposit must be at least 10-percent of the amount bid or \$5,000.00, whichever is less. Should the apparent successful bidder fail to complete the sale according to the terms, the deposit will be retained by the agency as liquidated damages.
  - The deposits of unsuccessful bidders will be returned certified mail as soon as possible, normally within two business days of the bid opening.
- The remaining balance of the sale price shall be due and payable within 60 days after the date of sale. Time extensions may be granted on a case-by-case basis but may never be a condition of the bid, as contingent or conditional bids are not allowed.
- The successful bidder may choose to purchase by real estate contract for balances of \$2,500 or more and upon approval of purchaser's credit. If credit is not approved, the apparent successful bidder will have the opportunity to purchase for cash. Should the apparent successful bidder then be unable to complete a cash sale, the surety deposit will be forfeited. See Section 7.3.3 for sales terms.
- Successful bidders are required by RCW 65.08.095, to pay recording fees. Assessment payments, if any, may be prorated and will be assumed by the purchaser.
- Upon receipt of the total sale price, plus interest if any, title will be conveyed by Quitclaim Fulfillment Deed. The agency will not provide title insurance or surveys.
- The agency T employees must request and receive the written permission from the Secretary of Transportation prior to bidding on agency-owned property.
- Property will be sold for the highest qualifying bid that is equal to or higher than the minimum bid listed.
  - When two (2) or more highest bids are submitted for the same amount, the tied bidders will be notified and requested to submit a new written bid to break the tie.
  - Bids will be opened beginning after the scheduled bid opening time with the name of the bidder, and the bid amount announced.
  - Bids will be opened in the order in which the parcels are listed on the agency's website.
  - The agency may waive any minor informalities or irregularities in bids received or reject any or all bids or portions thereof.
  - Bids containing contingencies or conditions will be rejected.
  - Modification to a bid is not permitted; should a bidder wish to modify their bid they must submit a new bid in the old bids place.
  - Name and address of the bidder, and ICN (if multiple bids are submitted) must be on the bid envelope or the bid may not be withdrawn or modified.
  - Bids may not be assigned to third parties.
  - Should the apparent successful bidder default or fail to qualify, another auction will be scheduled, or at the agency's option, the property will be offered to the next highest qualified bidder.
  - The apparent successful bidder will be notified and will receive a receipt for their deposit by mail.
  - Unsuccessful bidders will be notified, and their deposits returned by certified mail, as soon as possible, normally within two business days of the bid opening.

- Those properties for which no bids have been received at opening may be purchased for the minimum bid on a first-come first-serve basis.
- The property is offered "as is" and "where is."
- Interested parties are instructed to contact the local jurisdiction for specific requirements regarding use(s) allowed.
- All sales are subject to existing easements, reservations, restrictions, zoning ordinances, building and use restrictions.
- The agency reserves the right to cancel any or all sales and reject any or all bids.
- All sales are subject to approval by the Secretary of Transportation.



[47.12.283](#)

### 7.3.5 Disposal of Timber

WSDOT Maintenance is responsible for issuing permits to Washington State residents to remove specified quantities of standing or downed trees and shrubs, rock, sand, gravel, or soils that have no market value in place, and that WSDOT desires to be removed from State-owned lands under the agency's jurisdiction. An applicant for a permit must certify that the removed materials will be used by the applicant.

When the agency has fee title to and jurisdiction over any lands upon which timber is located, the timber may be disposed of by the following methods:

- Sale at public auction.
- Issuance of permit.
- Sale to an abutting landowner, for cash at full appraisal value.
- Direct sale.
- Removal for agency use.
- Sale of salvage rights to former owner from whom the State purchased the timber.
- Removal by a contractor as part of a construction project.

If timber is located on a federal aid project and is not used for the same or another federal aid project, appropriate credit must be given to FHWA.

In order to dispose of timber an engineering review is completed in the same manner as for surplus property. All concerned disciplines should be included in the review (always include Landscape Architect, Operations Engineer, and the Regional Administrator). The review should include the following information:

- Original copy of the Surplus Property Report (DOT Form 261-005)
- Any pertinent correspondence including diary.
- Any photographs, map, and any other relevant information.
- Timber cruise/valuation estimate.
- Forest Practice Application (FPA) if applicable. Timber harvesting inside of an active right of way usually does not require FPA. Forms and instructions can be obtained from the Department of Natural Resources.

The sale of timber is conducted in the following three instances:

- Sale at public auction.
- Sale to abutting landowner.
- Direct sales of timber.

Disposal of timber is conducted in the following four instances:

- Sale of salvage rights to former owner from whom the state purchased the timber.
- Removal by a contractor as part of a construction project.
- Removal for agency use.
- Issuance of a permit.

**Sale at Public Auction** – The agency may sell timber or logs at public auction. Auction sales may be conducted by either oral bidding or sealed bids.

 [RCW 47.12.140\(1\)](#)

**Permit** – The agency can issue a permit for the right to remove specified quantities of standing or downed trees and shrubs, rock, sand, gravel, or soils that have no market value in place and that the agency desires to be removed from agency-owned lands that are under its jurisdiction. A permit to remove timber should only be issued when the total merchantable timber volume is no more than 5,000 board feet or one truck load of logs.

 [RCW 47.12.140\(2\)](#)

Permits should not be issued for the removal of timber from properties located off of operating ROW; removal of timber off operating ROW requires an approved Forest Practice Application.

**Sale to an Abutting Owner** – The agency may sell timber or logs to an abutting landowner for cash at full appraised value but only after each other abutting owner(s) (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting owner requests in writing the right to purchase the timber within fifteen (15) days after receiving notice of the proposal sale, the timber must be sold at public auction.

 [RCW 47.12.140\(3\)](#)

**Direct Sale** – The agency may sell timber or logs having an appraised value of \$1,000 or less directly to interested parties for cash at the full appraised value without notice or advertising. If the timber is attached to agency-owned land, the agency must issue a permit to the purchaser of the timber to allow for the removal of the materials from agency land.

 [RCW 47.12.140\(4\)](#)

**Agency Use** – Timber may be removed for agency use, which must be documented. If the timber is removed from a federal participating project and not used for another federal project, the value of the items must be determined and FHWA credited accordingly.

**Sale of Salvage Rights** – The agency determines the value of the timber to be disposed of as salvage. The timber salvaged is prohibited from export until processed. The purchaser must comply with all regulations regarding export restricted timber as detailed in WAC 240-15.



WAC 240-15

The purchaser shall also be responsible for compliance with the regulations of the Department of Natural Resources and the payment of the Department of Revenue taxes on timber harvested. The purchaser shall obtain a Forest Practice Application before harvesting any timber and is responsible for payment of any fees for the permit.

**Removal by Project Contractor** –When the agency has determined the timber is to be removed by the project contractor, the agency must ensure the project engineer is advised, and the timber is included in the project contract prior to the ad date.

Upon receipt of full payment of the sales price, either at the time of sale or in fulfillment of a real estate contract, RES Headquarters will prepare the appropriate conveyance document.

### 7.3.6 Disposal/Closure of Park and Ride Facilities

Prior to closing and/or disposing of a park and ride facility, the agency must:

- Consider all approved uses of the facility and evaluate if and how these services will be provided if the facility is closed or disposed of.
- Consult the environmental documents to determine the original purpose of the facility.
- Review all subsequent agreements executed since the facility was originally acquired.
- Consider the following as part of the evaluation:
  - After considering the requirement for parking spaces from the environmental documents, perform a traffic count to determine current utilization.
    - If the facility is underutilized for parking, can changes be made to improve utilization (e.g. improve security, sanitation, etc.)
    - If the facility is closed or disposed of, how will the public currently using the facility for park and ride parking be accommodated? Are there alternative locations nearby that could accommodate this need?
  - Does the facility include other services such as electric vehicle charging stations? How were those stations funded?
    - Federal Transit Administration (FTA) funding.
    - Federal Highway Administration (FHWA) funding.
  - Perform an assessment to determine the utilization of the charging stations. If the facility is closed or disposed of, how will the loss of charging services be accommodated?
  - Are agreements in place to utilize the facility as a staging point for evacuations? If so, how will this service be accommodated if the facility is closed or disposed of?
  - Are there current public transit services that use the facility? If so, what are the agency's obligations (if any) to the transit agency?

- What funding source was used to acquire the facility? Are there any additional requirements to consider due to those funding sources, including but not limited to:
  - FTA
  - Congestion Mitigation and Air Quality (CMAQ) funding.
  - FHWA
  - Any other funding not listed above.
- In addition to the items above related to the authorized purpose and use of the facility, the following should also be considered:
  - Work with WSDOT's Rail, Freight, and Ports Division to evaluate opportunities to convert the facility into a truck rest facility (semitruck parking).
  - Explore options for converting the facility into a transit-owned park and ride facility.
  - Assess if closure of the facility will trigger closure of other facilities.
  - Consider what the future potential land use for the property will be and evaluate how this will impact highway operations.

After completing the above assessment, the agency must determine if it is appropriate to close or dispose of the facility. If the agency determines that disposal is appropriate, the standard disposal process shall be followed, including the items shown below:

- Provide public notice and allow for public input regarding the closure of the facility.
- A disposal triggers NEPA, NEPA documentation or the Environmental Checklist must be attached to the disposal review to assess the impacts of closing the facility and the elimination of the parking stalls.
- Analyze whether mitigation is required to compensate for loss of the use of the facility. Potential mitigation examples include repayment of federal share; no repayment of federal share; expansion of a nearby facility; and/or construction of a new facility along the interstate in the general area.

Should the agency determine the facility can be disposed of or transferred for continued park and ride purposes, the agency must follow the standard disposal process through the region's real estate office. The facility can be disposed of for either fair market value or for less than fair market value in consideration of continuity in use.

Should the facility be disposed of for fair market value, no restrictions are placed on the property.

If the facility is sold at a reduced value in consideration of the park and ride and stall count requirements, the conveyance document must contain a mandatory stall count and a reversionary clause stating that in the event the property ceases to be used for continued park and ride purposes, title reverts to, and vests in, the agency.

Any additional restrictions on the facility must be documented in writing either in the conveyance document or by agreement.

 [23 USC 137](#)

 [23 710.403](#)

[23 CFR 710.409\(a\)](#)

[23CFR 771.105\(d\)](#)

[23 CFR 810.106](#)

 [RCW 47.12.063](#)

### 7.3.7 Modifications to Limited Access Highways

The agency acquires rights of direct access to or from abutting property owners and by selectively limiting a right of access. Requests can be made to the WSDOT's Development Services and Access Office for modifications to limited access control to accommodate non-highway purpose activities that involve either crossing limited access boundaries or entering into roadside areas from within limited access facilities. For more information about the process and standards for requests for access modification, See Section 530.10 of the Design Manual M 22-01.

 [Design Manual M 22-01](#)

Once the access modification is approved, Region PM is responsible for valuation of the modification. HQ PM is responsible for collecting and depositing funds from the sale and drafting and recording the necessary conveyance documents.

### 7.3.8 Turnback/Relinquishment to Local Jurisdiction

Turnback Agreements are areas of the ROW, roads, and/or streets that the agency acquires for improving or constructing roads that will be turned back, relinquished, conveyed, or transferred to a city, town, or county rather than remain part of the highway system. The agency uses this agreement to transfer jurisdiction and ownership of ROW from the agency to a city, town, or county for highway purposes.

These are a disposal and must be processed as such. The property may be conveyed without monetary consideration, only if the property will be used for continued road and street purposes. Conveyance of any such property is completed via a quitclaim deed and is subject to reversionary clause and/or deed restrictions as to use. HQ PM is responsible for drafting and recording the necessary conveyance documents in accordance with the agreement.

 [23 CFR 620.203](#)

 [RCW 36.75.090](#)

[RCW 47.12.080](#)

[RCW 47.24](#)

[RCW 47.50](#)

[RCW 47.52](#)

[RCW 65.08.095](#)

 [WAC 468-18-040](#)

[WAC 468-30-070](#)

[WAC 468-30-075](#)

 [Agreements Manual M 22-99, Chapter 7](#)

[Local Agency Agreement Summary \(Master Deliverables List\)](#)

### 7.3.8.1 Limited Access

Title to streets, roads, alleys, etc., in a city or town that are within the limits of a limited access facility become the property of the agency “*by operation of law*” and without the need for a deed from the city or town.

The agency may transfer property and improvements acquired by the agency within and outside of limited access that is included in a Turnback Agreement. If within limited access, the property is transferred subject to the agency’s access rights.

 [RCW 47.24.020\(2\)](#)

[RCW 47.52.090](#)

### 7.3.8.2 Managed Access

Property acquired from a third party for right of way **within** a city/town becomes the property of the city, as noted on the right of way plans. No agreement is needed for such properties.

Property acquired for right of way from a third party **outside of the limits of the state route** does not automatically vest in the name of the city/town.

 [RCW 47.24.020\(15\)](#)

## 7.4 Leasing/Right of Way Use Agreements

A lease for the non-highway use of real property interests (referred to as a Right of Way Use Agreement by FHWA) may be executed with a public or private party in accordance with state and federal laws, policies, and procedures.

ROW Use Agreement means real property interests—defined by an agreement and as evidenced by instruments such as a lease, license, or permit for use of real property interests for non-highway purposes—where the use is in the public interest; consistent with the continued operation, maintenance, and safety of the facility; and such use will not impair the highway or interfere with the free and safe flow of traffic. The agency may lease any lands, improvements, or air space above or below any lands that are held for highway purposes but not presently needed as long as the non-highway purpose is compatible with the transportation use.

**NOTE:** If the property is located on a state route within incorporated city or town limits, jurisdiction falls to the city or town pursuant to RCW 47.24.020.

**RCW →** [RCW 47.24.020](#)

The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. As stated under RCW 47.24.020(15), no rental or any other non-transportation use of any unused portion of any such street may be made by the city or town without prior written approval from the agency, and all revenue derived from the rental or any non-transportation use of the right of way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared.

**RCW →** [RCW 47.24.020\(15\)](#)

Lease types include, but are not limited to, the following:

- **Residential/Commercial Displaced Person Lease** – Used when occupied property is acquired and the displaced grantor or tenant remains in tenancy until relocated.
- **Airspace Lease** – Used when tenancy lies within the ROW lines of the constructed facility which should be identified on the approved ROW plan. Airspace is defined as the space above, at, and below the grade line of all completed highways, as well as the area alongside the traveled way, which would include any proposal to lease property that straddles the ROW line.
- **Ground Lease** – Used when premises lies outside the operating right of way or lies within unconstructed right of way.
- **Trail Lease** – Used when an applicant wishes to place a trail on agency-owned property, either inside or outside the operating ROW.
- **Cooperative Agreement** – Used pursuant to RCW 47.28.140. Primarily when writing an agreement with a Transit Organization to operate and maintain a Park and Ride Lot in exchange for operating their transit amenities on the Park and Ride.

**RCW →** [RCW 47.28.140](#)

- **Event Lease** – Used for short-term engagements up to five days in duration. The minimum rental rate \$500/day up to five consecutive days. LET is not charged.
- **Transit Facility Lease** - Used for transit facilities that do not qualify as a Transit Stop Permit. These uses are typically more elaborate transit facilities (e.g., in-line stations, transfer stations or hubs).
- **Interagency Agreement** – Typically used when leasing to another governmental agency.
- **Single Family Residential Lease** – Used for nondisplaced residential occupancy. Rental of state-owned housing must comply with RCW 59.18, the Residential Landlord Tenant Act.

**RCW →** [RCW 59.18](#)

Deposits shall be collected from tenants to help cover any cleaning and damage repair expenses incurred during the tenancy. All residences leased after the initial 90 day displacee tenancy will need proper smoke and carbon monoxide detectors, as well as asbestos, lead, and mold notifications. **NOTE:** Rental of state-owned housing to state employees is the same as for any rental of any other improved property. A state employee who rents a state-owned rental may not be obligated to pay Leasehold Excise Tax (LET) if it is determined that the state benefits from the employee residing on the leased premises

- **Wireless Lease** – Used when leasing property for telecommunications purposes.

All leases must be based on fair market rent/economic rent or an equivalent consideration. See Chapter 3, Section 3.3.3 Surplus Property Appraisals, for more information.

Proposed leases or agreements for non-highway use must meet the conditions set forth in 23 CFR 710.405(a), including the preservation of the safety of the facility and its users. Manufacturing or storing flammable, explosive, or hazardous material on the right of way or under or adjacent to bridges and structures is prohibited.

**CFR →** [23 CFR 710.105v](#)

[23 CFR 710.403](#)

[23 CFR 710.405](#)

**RCW →** [RCW 47.04.045](#)

[RCW 47.12.120](#)

[RCW 39.33.010](#)

[RCW 47.12.380](#)

**WAC →** [WAC 468-30-060](#)

[WAC 468-30-110](#)

## 7.4.1 Transit Stops

The agency processes and grants temporary property rights only in the form of leases. Other programs within the agency issue permits for a variety of uses of agency property that do not require a lease.

- **Transit Stops within Limited Access** – A Transit Facility Lease is used for transit facilities/stops located within limited access, regardless of the size of the facility.
  - Rent for transit stops 2,000-square-feet or smaller within limited access is set at an initial rate of \$1,000.00 per year per stop, subject to annual adjustments at the rate of two percent per year.
  - Rent for transit stops more than 2,000-square-feet are determined under Chapter 3, Valuation, and are subject to annual adjustments at the rate of two percent per year. Rent shall not be less than \$1,000.00 per year per stop and is subject to annual adjustments at the rate of two percent per year.
- **Transit Stops within Managed Access Outside of Incorporated Cities** – A Transit Stop Permit is used for transit facilities/stops that are 999-square-feet or less located within managed access and outside of incorporated cities. Transit Stop Permits are issued by regional Development Services Offices. For more information on the processes/procedures/fees for Transit Stop Permits, see Chapter 1130.12(4) Transit Stop Permits of the Design Manual M 22-01.



[Design Manual M 22-01](#)

A Transit Facility Lease is used for transit facilities that are more than 999-square-feet, located within managed access and outside of incorporated cities. Transit Facility Leases are authorized by Real Estate Services using the same process used to issue a Transit Facility Lease within limited access, as described above.

- **Transit Stops within Managed Access Within Incorporated Cities** – Transit stops within managed access within incorporated cities are permitted by the city.

In determining the square footage occupied by a transit facility, structures such as standing pads, shelter pads with or without a shelter (whichever is greater in size), and any sidewalks or pathways that are integral to the transit stop are included in the calculation.

Roadway pavement for the stopped transit vehicles, utilities, or sidewalks or pathways that are part of the state highway system are not included in the calculation.



[RCW 47.50](#)

[RCW 47.52](#)

[RCW 46.61.560](#)



[WAC 468-46-010](#)

## 7.4.2 Required Reviews

### 7.4.2.1 Engineering Reviews

An engineering review is required to determine if a property is not presently needed for highway purposes and eligible for leasing.

Lease amendments that increase the **size** of the leased premises or change the **use** of the premises must go through another engineering review to determine if the additional leased premises are needed by the agency or if the change in use of the premises is permissible.

The engineering review includes, but is not limited to, the following items:

- Tenant application for proposed lease location.
- Aerial delineating the leased premises.
- Hachured Right of Way Plan sheet depicting the leased premises.
- Acquisition documents (title verification of agency ownership).
- Two property photographs from different angles. Only one photograph may be aerial.
- Region Diary.
- Tenant's proposed use of the property (including any construction plan sets).
- Environmental review checklist (see additional requirements below based on property location – Limited Access or Interstate).
- Tenant's Ad Date, if applicable.
- Funding source information (for Trails or other improvements that may be using grant funds for construction).

**Non-Limited Access Facilities and Specific Sundry Sites (Pit Sites, etc.)** – Reviewed and approved by region staff and Headquarters (HQ) Access, with no HQ Approving Authority required. Every review must be reviewed by agency staff for each of the following disciplines:

- Environmental.
- Public Transportation/Planning.
- Roadside Services/Landscape.
- Local Programs (as determined by region).
- Area Operations Manager for specific county (primarily NWR).
- Developer Services (as determined by region).
- Region Access.
- HQ Access.
- Utilities.
- Maintenance.
- Hydraulics (Hillsides, Slopes, Water issues).
- Traffic (in NWR ARA Maintenance/Traffic, Maintenance).
- Region ROW plans.

Some reviews may also require review by the Special Circumstance Reviewers shown below if the region does not have staff who specialize in the needed discipline:

- Foundations (bridge structures, retaining walls, sloping issues, tiebacks and similar situations).
- Bridges.
- Homeland Security (Infrastructure and Bridges).

- Ferries.
- Bicycle and Pedestrian Coordinators, or Active Transportation Coordinators.
- ITS Communication, Wireless, and Technology.
- Aviation.
- Project-specific engineers or field experts, as determined by the agency
- Facilities - Pit Sites, Stockpile Sites, Quarry Sites, Rest Areas, Waste Sites, and Capital Improvements. In the case of a Facilities site, HQ Facilities must be included in the review.

**Limited Access Facility (Non-Interstate – Established or Planned)** – Standard Reviewers shown above as well as:

- HQ Access

**NOTE:** The review will automatically go to the following queues. Do not choose the following as reviewers:

- HQ Approving Authority
- HQ Plans

Region staff will facilitate the entire review, including any HQ reviewers.

**Interstate Facilities** – All standard reviewers, Special Circumstance Reviewers, HQ Access, HQ RW Plans, as shown above, as well as FHWA.

**NOTE:** Should a reimbursable agreement be utilized to cover the expense of the review and lease process, include the appropriate “J” account information in the PMA Comments field found on the General Information Tab of Real Estate Services-Electronic Review (RES-ER).

 [23 CFR 710.405](#)

#### 7.4.2.2 FHWA Reviews

FHWA review and approval and appropriate NEPA documentation are required for properties located on interstate, within limited access, purchased with federal funds, or if there is a federal nexus, unless otherwise delegated to WSDOT in the FHWA Stewardship and Oversight Agreement.

 [FHWA Stewardship and Oversight Agreement](#)

FHWA review and approval and appropriate NEPA documentation are also required if the agency will lease any property for less than fair market rent/economic rent.

In addition, the agency must evaluate and justify that the lease is for non-proprietary governmental use or that charging less than fair market rent/economic rent is in the overall public interest, based on social, environmental, or economic benefits, and that the public will receive such benefit(s).

An FHWA review is also required when an existing lease is being updated with a change in use or increase in the area being leased.

If an FHWA access break approval is necessary, the lease review will be delivered concurrently with the HQ Access break request.

The FHWA review consists of all items required in the engineering review, see Section 7-4.1.1 above, the RES-ER Reviewer Comments Report, RES-ER Property Details Report, and the letter to FHWA requesting review and approval of the lease and proposed leased premises.

**CFR →** [23 CFR 771.117\(d\)\(6\)](#)

[23 CFR 710.403\(e\)\(1\)-\(6\)](#)

**RCW →** [RCW 39.33.015\(3\)](#)

[RCW 47.12.380](#)

**WAC →** [WAC 468-30-130](#)

### 7.4.2.3 Attorney General Reviews

Leases may require review and approval by the Attorney General's Office, as determined by the agency.

## 7.4.3 Lease Rent Credit

### 7.4.3.1 Rent Credit for Maintenance or Repairs by Tenants

The agency may approve a tenant to perform maintenance and repairs or hire a contractor to perform the work to the leases premises. In such cases, the agency may grant a rent credit. Prior written approval for a rent credit must be provided by the agency and the agency must confirm that the tenant is qualified to perform the work or has hired a licensed and bonded contractor qualified to perform the work.

A tenant may be eligible to request a rent credit when at least one month's rent has been paid, and the tenant continues to pay rent until the work is completed. Rent credits are not allowed in cases when the current rent is delinquent, or the tenant has a history of delinquencies.

Payment for tenant's labor is not generally allowed for rent credit repairs unless approved prior to work commencing. If a tenant's labor is to be considered, at least two cost estimates from private contractors are required for repairs over \$2,500. Cases requiring special consideration may be submitted to HQ for review, which includes the following information.

- Complete description of the items needing repair, including photos.
- Itemization of hours needed to complete the repair, rate per hour, and materials needed to do the work, including any equipment rental if needed.
- A cost/benefit analysis of the proposed repair. This should consider factors such as estimated length of time until sale or demolition, total repair expenditures to date, and estimated cost of repairs in the future if known.

Private contractors may be hired to perform maintenance or repairs, following all the procurement and contracting requirements set forth in the Purchasing Manual M 72-80.



[Purchasing Manual M 72-80](#)

Once the work is completed, the tenant may request the rent credit. Rent credits are granted only after the agency determines the work has been performed satisfactorily.

Headquarters Property Management enters the total amount of the rent credit into the inventory system.

The Region Real Estate Services Manager may approve a rent credit up to their delegated purchasing authority. The HQ Property Management Program Manager must approve any rent credits that exceed this amount. The HQ Property Management Program Manager may waive late fees.

#### 7.4.3.2 Non-Monetary or In-Kind Rent Credit

In limited circumstances, fair market rent/economic rent may be offset when the property is used for a highway purpose or when the proposed use benefits the motoring public, and the value of such use is documented.

Situations that might be appropriate to consider as non-monetary rent credits include but are not limited to:

- **Permanent Improvements to the Lease Premises** – Permanent improvements (e.g., fencing, drainage, or lighting) made by a tenant that will become agency property at termination of the lease may be considered a “highway benefit” and eligible for an in-kind rent credit. The agency must complete a cost/benefit analysis to determine the amount of the rent offset. For example:
  - If it is an improvement that the agency would have been compelled to install itself, then the appropriate rent offset, in most cases, would be the depreciated value of the improvement at the end of the lease, since during the term of the lease, any improvements would typically benefit the lessee, not the agency.
  - If it is an improvement that the agency would not necessarily have installed but could be shown to offset some costs the agency would have otherwise incurred, then the appropriate rent offset, in most cases, would be the cost savings realized by the agency, not the cost of the improvement itself, depreciated or not.
  - Improvements that enhance the value of property may be considered to the extent of how it contributes to the overall value of the property, not the cost of the improvement itself.

- **Performance of Extraordinary Maintenance on the Lease Premises** – The performance of ordinary property maintenance (e.g., litter control, sweeping, landscaping, basic building and site maintenance, etc.) is a standard condition of every lease and not a “highway benefit.” If a tenant performs “extraordinary maintenance” on the leased premises (i.e., maintenance that is not considered routine or typical to the leased premises), those services may be considered a “highway benefit” and determined to be a non-monetary rent credit. In consultation with HQ PM, the agency determines whether a maintenance service is “extraordinary” on a case-by-case basis, based on the circumstances of the leased premises, and must complete a cost/benefit analysis to determine the amount of the rent offset.

The agency must document all justifications for calculating non-monetary or in-kind rent credits. Documentation includes:

- A detailed written assessment of the maintenance cost of a subject property and/or the need for permanent improvements (if applicable), provided by the appropriate regional maintenance division.
- The cost/benefit analysis.
- An appraisal or value memo determining the appropriate value of the proposed rent offset, based on the results of the cost/benefit analysis.

The HQ Property Management Program Manager makes the final determination as to whether a non-monetary or in-kind rent credit may be applied and the value of the offset to fair market rent/economic rent.

**NOTE:** Leasehold Excise Tax (LET) **cannot** be waived, even if a non-monetary/in-kind rent credit has been approved. The LET is calculated\* based off the fair market rent/economic rent and is still charged to the tenant per RCW 82.29A.

*\*The IRIS calculator **MUST** be used to calculate LET; it is located on the right side of the Lease Payment screen, above the Schedule Sequence. Seek guidance from the region PM Supervisor and/or HQ PM for additional details.*

 [WAC 468-30-110\(9\)\(a\)](#)

### 7.4.3.3 Lease of Real Property for Non-highway Use at Less Than Fair Economic Rent/Fair Market Value

The agency is required by Washington State law to receive fair market rent/economic rent, or its equivalent, when leasing real property for non-highway use.

There are some exceptions to this requirement; the agency may lease real property for less than fair market rent/economic rent for:

- Use as affordable housing.
- Use by a community-based nonprofit corporation or the Department of Commerce.
- Certain “community purposes made unavailable due to the placement of the highway projects.”

Federal law requires that, “current fair market value must be charged for the use or disposal of all real property interests.” When charging less than FMV, the agency must demonstrate that all instances are “in the overall public interest based on social, environmental, or economic benefits” and ensure that the public will receive these benefits. The agency may also charge less than FMV “for a non-proprietary governmental use.”

**Definition of “Community Purpose.”** – The agency utilizes “Community Purpose” as defined under state statute and rule. For uses and disposals under this exception:

- The agency must ensure the public will receive such benefit.
- The agency requires the applicant to submit a Public Purpose Statement (PPS) for each parcel of real property sought to be leased for less than fair economic rent/fair market value.
- The applicant must provide a statement of the public need for the real property in the PPS and describe how the proposed lease will address the public need, including a description of the benefits the public will receive by the agency leasing the real property at less than fair economic rent.
- The Region will prepare a Public Interest Finding (PIF) based off the information in the application and the PPS.
- In the PIF, the region must explain how the proposed lease will address the public need, including a description of the benefits the public will receive by leasing the real property at less than fair economic rent.
- The Property Management Program Manager will review and approve the PIF. For approval of the PIF, the agency must evaluate and justify the lease at less than fair economic rent based on a determination that the lease is in the public’s interest based on social, environmental, or economic benefits to the public, or for non-proprietary governmental use. Additionally, the agency must ensure the public will receive the benefits used to justify the lease at less than fair economic rent.
- Following approval of the PIF, the agency will submit the PIF to FHWA for review and approval, if applicable. FHWA may approve the PIF on a parcel-by-parcel basis.
- The proposed lease shall be constructed as to only allow for a very narrow and specific use that creates a benefit to the overall public. Additionally, the agency shall commit to inspecting the real property; this will ensure the real property is only being used to provide the benefit to the public in accordance with the lease.

The lease shall authorize the agency to terminate the lease in the event the real property is required for a highway purpose or if the leased premises cease to be used for public benefit and/or non-proprietary governmental purposes.

 [23 CFR 710.403\(e\)\(1\)-\(6\)](#)

 [RCW 39.33.015](#)

[RCW 47.12.380](#)



WAC 468-30-060(3)(a)

WAC 468-30-130

## 7.4.4 Rent Considerations

### 7.4.4.1 Rent Collection

In compliance with accounting requirements, all rental payments must be deposited within 24 hours of receipt. The initial rental payment, which may be paid at the time the lease is signed, may be paid and deposited in the region or mailed directly to HQ PM by the tenant. All other payments, after the initial payment, are to be paid directly to HQ PM. Computer-generated statements are obtained through the inventory system twice a month in advance of the due date. Rental statements are reviewed for correctness and mailed to the tenant (along with a return envelope) approximately 10 days prior to the due date.

### 7.4.4.2 Rent Adjustments

When a lease contains a provision for rent review or adjustment, rent should be adjusted, per the terms of the lease and based on one of the following:

- The percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for All Urban Consumers (U.S. CPI-U), using the data as published by the United States Department of Labor's Bureau of Labor Statistics.
- At the rate of 2% of the rent in effect during the preceding lease year.
- In an amount that reflects changes in comparable rents as identified in an appraisal/market evaluation. Usually after the fifth year, rent should be reviewed and revised based on an appraisal/market evaluation.
- Wireless Lease adjustments - Increased annually throughout the term of the lease by four percent (4%) of the rent in effect during the preceding lease year.
- At the agency's discretion, per the terms of the lease.

### 7.4.4.3 Rent Refunds

The region initiates a refund by transmitting a Property Inspection Report (PIR) to HQ PM along with photos of the vacated premises. The region must provide HQ PM with the tenant's Statewide Vendor Number at the time the PIR is submitted.

- For Displacee Leases, the region must verify in the inventory system that the tenant has paid rent. Rent shall be refunded only if the tenant vacates within the first 30 days and meets the requirements of the lease.
- For all other leases, rent may be refunded based on the terms of the lease.

HQ PM reviews and approves, if appropriate, the refund request and prepares and processes the appropriate refund document.

## 7.4.5 Delinquent Accounts and Evictions

HQ or the region may run the delinquent rental report from the inventory system which lists all leases that are more than 30 days delinquent.

With the aid of the report, and in conjunction with the region, HQ or the region completes the following:

- Prepares and mails a delinquency letter to each tenant that is more than 30 days delinquent requesting payment.
- Attempts to contact tenant.
- Follows up on the delinquency in the next billing cycle and checks the account to determine if the delinquent rent has been paid; the final attempt to collect delinquent rents due and owing by mailing must be done by certified letter to the tenant setting forth goals and deadlines for payment of the delinquent rent. The Certified Mail Receipt number must be noted in the letter to the tenant and copies of the letter must reside in the file.
- If the tenant remains on the leased premises and does not submit payment, an Unlawful Detainer Action is taken.
- After a completed Unlawful Detainer Action, the region inspects the leased premises to verify the leased premises is vacated and has been left in an acceptable condition. The region and HQ PM will work together to enforce any court judgment.
- The region prepares a detailed report with photos of the leased premises and damaged items, if any, including a list of any missing items. The report should include a description of any abandoned personal property, excessive debris, and/or hazardous materials.

If a property is vacated and rent is still due and owing, HQ PM engages a private collection agency for further handling.

If the debt is uncollectible, HQ Accounting approves the write-off of the debt and HQ PM makes appropriate entries to the account in the inventory system.

## 7.5 Right of Way Encroachments

Agencies are responsible for preserving the ROW free of public and private installations or facilities to maintain safe highway operation, maintenance, and use. No person or entity may lawfully occupy or use agency ROW without authorization to do so.

All encroachments are subject to removal, especially if they interfere with the safe operation, maintenance, and use of the highway.

Temporary or permanent occupancy or use of ROW for non-highway purposes, or reservation of subsurface mineral rights, may be approved if it is determined it is in the public interest and it will not impair the highway or interfere with the free and safe flow of traffic. Such encroachments can be cured and may be permitted to remain on the ROW under a lease or permit with the agency.

Exceptions are permitted for informational sites and for uses defined in [23 CFR 1.23\(c\)](#): Other Use or Occupancy.

 [23 CFR 1.23\(c\)](#)

When an encroachment is identified, it should be reported to the appropriate region office. If the encroachment has been determined to be immediately or eminently dangerous to the traveling public, it may be removed immediately.

 [RCW 47.32.130\(1\)](#)

In establishing and enforcing its encroachment policy, the agency's actions conform with the legal authorities listed below:

- [RCW 47.32.010](#), Order to remove obstructions – Removal by State
- [RCW 47.32.020](#), Notice of order, contents, posting – Return
- [RCW 47.32.120](#), Business places along highway
- [RCW 47.32.130](#), Dangerous objects and structures as nuisances – Logs – Abatement – Removal
- [23 CFR 1.23\(b\)](#), Use for Highway Purposes: All real property, including airspace, within the ROW boundaries of a project must be devoted exclusively to public highway purposes.

## 7.6 Assessments Against State-Owned Lands

WSDOT is exempt from paying general real estate taxes.

Assessing districts with statutory authority to assess agency-owned lands include diking, drainage, sewage, storm water, fire protection, irrigation, fire patrol, and weed districts. WSDOT is required to pay for noxious weeds assessments.



[RCW 17.10.240](#)

Other assessing districts have no authority to assess agency-owned lands. However, assessing districts may assess such lands when they follow the legal requirements to establish the district and the assessment values, and the proposed improvement “specially benefits” the assessed lands. Such districts include local improvement districts (LID), utility local improvement districts (ULID), water districts, sewer districts, sanitary sewer districts, port districts, public utility districts, reclamation districts, park districts, river and harbor improvement districts, and rodent extermination districts.

Generally, this section applies to assessments against parcels in the Real Property Inventory. The agency’s obligation for stormwater control assessments is detailed in RCW 90.03.525.



[RCW 90.03.525](#)

For unique assessment situations, contact HQ PM for case-by-case solutions.

# Chapter 8

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## 8. Use of Consultants

This chapter sets forth the requirements for using consultant services to accomplish real estate services tasks.

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8.1.1 Use of Consultants, Authority, Roles, and Responsibilities .....8-3

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## 8.1 Chapter Overview

### 8.1.1 Use of Consultants, Authority, Roles, and Responsibilities

Consultant services are used to accomplish real estate services tasks when the agency has insufficient staff availability or expertise.

The types of project level real estate services that might be contracted out include:

- Title
- Appraisal
- Appraisal Review
- Cost-to-cure/specialist estimates used in the appraisal process
- Acquisition
- Relocation Assistance
- Relocation Review
- Property management
- Expert witness services

#### 8.1.1.1 Authority

Use of consultants for ROW project services must conform with the legal authorities listed below:

- [23 CFR 710.201\(f\)](#)—Procurement
- [23 CFR 710.201\(g\)](#)— Use of Other Public Land Acquisition Organizations, Conservation Organizations, or Private Consultants
- [23 CFR Part 172](#)—Procurement, Management, and Administration of Engineering and Design Related Services
- [2 CFR 200](#)—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- [RCW 39.26](#)—Procurement of Goods and Services

The policies and procedures for procuring and managing professional services contracts are in the Consultant Services Manual M 27-50, Chapter 300. These procedures do not apply to interagency agreements/interlocal agreements between WSDOT and other public agencies.



[Consultant Services Manual M 27-50, Chapter 300](#)

In order to comply with record retention and public disclosure requirements, all ROW consultants, excluding appraisers and review appraisers but including consultants who work for design-builders, must maintain all working files and project and property management documentation (e.g., diaries, forms, emails and other correspondence, plans, etc.) on WSDOT IT systems (e.g. MS Teams, local drives, SharePoint, any ROW software systems, etc.) and affirm that all such files and documentation are the property of the agency. All project and property management consultants must use a WSDOT-issued email address.

**NOTE:** Due to the independent nature of the work done by consultant appraisers and appraisal reviewers, they are exempt from the requirements to maintain their working files and documents on WSDOT IT systems and the issuance of a WSDOT email address.

### 8.1.1.2 Qualifications

Minimum qualifications for consultants must be the same as WSDOT staff. These qualifications are listed on OFM's website and Chapter 2, Section 2.2.1 Staff Qualifications.



<https://ofm.wa.gov/>

The contract manager hiring the consultants is responsible for determining the minimum qualifications needed for the consultants based on the complexity and needs of their project or service requirement. ROW consultants will often use position titles different from agency staff. The consultant selection process described in the Consultant Services Manual M 27-50, Chapter 300, provides an excellent opportunity for the contract manager to review and evaluate the qualifications, experience, performance, and competency of the consultant prior to making the selection.



[Consultant Services Manual M 27-50, Chapter 300](#)

Valuation services have special qualification requirements listed in Chapter 3, Section 3.1.3 Qualifications.

### 8.1.1.3 Responsibilities

The agency's contract manager for each consultant contract is responsible for ensuring adequate oversight of consultants for real estate activities to comply with FHWA requirements. This oversight includes individual consultant approval, contract oversight, management of deliverables, and review and approval of recommended actions and decisions. This also includes, reviewing invoices for work hours performed on tasks and ensuring the billing rate is correct per the contract and helps ensure prevention of fraud, waste, and abuse.

Prior to any work, the agency meets with consultants to discuss expectations and requirements for successful completion of real estate activities and establish processes and protocols for such work. WSDOT's contract manager, who is hiring the services and has oversight for the deliverables, must ensure the consultant is onboarded and added to all appropriate WSDOT systems.

The agency conducts periodic project status meetings throughout the project to ensure that Federal laws, State laws and WSDOT established policies are being met.

A performance review is required to be completed by the contract manager or designee, either on a project-by-project basis if hired for a specific project or annually if the consultant is hired as staff supplement, when the consultant is actively contracted to do work for the agency.

Completed evaluations shall be forwarded to the appropriate Consultant Services staff at completion of the contract or at project closeout.

The contract manager conducts a project contract closeout meeting to go over findings from agency consultant reviews and evaluations to ensure that any corrective actions identified have been completed or that all necessary steps are in place for the consultant and project management team to complete such actions.

All payment claims for acquisition settlements, relocation assistance payments, and sales and leases of agency property are processed by agency staff.

#### **8.1.1.4 Conflict of Interest**

When appraisal is contracted to a consultant, the appraisal review cannot be performed by an employee or principal of the same firm employing the appraiser.

See Chapter 3, Section 3.1.4 for other Valuation conflicts of interest.

## 8.2 Design-Build Contracts

The design-build contractor's procurement process must include specific minimum qualifications provided by the agency contract manager, relevant to the requirements and complexities of each project or service. Consultants selected must meet project or service-specific requirements.

The WSDOT Region RESM responsible for overseeing right of way activities must review and approve the ROW consultants selected by the Design-Build contractor. Final approval of all ROW consultants is at WSDOT's discretion.