Chapter 25  Right of Way

25.1 General Discussion

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

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

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

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

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

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

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

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

It is essential that local agencies and WSDOT communicate freely and work closely together during the entire acquisition process to expedite projects and to assure that all federal and state requirements are met. Early notification to the Region Local Agency Coordinator (LAC) is required for projects with right of way acquisition when there are federal funds in any phase of the project.
.11 **WSDOT Services** – At the earliest possible date, the local agency should notify the LAC of upcoming federal-aid projects that have ROW activities. In addition, the local agency should advise the LAC of the need for WSDOT assistance. WSDOT is committed to an ongoing program that will provide effective assistance and guidance to local acquiring agencies. To this end, WSDOT will designate an LAC to act as consulting expert to local governments who are acquiring right of way for federally funded transportation projects. The LAC provides oversight and guidance on the federal acquisition process to ensure local agencies are acquiring, managing, and disposing of real property and real property interests consistent with state and federal regulations. ROW activities include title, appraisal, appraisal review, acquisition/negotiation, relocation, and property management activities (collectively referred to as acquisition or acquisition process).

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

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

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

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

### 25.2 Approval of Right of Way Acquisition Procedures

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

1. Staffing changes
2. If the local agency is thinking of doing early acquisition for an unfunded project, the local agency needs to have current procedures.
3. A change is requested regarding who can perform specified activities.
4. Revisions to the ROW Program, such as statutory, regulatory, or policy changes.
Acquisition procedures are submitted on local agency letterhead to the LPE for review prior to final execution by the local agency. Region Local Programs forwards the procedures through the LAC for approval. The local agency will be approved to acquire ROW based upon the submitted procedures.

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

Approved procedures will designate the title of the position and the current staff member's name. When staff changes or additions occur, the local agency will submit the person's right of way experience and qualifications to the LAC.

Procedures shall include the following:

1. Agreement to comply with state and federal laws and FHWA regulations. The local agency agrees to follow this manual and the Right of Way Manual M 26-01 or the local agency's own manual if they have a WSDOT/FHWA approved ROW manual.

2. Agreement will list local agency's current staff and position(s) performing the separate functions of program administration, appraisal, appraisal review, acquisition, relocation, and property management. All local agency staff who perform any of these separate functions should be listed. Note: Local agency personnel such as administrators and members of the executive branch who might participate in the acquisition of ROW for federal aid projects need to be aware that their actions must conform to the Uniform Act and 49 CFR Part 24.

3. Resumes for all current staff, including their position(s) and a brief statement of their qualifications pertaining to the function they are performing (see Sections 25.51, 25.6, & 25.91 of this chapter for additional information).

4. Waiver Valuation procedures, which needs to include the local agency’s minimum payment policy (if applicable).

5. A procedure for handling administrative settlements including the approving authority(s) and process (see Section 25.52 of this chapter for additional information).

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

Note: Local Agencies need to submit FHWA Annual ROW Statistical Report for federal aid projects by October 25th each year. The data provided is for ROW activities from October 1 through September 30 and should reflect parcel activities that occurred within the reporting period.
.21 Acquiring Right of Way – Acquisition of ROW may be performed by the following entities:

- By a local agency that is adequately staffed, equipped, and organized to discharge its ROW responsibilities and has ROW procedures approved by Local Programs. Staff may consist of qualified contract personnel and/or licensed private Real Estate Brokers (see RCW 18.85 in addition to or in lieu of regular employees of the local agency).
- By another local agency that meets the requirements above.

25.3 Preliminary ROW Activities

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

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

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

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

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

When there is federal participation in any phase of a project (PE, RW and/or CN), federal regulations must be followed. The checklist of Federal Aid Requirements (Appendix 25.178) provides useful reminders and should be used as guidance to ensure compliance.

41 Determining Whether Right of Way (Acquisition) is Needed (Appendix 25.174 & 25.715)

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

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

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

   - If it is later determined that ROW is needed, ROW Funding Estimate, a ROW Plan, and a Relocation Plan (if required) must be prepared and submitted to the LPE who will notify the LAC (who is responsible for review and approval).

2. **No ROW (acquisition) Needed** means that the proposed project can be built entirely within the local agency’s existing ROW. Existing ROW is defined as land already incorporated into the roadway facility or land certified under a previous federal aid project. Leases, permits and easements for construction activities, slopes, drainage, etc., whether temporary or permanent, are considered ROW acquisition.

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

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

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

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

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

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

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

Note: If FHWA does not accept the local agency's justification, they must be prepared for FHWA to either make a finding that they have not acquired sufficient property rights (which would preclude ROW certification) or FHWA may consider a conditional approval
that would require the local agency to either repay the project funding or reestablish a replacement improvement in a new location with their own funds (and the right of way for the new location must have been acquired in accordance with the Uniform Act).

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

- **DNR aquatic lands** – DNR typically grants only term easements for uses of state-owned aquatic lands. The term of an easement will normally not exceed 30 years and is not renewable by policy. A new easement may be applied for one year in advance of the current easement agreement term expiration.

- **BPA (Bonneville Power Administration)** – BPA typically grants only revocable permits (Land Use Agreement Fee) for uses under their power lines.

- **WSDOT** – WSDOT typically grants only term leases and/or easements for uses of their property.

- **Bureau of Indian Affairs (BIA)** – BIA policy may vary by tribe as not all tribes are willing to grant permanent easements. Some tribes may grant only a non-permanent easement.

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

**Use of WSDOT Property** – The LAC should be contacted immediately when it is determined that the local agency project requires the use of WSDOT’s property. The LAC will advise the local agency of the process and timeline needed to acquire sufficient legal rights to construct and operate on WSDOT property. The length and type of use of WSDOT property will determine if it will be considered an acquisition and subject to certification requirements. If a local agency requires temporary use of property owned by WSDOT for the construction of a transportation project and those rights are obtained under a WSDOT general permit or agreement, WSDOT will not consider this part of the acquisition process and the permit would not be subject to ROW certification. This also applies if a local agency obtains permanent rights from WSDOT through a relinquishment. These activities are governed by 23 CFR Part 710 Subpart D, Real Property Management and are not Uniform Act activities, nor activities which must be addressed under the
certification requirements found in federal regulations. The acquisition of all other permanent property rights and/or property interests acquired from WSDOT for a federally funded local agency project is subject to certification requirements. Your agency will need to work closely with the appropriate region Real Estate Services staff to acquire the necessary property rights. Please see 25.1.13 of this chapter for additional information.

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

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

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

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

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

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

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

### Property Right vs. Right to Enter

<table>
<thead>
<tr>
<th>Property Right</th>
<th>Right to Enter (Permit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required/needed for the project</td>
<td>Not required/needed for the project</td>
</tr>
<tr>
<td>Element of project design</td>
<td>Not part of project design</td>
</tr>
<tr>
<td>Prior to offer</td>
<td>Post offer</td>
</tr>
<tr>
<td>Mitigation for compensable damage</td>
<td>Requested by owner</td>
</tr>
<tr>
<td>Show rights on ROW plan</td>
<td>Not shown on ROW plan</td>
</tr>
<tr>
<td>Valuation includes cost of item</td>
<td>No compensation paid</td>
</tr>
<tr>
<td>Temporary Construction Easement (TCE) obtained</td>
<td>Permit obtained</td>
</tr>
<tr>
<td>Transfers with ownership</td>
<td>Non-transferrable</td>
</tr>
<tr>
<td>Sufficient for construction</td>
<td>Not sufficient for construction</td>
</tr>
</tbody>
</table>

#### Early/Advance Acquisitions

*Early acquisition* is defined in federal regulations, as the “...acquisition of real property by State or local governments in advance of Federal authorization or agreement.” In practical use, early acquisition refers to the acquisition of real property prior to the final NEPA decision on a project: The Record of Decision (ROD), for projects developed with an Environment Impact Statement (EIS); a Finding of No Significant Impact (FONSI), for projects developed with an Environmental Assessment (EA); or, a Categorical Exclusion (DCE/ECS). Local Programs has two types of early acquisitions; those that occur prior to the initiation of NEPA and those that occur after the initiation of NEPA but prior to NEPA approval.

1. **Concurrent Early Acquisition**-After the initiation of NEPA but prior to its approval.
2. **Advanced Acquisition**-Refers specifically to hardship acquisitions and protective buying. It is discussed further in subsection 4 below. In the case of Advanced Acquisition, the parcel or parcels being acquired must be environmentally cleared prior to starting negotiations.

In each case, federal guidelines must be followed in the acquisition process. The local agency should place copies of any documentation pertaining to early or advance acquisition approval in the parcel acquisition file if it is required as described below. In addition, note the date and actions pertaining to such approval in the parcel acquisition diary.

A local agency may use eminent domain (except under Early Acquisition Option 4), but the local agency must be able to prove public use and necessity, which may be difficult when the environmental alternatives have not been evaluated or selected. The use of eminent domain on a locally-funded acquisition in advance of a project NEPA approval is a decision that the local agency should make after undertaking a risk analysis to determine if they want to proceed with the acquisition using eminent domain. The risk analysis should consider if the proposed project has multiple alignments that could be considered to address the transportation issue. If there is only one obvious alignment, the local agency’s ability to prove public use and necessity is good, which makes the risk low. If there are multiple alignments to address the transportation issue, then the local agency should determine the property needs for the multiple alignments. If each alignment requires different parcels to address the transportation issue, then the local agency’s ability to prove public use and necessity may be low due to uncertainty of the need for the parcel, and the risk is higher.
For all early acquisitions prior to the initiation of the NEPA process, the local agency must show that the early acquisition did not influence the project through the decision or need to construct the project, the consideration of alternatives, or the selection of the design or location of the proposed improvement and demonstrate compliance with 23 CFR 710.501. The local agency should contact the LPE and Environmental Engineer to determine whether additional documentation is required. If NEPA cannot be approved, then the local agency cannot incorporate the parcel into the project. If the project cannot be built without the parcel, then the entire project may be ineligible for federal funding. Concurrent early acquisition parcels will be covered under the overall NEPA evaluation.

A local agency may apply market value (or if donated, the appraised value at the time of the donation) toward their share of project costs, as long as they meet the requirements of 23 CFR 710.501(b). The acquisition of early or advance ROW must not influence the environmental assessment for the project. Properties with a 4(f) Resource may not be purchased if the local agency wants to apply the market value toward their share of project costs.

The local agency can only request match for the Just Compensation plus the Administrative Settlement, if applicable. The costs of the appraisal or any other documentation necessary to meet the requirements of 23 CFR 710.501(b) are not eligible to be used as a match.

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

- The property must be lawfully obtained.
- The acquisition must fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- Per 23 CFR 701.501(c)(5) and 771.113(d)(4) and 40 CFR 1506.1, these early acquisitions cannot have an adverse environmental impact or limit the choice of reasonable alternatives in the NEPA analysis for the project, or have an adverse environmental impact on the parcel. (e.g. If a building that would have been determined to be eligible for the National Register of Historic Places is acquired and demolished, this would be an adverse environmental impact on the parcel).
- Local agencies will not do early acquisition on properties that are protected under section 4(f) of the Department of Transportation Act of 1966, codified at 23 USC 138, and the regulations at 23 CFR 774.
- The acquisition must fully comply with Title VI of the Civil Rights Act of 1964.

**Early Acquisition Options:**

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

2. **Agency-Funded with Matching Credit (Eminent Domain allowed)** – In order for the local agency to use the acquisition costs of early acquisition as a credit toward the local agency's matching share of a federal-aid project, the FHWA must concur in a written determination provided by the local agency that the acquisition did not influence the environmental assessment for the project or the parcel, including:
   - The decision on the need to construct the project.
   - The consideration of alternatives.
   - The selection of the design or location.
   - A statement that the property will be incorporated into a Federal-aid project.
   - The original project agreement covering the project was executed on or after June 9, 1998.

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

3. **Local-Funded with Reimbursement (Eminent Domain allowed)** – The local agency is entitled to reimbursement for costs incurred prior to the completion of environmental review for a transportation project once the real property interests are incorporated in the transportation project under the following conditions:
   - Acquisition complies with the URA
   - Acquisition complies with Title VI of the Civil Rights Act
   - State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under state law and the acquisition was determined in advance by the Governor as consistent with the State Transportation planning process

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

   - Acquisition determined in advance by Governor to be consistent with State Transportation planning process.
   - Land is lawfully obtained by the local agency
   - Acquisition doesn’t involve 4f property

In determining the costs for reimbursement of the project, the local agency can seek reimbursement of the cost of the acquisition including appraisal fees, title fees, relocation costs, and other costs incurred as part of the acquisition.
4. **Federal-Funded Early Acquisition (Eminent Domain is NOT allowed)** – Consistent with federal legislation commonly referred to as MAP-21 (Moving Ahead for Progress in the 21st Century), a local agency may program an early acquisition project in the STIP and, after meeting the additional conditions listed below, request authorization to proceed with the acquisition and obtain federal funding participation. This early acquisition alternative is particularly useful for doing corridor preservation, as it does not require that the local agency have a specific transportation project programmed or in development at the time the early acquisition, using federal funds is carried out.

There are some specific conditions that apply to this alternative:

- The early acquisition project must be included in the STIP.
- A NEPA analysis must be performed for the scope of the early acquisition project, and must be approved by FHWA. In most cases, if the purpose and need for this project is simply to acquire property and hold it until needed for a transportation project, the NEPA clearance would be done with a DCE/ECS. For the purpose of the NEPA analysis, and consistent with the federal requirement, an early acquisition project under this alternative is considered to have independent utility.
- Although the local agency must follow the Uniform Act, as required for all other early acquisition alternatives, early acquisition under this alternative may not be carried out under the threat of eminent domain. If an agreement cannot be negotiated with a property owner, the local agency will have to wait until a specific transportation project requiring this property has been completed through the NEPA process and FHWA funding is authorized for such project.
- Real property interests acquired under this option may not be developed until a specific transportation project requiring this property has been completed through the NEPA process and FHWA funding is authorized for such project.
- If the real property acquired under this alternative is not incorporated within 20 years in a project eligible for FHWA funding, FHWA will offset the State's federal funding by the amount of federal funds used in this early acquisition project.

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

5. **Hardship Acquisition and Protective Buying (Advanced Acquisition Options)**

In addition to the early acquisition options set out in 1 thru 4, federal regulations provide for doing advance acquisition under two options: Hardship and Protective Buying. (Unless otherwise stated elsewhere in this manual, the term "advance acquisition" will be understood to apply specifically to hardship and protective acquisition.) Normally, these two options will apply to a limited number of properties, whereas the early acquisition provisions of 1 thru 4 may apply to some or all properties on a project. Both options must meet these conditions:

- The project must be included in the currently approved STIP.
- The state must have complied with the public involvement requirements addressed in federal regulations at 23 CFR parts 450 and 771.
- If applicable, the Section 4(f) determination must have been made on these properties.
- If applicable, the Section 106 requirements of the National Historic Preservation Act must have been completed on these properties.
• All other required NEPA clearances must have been completed on these properties.
• The conditions set out in Section 25.44 above also apply to hardship and protective buying.
• For federally-funded projects, FHWA Right of Way approval for doing a hardship or protective acquisition is required.
• NEPA approval will be secured by following the 2015 Programmatic Categorical Exclusion Agreement.

**A. Hardship Acquisition** – A hardship acquisition is initiated by a property owner, not the acquiring local agency, when the property owner provides a written statement that:

• Supports the hardship on the basis of health, safety, or financial reasons, and that remaining in the property would pose an undue hardship compared to others.
• Documents the inability to sell the property at fair market value, within a time period that is typical for properties not impacted by the impending project.

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

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

Processing Early and Advanced Acquisitions. The decision whether to proceed with one of the early or advance acquisition options will be made by the local agency. In either case, if FHWA approval is required, as discussed in the earlier sections of this chapter, the request for FHWA approval will be processed through the Local Programs ROW section. It is important to remember that the standard acquisition process, as set out in this chapter, applies to early and advance acquisitions. The main difference between standard acquisition and early or advance acquisitions is that the latter often require additional documentation, such as the approval by FHWA of a request to do an advance acquisition.

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

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

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

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

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

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

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

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

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

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

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

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

.47 **ROW Plan** – A ROW Plan indicating the property required to build and maintain the transportation project is required. A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.
The local agency's ROW plan shall be considered approved upon seal and signature of a registered Professional Engineer or Professional Land Surveyor in accordance with RCW 18.43.070 and RCW 58.09. The ROW plan shall contain essential data needed for appraisal, negotiation, right of way certification activities, and illustrate the following information (see Appendix 25.170 for ROW Plan Checklist).

- Survey line or centerline for the alignment, including sufficient ties to physically locate the alignment. Please contact the LAC if other acceptable survey practices are proposed to establish the alignment.
- Sufficient information for preparation or verification of legal descriptions of the affected properties and types of property interests to be acquired.
- Width of the right of way (alignment), grade changes, and other design features/details of the construction.
- The property lines in their entirety and owner's names for each affected property, along with all contiguous parcels to the property being acquired and owned by the same owner, the parcel identification number; the calculated area(s) of the existing parcel(s); the areas to be acquired, including any easement areas; and the calculated area(s) of the remainder parcel(s).

It is recommended ROW plans illustrate the following additional information:

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

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

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

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

The obligation of federal funding is the approval (authorization) by FHWA to participate in a share or portion of federally eligible expenditures on an agreed-upon scope of work (also known as a project). This commitment occurs when a project phase or additional funding for a phase is approved, and the project agreement is authorized by FHWA. The dollar amount of federal funds approved on the project agreement is known as the obligation of federal funds. Only after the local agency receives written authorization from Local Programs are costs incurred eligible for reimbursement. Once FHWA approval has been obtained for the obligation of funds for the ROW Phase, Local Programs will notify the local agency of authorization to proceed with ROW acquisition. Acquisition activities should not occur prior to the obligation of funds. No acquisition costs are eligible prior to this authorization, except those preliminary ROW costs that are allowable in the PE phase.
.49 ROW Phase with Local Agency Funds Only – If federal funds are to be used in any part of the project, or the property is later incorporated into a federally funded project, federal guidelines for acquisition of the ROW must be followed. The local agency must also follow the local agency’s approved procedures, which typically requires the LAC to review all offers and supporting data before they are presented to the property owner. The ROW plan requirement applies if there are federal funds in any phase of the project. The ROW Funding Estimate ONLY needs to be submitted to the LAC for review and approval if there are federal funds in the ROW Phase of the project (see Section 25.41 of this additional information).

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

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

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

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

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

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

1. The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised.

2. The estimate of just compensation for the acquisition. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages to remaining property in either the report or a separate statement.

3. The data and analyses (or reference to same) to explain, substantiate, and document the estimate of just compensation.

An adequate description of the physical characteristics of the property being appraised, including items identified as personal property. Local Programs created templates that are available for use but are not required if the local agency has a similar form.
Appraiser/Owner Contact – Property owners have the legal right to inspect the property with the appraiser. Every effort must be made to ensure that the property owner has been extended that opportunity for a joint inspection. The appraiser shall document in the appraisal report his or her attempts to contact the property owner, which shall include attempts to contact the property owner either by phone and/or in person. The appraiser should be flexible with scheduling in order to accommodate the property owner. If contact cannot be made by telephone, the appraiser should send a letter explaining the need for the inspection and inviting the owner to join in the inspection. The letter shall be sent "Return Receipt" in order to document the attempt for contact.

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

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

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

The AOS policy is as follows:

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

<table>
<thead>
<tr>
<th>Waiver Valuation (AOS) Value Limits</th>
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<tbody>
<tr>
<td><strong>Condition A: $10,000 or Less</strong></td>
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<tr>
<td>No requirement to offer to provide property owner with an appraisal.</td>
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Under Condition B, if the owner requests an appraisal, the local agency is required to provide and pay for one that meets the standards.
25.6 Appraisal Review

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

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

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

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

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

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

Note: A consulting firm may complete the appraisal and the appraisal review as long as the reports are completed independently. In addition, in order to avoid a conflict of interest the consultants performing the acquisition/negotiation cannot be involved in the appraisal and appraisal review process.
Uneconomic Remnants – An uneconomic remnant is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the local agency has determined has little or no value or utility to the owner.

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

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

Agency Concurrence for Setting Just Compensation

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

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

Title

The local agency will acquire evidence of the condition of title for all properties from which real property interest rights are to be acquired. It is suggested that a preliminary title report be ordered from a title company, and the title to the property acquired cleared so that a policy of title insurance can be issued showing title vested in the local agency subject only to those exceptions which can reasonably be accepted. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.
Special care should be taken to ensure that the parties shown as the vested owners by the title evidence are named correctly in the conveyance instruments, and that the parties signing are the same or have authority to sign. The notary acknowledgement form (jurat) should be appropriate for the status of the granting party.

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

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

25.9 Negotiations

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

Local agencies using staff to negotiate who do not have the necessary qualifications must work closely with the LAC as explained in the Approved ROW Procedures letter.

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

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

Offer/Summary Statement – Upon initiation of negotiations, the local agency shall provide the owner of real property and/or property rights to be acquired with a summary of the appraisal (they can provide the appraisal to fulfill this requirement), or if an AOS a copy of the comparable sales data, a written offer letter, including a summary of the basis for the amount it has established as just compensation for the proposed acquisition. At a minimum the offer letter shall include the following:
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1. The amount established as just compensation.
2. A statement explaining that the offer is based either on an appraisal made by a qualified appraiser and reviewed by a qualified Review Appraiser, or an AOS under the Waiver Valuation Procedure. The local agency's current approved Waiver Valuation Procedure will determine their obligations for offering an appraisal if one was not performed.
3. Identification of the real property to be acquired, including the estate or interest being acquired.
4. Identification of improvements and fixtures considered to be part of the real property to be acquired.
5. The amount of just compensation for the real property to be acquired and any amount included for damages to remaining real property shall be separately stated. If the local agency does not provide a copy of the AOS/Appraisal then items addressed in the valuation that will be handled during construction shall be explained in the offer and a construction memo signed.

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

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

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

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

.96 Statutory Evaluation Allowance (SEA) – The local agency must notify the property owner of the availability of a SEA not to exceed $750 to help defray the owner’s expenses actually incurred in evaluating the local agency’s offer. Reimbursement made to the property owner shall not be delayed due to negotiated settlement or project delays. The SEA requirement only applies to offers made under the threat of eminent domain. Therefore, when a local agency’s offer is NOT under threat of eminent domain, either by choice or regulation (such as early/advance or voluntary acquisitions), the local agency...
does NOT have to notify the owner of the $750 SEA. A local agency is not prohibited from offering the $750 SEA on non-eminent domain offers; however, FHWA may not participate in the cost. Local agencies must be consistent in their policy on whether to offer the $750 SEA to property owners and apply it uniformly.

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

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

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

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

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

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

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

Because global settlements could compromise the entire project’s federal aid eligibility, FHWA will not accept a project ROW certification if it includes a global settlement. The local agency should contact the LAC if they are considering global settlements.
.101 Functional Replacements – When publicly-owned real property, including land and/or facilities, is to be acquired for a federally funded transportation project, in lieu of paying the fair market value for the real property interest, the local agency may provide compensation by replacing the publicly-owned real property with another facility which will provide equivalent utility.

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

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

### 25.10 Donated Property

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

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

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

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

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

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

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

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

1. Any administrative settlement which exceeds the fair market value must be documented, thoroughly justified, and the rationale set forth in writing in order to be eligible for federal aid funds. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from LAC.

2. The local agency shall document the following and make it available for review by LAC if it is not already part of the local agency’s Approved ROW Procedures:
   a. Identify the responsible official who has the authority to approve administrative settlements.
   b. Describe the procedure for handling administrative settlements.

3. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information. The settlement must include an analysis of the circumstances of each individual parcel and provide justification as to why the administrative settlement is in the public’s best interest. This documentation shall be completed and approved by the designated local agency official prior to payment(s) being made. The list below is a sample of items to be considered for an administrative settlement, and should not be used as a template.

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

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

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

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

### 25.12 Relocation

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

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

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

You may contact a LAC for sample relocation plans or refer to Right of Way Manual Chapter 12 for guidance. You may also contact the LAC for assistance in preparing relocation plans and carrying out relocation activities (see Section 25.43 of this chapter for additional information).

### 25.13 Right of Way Certification

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

The LAC will perform spot check reviews on selected federal aid or federal aid eligible projects. The number of spot check reviews is dependent upon the scope of the project, complexity of acquisitions, the local agency's level of experience, and past performance. Spot check reviews are not required on all projects, unless required by the local agency's Approved ROW Procedures.

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

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

The certification provides the following information and assurances.

1. Sufficient property rights to construct, operate, and maintain the facility as shown on PS&E has been acquired.
2. Right of way has been acquired in accordance with Uniform Act requirements.
3. Relocation assistance has been completed in accordance with the Uniform Act and meets the requirements of Right of Way Manual Chapter 12.
4. Properties acquired in advance of NEPA Clearance (including donations) shall be identified by parcel number. (This information could take the form of an address or a county tax ID if parcel numbers are not assigned.)
and use agreement. This is different from the procedures in Chapter 17 of the ROW Manual. In addition, certificate 2s must be updated to a certificate 1 in order for the local agency to have all the necessary rights to operate and maintain the facility.

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

### 25.14 ROW Certification vs URA Compliance

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

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

#### RW Documentation Requirements

<table>
<thead>
<tr>
<th>RW Documentation Requirements Based on Funding Source When a Project has RW Acquisition</th>
<th>ROW Certificate</th>
<th>URA Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>FHWA Funds in PE Phase</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>FHWA Funds in RW Phase</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>FWHA Funds in CN Phase</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>100% Local Funds Only – Federalized by NEPA</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>100% Local Funds Only – Project involves Interstate</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

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

Per 23 CFR 635.309(b) and (c), the ROW certification procedure for federally funded transportation projects identifies the acquisition status of necessary ROW for the purpose of advancing a project to construction. This regulation is specific to construction authorization only and is the only time that a ROW certification is issued by Local Programs/FHWA. Title 23 requires that acquiring local agencies comply with 49 CFR Part 24. The requirements of 49 CFR 24.101 apply to any acquisition of real property for programs or projects where there is federal funding in any part of project costs. The phase program or project means any activity or series of activities undertaken by a Federal Agency or with federal funding received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines. The certification process outlined in Chapter 17 of the ROW Manual must be followed if federal funds are planned in the Construction or ROW Phase of the project.

**URA Compliance – Non-Construction Authorization**

If federal funds of any amount are used in the PE phase the project is required to follow the URA. This also applies to projects which have been federalized by NEPA or involve Interstate when local funds are used. For example, a project that has been split into two or more separate projects but is covered by one NEPA document is required to follow the URA when any portion of the overall project involves federal funding.
Title 23 requires that acquiring local agencies comply with 49 CFR Part 24. The requirements of 49 CFR 24.101 apply to any acquisition of real property for programs or projects where there is Federal financial assistance in any part of project costs. The phase program or project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

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

**URA Compliance is required if:**
- Federal funds in the PE Phase only
- Locally funded but federalized by NEPA
- Locally funded but involves interstate

**ROW Project Compliance Reviews (CR):**
- In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines; WSDOT may perform reviews on selected local agency projects that are locally funded but involve interstate, locally funded but federalized by NEPA, or federal funds are only in the PE phase.

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

### 25.15 Property Management

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

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

1. Property records showing:
   a. An inventory of all improvements acquired as a part of the ROW.
   b. An accounting of excess properties acquired with FHWA funding.
   c. An accounting of the property management expenses, and the rental payments received.
   d. An accounting of the disposition of improvements and the recovery payments received.

2. Methods for accomplishing the clearing of ROW when such clearance is performed separately from the control for the physical construction of the project.

3. The methods for employing private firms or public agencies for the management of real property interests.

4. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.
If the local agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the local agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

The local agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

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

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

FHWA approval is required for disposal (sale, lease, easement, etc.) of any rights of way or uneconomic remnants sold at less than fair market value. The local agency will need to provide a written request showing the exception is in the overall public interest based on social, environmental, or economic benefits, or is for a non-proprietary governmental use. Upon approval, the local agency will include a reversion clause in the deed.

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

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

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

.161 General – The diary (also can be referred to as a negotiator’s log) is one of the most important elements of an acquisition or relocation file. It is crucial that it be accurate and complete, for it is frequently the only document in a file that explains how a difficult or complex real property interest transaction proceeded. Diaries are also often the only written documentation that is available to show that ROW transactions were done in compliance with the Uniform Act and 49 CFR Part 24. Therefore, diaries need to provide a complete record of the transaction. They need to be well organized and factual, and they should be written to be understandable by someone unfamiliar with the transaction. Also, they should reference any appropriate documents in the file such as brochures provided to property owners or estimates obtained to support an administrative record.

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

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

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

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

If during the LAC Certification Review, it becomes necessary for a Diary to be corrected, amended, or for additional information to be added this must be accomplished through a Supplemental Diary. The original Diary shall NOT be altered in order to correct erroneous or add missing information.
25.17  Oversight of Consultants Hired to Perform ROW Activities

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

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

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

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

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

25.18  ROW Training

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

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

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

25.20 **Appendices**

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

- 25.170 Right of Way Plan Checklist
- 25.171 Vacant
- 25.172 Sample Neighborhood Description
- 25.173 Vacant
- 25.174 Determining Whether Land or Property Rights or Interest are Needed
- 25.175 Determining the Type of Property Rights Necessary
- 25.176 No ROW Needed Verification Checklist
- 25.177 FHWA Early/Advanced Acquisition Options and Requirements Chart
- 25.178 Federal Aid Requirement Checklist
- 25.179 Acquisition Process Flowchart
- 25.180 LPA Certification Worksheet – Certificate 1 Sample
- 25.180a LPA Certificate 1 Worksheet – Instructions
- 25.181 LPA Certification Worksheet – Certificate 2 Sample
- 25.181a LPA Certificate 2 Worksheet – Instructions
- 25.182 LPA Certification Worksheet – Certificate 3 Sample
- 25.182a LPA Certificate 3 Worksheet – Instructions
- 43.62 Example of Design Approval Document

25.21 **Local Programs Right of Way Services Website**

*Right of Way Services Home*
- Laws & Regulations
- Manuals & Resources
- Clarification & Guidance
- ROW Training & Education
- LPA Forms & Brochures
Appendix 25.170 Right of Way Plan Checklist

The following checklist is provided as an aid to completing a new right of way plan based on Section 25.4 of the Local Agency Guidelines and WAC 332-130.

____ A vicinity map showing the project limits and total parcel details for parcels too large to show on the individual plan sheet.
____ The survey line or centerline of the alignment.
____ The old and new RW limits with sufficient ties to the survey line to allow a legal description to be written for all rights to be acquired.
____ Show all rights to be acquired including fee simple acquisitions, permanent easements and temporary easements. Include advanced acquisition parcels.
____ The total ownership boundaries of all parcels showing all rights to be acquired.
____ The parcel identification number and owner name.
____ Contiguous parcels owned by the same owner.
____ Verify that the legal description of each parcel has been plotted correctly.
____ The calculated area of the parcel(s) to be acquired.
____ The calculated area of the remainder.
____ Make sure the total, right of way and remainder areas add up correctly.
____ Make sure the curve data is correct and matches the information and stationing on the plan.
____ Any improvements within 100' of the existing RW line.
____ Cross reference notes to existing RW plans, Records of Survey or other documentation.
____ Label grade intersection stations.
____ Provide necessary backup calculations and title reports.
____ Seal and signature of register professional engineer or professional land surveyor in accordance with RCW 18.43.070 and RCW 58.09.
____ Design features, width of the new highway (alignment), grade changes, and other detail of the construction.

Verify that the requirements of WAC 332-130 have been met, including:

____ Basis of Bearing
____ North Arrow
____ Text size
____ No shading on the plan.
____ Identification of corners used to control the alignment
____ A description of all monuments shown
Appendix 25.171  Vacant
DATE: October 21, 1986

The project vicinity is rural Yakima County lying about 25 miles (40 km) westerly of Yakima city limits in an area commonly called Sunset Hill. The county road connecting the area to the city of Yakima is the Sunset Hill Road, which is currently a two-lane arterial. The area is primarily devoted to agricultural uses, such as cattle raising and forest products, but also is developing with single family lot subdivisions and ranchette residential uses. This part of the county is becoming a bedroom area for commuters to Yakima and several commercial uses have developed along the Sunset Hill Road. Zoning here is Agricultural (AG) minimum 20 acres (8 ha), with areas bordering the Sunset Hill Road zoned Single Family Residential (SR 13), minimum 13,000 square feet (1210 square meters) per site, and a strip along said arterial between Henderson Road and White Bluff Boulevard being zoned for commercial and/or office uses (CPD), with a minimum area required of 15,000 square feet (1395 square meters) per site. Utilities available along Sunset Hill Road are Puget Power, West Yakima Water (Community System), PNB telephone, and sewers are by individual septic systems (soils percolate adequately). There appears to be minimal demand for new commercial development along Sunset Hill Road.

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

Eleven parcels will be affected: seven homes, a tree farm (2,000 acres (810 ha) in size), one convenience store, a small wholesale lumber mill, and a new professional (medical) office complex. One of the residences is partially in the take and possibly will require relocating the owner-occupant family. A machine shed on the lumber mill site is partially in the take and it contains tenant-owned equipment. The convenience store’s gasoline dispensers and canopy are partially in the take. About 10 of the 40 parking stalls for the medical office are in the taking, possibly resulting in loss of one tenant. The project should generally benefit the neighborhood by improving traffic flow during the rush hour. The neighborhood should continue to moderately change from agricultural to single family uses, with no major zoning changes immediately foreseeable, since neighborhood commercial services should remain adequate for the next five or more years.
Appendix 25.173  Vacant
Determining Whether Land or Property Rights or Interest are Needed

1 Existing Right of Way (ROW) is real property, or an interest in real property, previously acquired for or devoted to the local agency’s roadway purpose.

#1 Does your agency already own all of the land (or property rights) necessary to construct, operate, and maintain the proposed project (existing ROW)?

#2 Does your agency solely need temporary rights* (aka permit) to perform work exclusively for the benefit of the property owner and does not cause compensable damage (as determined by the appraiser or AOS preparer listed in the Agency’s Approved Procedures), which work may not be done if agreement cannot be reached (49 CFR 24.101(c)(2))?  

*Temporary rights including but not limited to: Temporary Construction Permits, Temporary Access Permits, Detour Permits, Driveway Permits, etc., should not be used when the local agency needs a perpetual right. The provisions of the Uniform Act do not apply if all required project elements of the design cross section (slopes, drainage, maintenance access, etc.) can be built within existing right of way using AASHTO minimum geometric design standards; and only temporary minor work outside the existing right of way is needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached per 49 CFR 24.101(c)(2) (such as driveway reconnections, slope flattening, and/or contouring). Such temporary minor work normally does not require compensation, and rights are typically granted by permit. Permits are revocable (valid with the current owner only), and must be renegotiated if property ownership changes before the permit expires. If you have any questions whether temporary work on your project meets these criteria, please contact your Local Agency Coordinator and review Chapter 25 of the Local Agency Guideline Manual (LAG).

#3 Do you need land or property rights from another Agency, or land or property rights from a private owner to construct your project?

#4 Develop ROW Plan, Property Acquisition Plan, or other appropriate document and determine the type of property rights needed (e.g., fee, permanent easement, temporary construction easement (TCE), or other instrument). See Determining Type of Property Rights Necessary Flow Chart.

#5 ROW Certificate will be needed

#6 Did your agency come into ownership of all the existing ROW by any of the following methods?
1. ROW was acquired prior to July 1, 1971 (pre-URA)
2. ROW was certified under a previous federal aid project
3. ROW was purchased for a purpose other than the transportation related project
4. ROW was obtained through normal dedication or exaction procedures

#7 No ROW or Property Rights Needed (No ROW Certificate Needed)

#8 Confirm appropriate type of property rights were acquired and add to ROW Plan

No

#9 Was any of the existing ROW previously purchased or donated specifically for the current project (early acquisition)?

Yes

#10 Property rights/ROW is needed

No

Revised April 2019
Determining the Type of Property Rights Necessary

An Agency’s acquisition of property rights must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) requirements except as exempted below (per #2 and #3), and be done either following the Agency’s Approved Procedures or by a qualified consultant. The acquisition activities must include going through the valuation process to determine just compensation.

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

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Yes

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Yes

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Yes

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Yes

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Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No
No Right-of-Way (ROW) Needed Verification Checklist

This verification checklist is a tool to be used during the completion of the Project Prospectus to aid in determining if ROW is needed for a project. Please verify each of the following statements by comparing the ROW plan against the PS&E (refer to Appendix 25.174 & Appendix 25.175 for additional guidance):

<table>
<thead>
<tr>
<th>Yes</th>
<th>N/A</th>
</tr>
</thead>
</table>

The project can be constructed, operated AND maintained entirely within the acquiring agency's existing ROW, which was obtained under one or more of the following methods:

1. ROW acquisition occurred prior to July 1, 1971/the Uniform Act;
2. ROW was certified under a previous federal aid project;
3. ROW was purchased for a purpose other than this project, and is no longer needed for its original purpose; and/or
4. ROW was obtained through normal dedication or exaction procedures not related to this project (there was no unconstitutional taking).

Early acquisition or donation was not obtained specifically for this project.

The acquiring agency does not need to obtain any interest in, or possession of, real property (including temporary uses, easement, access rights, air rights and/or airspace) to construct, operate and maintain the proposed project.

The acquiring agency solely needs temporary rights to perform work exclusively for the benefit of the property owner and does not cause compensable damages, which work may not be done if agreement cannot be reached.

Real property improvements are not encroaching into the existing ROW and/or airspace.

If all the answers to the above are “Yes” or “NA” then no ROW acquisition is needed, sign the Design Approval Documentation form (Appendix 43.62) and place a copy in the project file.

By: Approving Authority   Print Name   Date

Regulatory Definitions:
Access rights mean the right of ingress to and egress from a property that abuts a street or highway.
Acquiring agency means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.
Acquisition means activities to obtain an interest in, and possession of, real property.
Air rights mean real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.
Airspace means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.
Damages means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.
Donation means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.
Early acquisition means acquisition of real property by State or local governments in advance of Federal authorization or agreement.
Easement means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.
Program or project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.
Real property means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.
Right-of-way means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.
## Appendix 25.177 FHWA Early/Advanced Acquisition Options and Requirements Chart

### Early Acquisition (EA) Options & Requirements

(23 CFR 710.501)

<table>
<thead>
<tr>
<th>Acquiring ROW Options</th>
<th>Require NEPA Decision</th>
<th>Allow 4F Properties</th>
<th>Start Acquisition</th>
<th>Request Reimbursement/Credits</th>
<th>Comply w/ Federal Law*</th>
<th>Subject to Condemnation</th>
<th>Requirements</th>
</tr>
</thead>
</table>
| 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 | A State may carry out early acquisition entirely at its expense. However, a State may maintain eligibility for future Federal assistance on a project. To maintain eligibility, early acquisition must comply with the following requirements of 23 CFR 710.501(c)(1)-(6):  
  - Property lawfully obtained by the State agency;  
  - Not 4F property;  
  - Acquisitions and relocations comply with the Uniform Act;  
  - State agency complies with Title VI of the Civil Rights Act;  
  - FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including:  
    - The need to construct,  
    - The consideration of alternatives, or  
    - The selection of design or location. |
| 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 | • Property lawfully obtained by the State agency;  
  • Not 4F property;  
  • Acquisitions and relocations comply with the Uniform Act;  
  • State agency complies with Title VI of the Civil Rights Act;  
  • FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including:  
    - The need to construct,  
    - The consideration of alternatives, or  
    - The selection of design or location;  
  • Property is incorporated in the project to which the credit will be applied; and  
  • The amount of the credit may be current fair market value or historic acquisition cost to acquire; however, this credit must be applied consistently within the project. 23 U.S.C. 323(b)(2). |
| 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 | • Property lawfully obtained by the State agency;  
  • Not 4F property;  
  • Acquisitions and relocations comply with the Uniform Act;  
  • State agency complies with Title VI of the Civil Rights Act;  
  • FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed project including:  
    - The need to construct,  
    - The consideration of alternatives, or  
    - The selection of design or location;  
  • State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State transportation planning process;  
  • The State actually selects the alternative for which the real property interest is acquired pursuant to NEPA;  
  • Prior to approval for Federal participation, NEPA is completed; and  
  • Reimbursement is based on the usual costs to acquire—23 CFR 710.203(b)(1). |
### Early Acquisition (EA) Options & Requirements

**23 CFR 710.501**

<table>
<thead>
<tr>
<th>Acquiring ROW Options</th>
<th>Require NEPA Decision</th>
<th>Allow 4F Properties</th>
<th>Start Acquisition</th>
<th>Request Reimbursement/ Credits</th>
<th>Comply w/ Federal Law*</th>
<th>Subject to Condemnation</th>
</tr>
</thead>
<tbody>
<tr>
<td>4) Federally funded Early Acquisition (Stand-alone project) 23 CFR 710.501(e) 23 USC 108(d)</td>
<td>YES, NEPA decision required for the early acquisition, stand-alone project only (not the transportation project); (Usually a CE)</td>
<td>NO</td>
<td>After NEPA is complete for the Early Acquisition Project</td>
<td>This is a reimbursable, stand-alone Federal-aid Project based on FHWA authorization to proceed with acquisition</td>
<td>YES</td>
<td>NO</td>
</tr>
</tbody>
</table>

- State certifies and FHWA concurs that the following requirements have been met:
  - State has authority to acquire under State law;
  - Is for a Title 23 eligible transportation project and does not involve 4F properties;
  - Will not cause significant adverse environmental impacts as a result of the EA project or from cumulative effects of multiple EA projects;
  - Will not limit the choice or otherwise influence the NEPA decision of FHWA;
  - Will not prevent the lead agency from making an impartial decision as to alternatives;
  - Is consistent with the State transportation planning process under 23 U.S.C. 135;
  - Complies with other applicable Federal laws (including regulations);
  - Will be acquired through negotiation, without the threat or use of condemnation.

- Real property interests acquired cannot be developed in anticipation of the transportation project until a NEPA decision for that transportation project has been completed. No development activity related to demolition, site preparation, or construction that is not necessary to protect health or safety may be undertaken.

- If reimbursement is made and the real property interests are not incorporated in a project within 20 years, FHWA must offset the amount against Federal-aid funds apportioned to the State.

- Eligibility for Relocation Assistance—a person is considered displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest. Options to purchase and similar agreements do not create an immediate commitment and do not create eligibility.

*Note: The “Option” to purchase the property at a later day allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings.*

### Advance Acquisition (AA) Options & Requirements

**23 CFR 710.503**

<table>
<thead>
<tr>
<th>Acquiring ROW Options</th>
<th>Require NEPA Decision</th>
<th>Allow 4F Properties</th>
<th>Start Acquisition</th>
<th>Request Reimbursement/ Credits</th>
<th>Comply w/ Federal Law*</th>
<th>Subject to Condemnation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Protective Buying 23 CFR 710.503</td>
<td><strong>Yes typically a CE. See 23 CFR 771.117(d)(12)</strong></td>
<td>Yes, if consultation is completed on 4F. Usually during the NEPA process.</td>
<td>After property is incorporated in the Federal-aid project.</td>
<td>YES</td>
<td>YES, if State law allows</td>
<td>Development of the property is imminent.</td>
</tr>
<tr>
<td>2) Hardship Acquisition 23 CFR 710.503</td>
<td><strong>Yes typically a CE. See 23 CFR 771.117(d)(12)</strong></td>
<td>Yes, if consultation is completed on 4F. Usually during the NEPA process.</td>
<td>After property is incorporated in the Federal-aid project.</td>
<td>YES</td>
<td>YES, if State law allows. See comment</td>
<td>A request for hardship acquisition based on a property owner’s written submission. <strong>Note:</strong> While the agency may condemn if a settlement cannot be reached on a hardship acquisition, great care should be taken to ensure that the decision is warranted both for the property owner and the agency.</td>
</tr>
</tbody>
</table>

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

**Note:** Protective Buying and Hardship Acquisitions usually occur during the transportation project’s NEPA phase. However, prior to approving an AA, NEPA clearance is necessary for the AA parcels. This requires the AA parcels to be carved out from the overall project so that NEPA clearance provided on those parcels, typically in the form of a CE.
# Appendix 25.178  Federal Aid Requirement Checklist

## Informational Only

**Agency:** Click here to enter text.  
**Region:** Click here to enter text.  
**Date:** Click here to enter text.  

**Project Federal Aid Number:** Click here to enter text.  
**Project Name:** Click here to enter text.  
**Federal Funds Will Be Used For:**  
- **PE:** Click here to enter text.  
- **R/W:** Click here to enter text.  
- **CONST.:** Click here to enter text.  

**Persons Will Be Displaced:** Yes ☐ No ☐  
**Right of Way Acquired for This Project:** Yes ☐ No ☐

<table>
<thead>
<tr>
<th>Reminders</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Real property must be appraised before initiation of negotiations with the owner, per 49 CFR 24.102(c) and 24.108.</td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td>2. Owners must be given an opportunity to accompany each appraiser during his inspection of the property, per 49 CFR 24.102(c).</td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td>3. The acquiring agency must establish just compensation before initiation of negotiations with the owners, per 49 CFR 24.102(d).</td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td>4. No increase or decrease in the FMV due to the project except physical deterioration, is to be considered in the valuation of the property, per 49 CFR 24.103(d).</td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td>5. Appraisals are not to give consideration nor include any allowance for relocation assistance benefits.</td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td>6. The owner is not to be left with an uneconomic remnant that the acquiring agency did not offer to acquire, per 49 CFR 24.102(k).</td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td>7. The owner is to be given a written statement of the amount offered as just compensation, and where appropriate, the compensation for real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated in the written statement, per 49 CFR 24.102(e).</td>
<td>Click here to enter text.</td>
</tr>
</tbody>
</table>
8. No owner shall be required to surrender possession before the agreed purchase price has been paid or the approved amount of compensation has been paid into the court, per 49 CFR 24.102(j).

9. No lawful occupant shall be required to move unless the occupant has been given at least 90 days advance written notice of the earliest date by which the occupant may be required to move, per 49 CFR 24.203(c).

10. The rental amount charged to owners and/or tenants permitted to occupy the property subsequent to acquisition must not exceed the fair rental value for such occupancy, per 49 CFR 24.102(m).

11. No action must be taken to advance condemnation, defer negotiations or condemnation or taken any other action coercive in nature in order to compel an agreement on the price to be paid for the property, per 49 CFR 24.102(h).

12. The acquiring agency must acquire an equal interest in all buildings, etc., located upon the real property acquired, per 49 CFR 24.105.

13. The acquiring agency must pay recording fees, transfer taxes, etc.; penalty costs for pre-payment of a pre-existing mortgage and the pro rata share of real property taxes paid subsequent to vesting title in the acquiring agency, per 49 CFR 24.106.

14. No property owner can voluntarily donate his property prior to being informed of his right to receive just compensation.

15. Provisions have been made for rodent control should it be necessary.

16. No owner was intentionally required to institute legal proceedings to prove the fact of the taking of his real property.

Prepared by: 
Title: 
Acquisition Process

Pre-Negotiations

- Make property owner aware of negotiations process through project meetings or preliminary visit
- Preparation and assembly of negotiation package (letter of offer, notices, summary statement, option)
- Pre-negotiation coordination with other offices, scheduling of appointment with owner(s) or representative (if by mail, prepare package)

Negotiations

- Initial contact in person
- Present negotiation package (offer letter, summary statement, notices, option/agreement)
- Log contacts
- Deed/Option signed
- Option accepted

Closing/Condemnation

- Settlement (prepare settlement statement, releases, deed, etc.)
- Closing and possession (payment of just compensation)

Flowchart:

1. Initial contact in person
   - Yes: Present negotiation package
   - No: Log contacts
2. Make follow-up contact
3. Administrative settlement
   - Yes: Mediation successful
   - No: File condemnation deposit FMV
4. Mediation successful
   - Yes: Legal settlement
   - No: Litigation judicial
5. Litigation judicial administrative hearing trial on merits
**Certificate No. 1**  
*Agency: ABC County*  
*Project Title: NW Gold Trail Project*  
*F.A. No.: STPU 2145(001)*

### Certificate 1 Sample

#### GENERAL

<table>
<thead>
<tr>
<th>R/W Plan</th>
<th>Parcel Number</th>
<th>Owner</th>
<th>Pre-NPA</th>
<th>Fee</th>
<th>Access Rights</th>
<th>Esmt.*</th>
<th>P/N/L</th>
<th>Date Esmt.*</th>
<th>N/L Expires</th>
<th>Date TCE</th>
<th>Date TCE Expires</th>
<th>Effective Date Permit or Right of Entry</th>
<th>Date Permit or Right of Entry Expires</th>
<th>Date Acquired</th>
<th>Acquired Date Permit or Right of Entry</th>
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</tr>
</tbody>
</table>

**Easement Key**

- P=Permanent/Perpetual
- N=Non-Permanent (defined term)*
- L=Lease*

*Non-permanent easements and leases subject to FHWA approval*
Certificate 1 Worksheet
Instructions to Complete Form

Worksheet Format:
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

Creating a List within a Cell:

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

Selecting Correct Form:
The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 1 tab to complete the worksheet.

Electronic Worksheet Instructions:

RES-397a – Instructions for Certificate 1 Worksheet
Created 6/2015
The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

**Header:**

Agency Name: Enter acquiring agency name.
Project Title: Enter complete project title which was used on the STIP.
F.A. No.: Enter the federal aid number for the project.

**General Section:**

R/W Plan Sheet #: Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.
Parcel Number: The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcel numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate (use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.
Owner: Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate (use Alt enter function).

**Acquisition Section:**

RES-397a – Instructions for Certificate 1 Worksheet
Created 6/2015
Pre NEPA: If an offer was made on a parcel prior to environmental approval (NEPA), place an “X” in cell. For all offers made on parcels after environmental approval this field should be left blank.

Fee: If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an “X” in the cell.

Access Rights: Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an “X” in the cell.

Esmt.* P/N/L: If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an “P” for permanent easement, or an “N” for non-permanent easement, or an “L” for lease in cell. *If something less than a permanent easement is acquired FHWA approval is required.

Date Esmt.* N/L Expires: If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

Effective Date TCE: If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

Date TCE Expires: Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner’s title.

Effective Date Permit or Right of Entry: Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction’s road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, “beneficial” permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

Date Permit or Right of Entry Expires: Enter the date the permit or right of entry expires as specified in the permit or right of entry.

Date Acquired: Date acquired is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each acquisition listed (on a Cert 1) even if the same date appears in other columns.

NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.
Relocation Section:

None: If there was no relocation on the parcel place “X” in cell. Even in situations where projects have no relocation, the cell should not be left blank.

Res: If your project displaced a residential owner or tenant occupant from the parcel place an “X” in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Bus: If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an “X” in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Farm: If your project displaced a farm, place an “X” in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.

NPO: If your project displaced a Non-Profit Organization (NPO), place an “X” in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

PPO: If your project displaced Personal Property Only (PPO), place an “X” in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Calculated Totals Section:

Column Totals: Each column has a formula at the bottom that will “count” the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter information in this section. The totals should be reconciled with the ROW plan to ensure all rights were acquired.
If you have multiple displacements for one parcel you will need to type in the number of displacements in the appropriate column and then change the formula in the total row from a “Count A” to an “Auto Sum”.

**Example:**

<table>
<thead>
<tr>
<th>ROW Plan</th>
<th>Parcel Number</th>
<th>Owner</th>
<th>Access Rights</th>
<th>Date Rights Expire</th>
<th>Effective Date TIE</th>
<th>Date TIE Expires</th>
<th>Effective Date PPA or Rights of Entry Expire</th>
<th>Date Acquired</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>106</td>
<td>102405-9000</td>
<td>Norris</td>
<td>X</td>
<td>3/2/15</td>
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</table>

**Best practices:**
ROW Plan – for ease of certification it is recommended that you do not rely solely on Tax Identification numbers as they do not define a parcel acquisition. It is better to assign a parcel number that will identify the entire acquisition which could encompass multiple tax parcel numbers.

If your agency uses both tax parcel numbers and assigned numbers, the use of numbers must be consistent between the ROW plan, ROW certification, parcels, and all file documents.
## Appendix 25.181  LPA Certification Worksheet – Certificate 2 Sample

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### LPA Certification Worksheet – Certificate 2 Sample

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</tbody>
</table>
Certificate 2 Worksheet
Instructions to Complete Form

Worksheet Format:
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

Creating a List within a Cell:

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

Selecting Correct Form:
The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 2 tab to complete the worksheet.

Electronic Worksheet Instructions:
The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

**Header:**

![Certificate No. 2]

**Agency Name:** Enter acquiring agency name.

**Project Title:** Enter complete project title which was used on the STIP.

**F.A. No.:** Enter the federal aid number for the project.

**General Section:**

**R/W Plan Sheet #:** Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

**Parcel Number:** The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcel numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate (use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.

**Owner:** Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate (use Alt enter function).

**Acquisition Section:**

**Pre NEPA:** If an offer was made on a parcel prior to environmental approval (NEPA), place an “X” in cell. For all offers made on parcels after environmental approval this field should be left blank.

**Fee:** If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an “X” in the cell.

RES-397b – Instructions for Certificate 2 Worksheet
Created 6/2015
Access Rights: Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an “X” in the cell.

Esmt.* P/N/L: If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an “P” for permanent easement, or an “N” for non-permanent easement, or an “L” for lease in cell. *If something less than a permanent easement is acquired FHWA approval is required.

Date Esmt.* N/L Expires: If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

Effective Date TCE: If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

Date TCE Expires: Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner’s title.

Effective Date Permit or Right of Entry: Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction’s road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, “beneficial” permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

Date Permit or Right of Entry Expires: Enter the date the permit or right of entry expires as specified in the permit or right of entry.

Date Acquired: Date acquired is the date the agency has legal and physical possession and reached final settlement, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each parcel acquired except in the case where final settlement has not been reached (see possession date below) even if the same date appears in other columns.

Possession Date (P&U Only): The possession date is the date the agency has the right to occupy and use the portion of the parcel needed for the project. Enter the date the agency obtained possession and use of the property. Possession cannot occur prior to payment to the property owner. In the case of a negotiated P&U, if the payment is mailed, the agency should add 5 days to the mailing date. If the payment is deposited into the court in the case of stipulated P&U, enter the date of receipt by the court clerk’s office. This is only applicable in situations in which all necessary rights of way have not been acquired because final settlement has not been reached.

NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.
Relocation Section:

None: If there was no relocation on the parcel place “X” in cell. Even in situations where projects have no relocation, the cell should not be left blank.

Res: If your project displaced a residential owner or tenant occupant from the parcel place an “X” in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Bus.: If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an “X” in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Farm: If your project displaced a farm, place an “X” in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.

NPO: If your project displaced a Non-Profit Organization (NPO), place an “X” in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

PPO: If your project displaced Personal Property Only (PPO), place an “X” in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Calculated Totals Section:

RES-397b – Instructions for Certificate 2 Worksheet
Created 6/2015
**Column Totals:** Each column has a formula at the bottom that will “count” the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter information in this section. The totals should be reconciled with the ROW plan to ensure all rights were acquired.

If you have multiple displacements for one parcel you will need to type in the number of displacements in the appropriate column and then change the formula in the total row from a “CountA” to an “Auto Sum”.

**Example:**

![Example Table]

**Best practices:**
ROW Plan – for ease of certification it is recommended that you do not rely solely on Tax Identification numbers as they do not define a parcel acquisition. It is better to assign a parcel number that will identify the entire acquisition which could encompass multiple tax parcel numbers.

If your agency uses both tax parcel numbers and assigned numbers, the use of numbers must be consistent between the ROW plan, ROW certification, parcels, and all file documents.
### Certificate No. 3
Agency: ABC County
Project Title: NW Gold Trail Project
F.A. No.: STPU 2145(001)

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#### Appendix 25.182 LPA Certification Worksheet – Certificate 3 Sample

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<th>Esmt. N/L Expires</th>
<th>Effective Date of TCE</th>
<th>Date TCE Expires</th>
<th>Effective Date Permit Right of Entry</th>
<th>Date Permit Right of Entry Expires</th>
<th>Date Acquired</th>
<th>Possession Date (P&amp;U Only)</th>
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<th>Bus.</th>
<th>Farm</th>
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<td>Falkner</td>
<td>X P</td>
<td></td>
<td></td>
<td></td>
<td>10/15/15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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**Easement Key**
- P=Permanent/Perpetual
- N=Non-Permanent (defined term)*
- L=Lease*
- *Non-permanent easements and leases subject to FHWA approval

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**Excepted Parcels**

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June 2022

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Certificate 3 Worksheet
Instructions to Complete Form

Worksheet Format:
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

Creating a List within a Cell:

<table>
<thead>
<tr>
<th>R/W Plan Sheet #</th>
<th>Parcel Number</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>105</td>
<td>021605-9000</td>
<td>Martin</td>
</tr>
<tr>
<td>106</td>
<td>022605-9215</td>
<td>Money</td>
</tr>
<tr>
<td>107</td>
<td>022605-9326</td>
<td>Big Blue Diner</td>
</tr>
</tbody>
</table>

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

Selecting Correct Form:

The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 3 tab to complete the worksheet.

Electronic Worksheet Instructions:

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The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

**Header:**

<table>
<thead>
<tr>
<th>Agency Name:</th>
<th>Enter acquiring agency name.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Title:</td>
<td>Enter complete project title which was used on the STIP.</td>
</tr>
<tr>
<td>F.A. No.:</td>
<td>Enter the federal aid number for the project.</td>
</tr>
</tbody>
</table>

**General Section:**

<table>
<thead>
<tr>
<th>R/W Plan Sheet #:</th>
<th>Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parcel Number:</td>
<td>The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcels numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate (use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.</td>
</tr>
<tr>
<td>Owner:</td>
<td>Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate (use Alt enter function).</td>
</tr>
</tbody>
</table>

**Acquisition Section:**

<table>
<thead>
<tr>
<th>Pre NEPA:</th>
<th>If an offer was made on a parcel prior to environmental approval (NEPA), place an “X” in cell. For all offers made on parcels after environmental approval this field should be left blank.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee:</td>
<td>If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an “X” in the cell.</td>
</tr>
</tbody>
</table>

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**Access Rights:** Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an “X” in the cell.

**Esmt.* P/N/L:** If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an “P” for permanent easement, or an “N” for non-permanent easement, or an “L” for lease in cell. *If something less than a permanent easement is acquired FHWA approval is required.

**Date Esmt.* N/L Expires:** If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

**Effective Date TCE:** If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

**Date TCE Expires:** Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner’s title.

**Effective Date Permit or Right of Entry:** Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction’s road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, “beneficial” permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

**Date Permit or Right of Entry Expires:** Enter the date the permit or right of entry expires as specified in the permit or right of entry.

**Date Acquired:** Date acquired is the date the agency has legal and physical possession and reached final settlement, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each parcel acquired except in the case where final settlement has not been reached (see possession date below) even if the same date appears in other columns.

**Possession Date (P&U Only):** The possession date is the date the agency has the right to occupy and use the portion of the parcel needed for the project. Enter the date the agency obtained possession and use of the property. Possession cannot occur prior to payment to the property owner. In the case of a negotiated P&U, if the payment is mailed, the agency should add 5 days to the mailing date. If the payment is deposited into the court in the case of stipulated P&U, enter the date of receipt by the court clerk’s office. This is only applicable in situations in which all necessary rights of way have not been acquired because final settlement has not been reached.

**Estimated Possession or Clear Date:** This column is only used if there are parcels excepted from the certification which are shown at the bottom of the spreadsheet highlighted in orange. Enter the date the agency estimates they will obtain possession or the date the parcel will be cleared for certification (occupants relocated, improvements cleared from the right of way, cost to cures completed).
NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.

Relocation Section:

None: If there was no relocation on the parcel place “X” in cell. Even in situations where projects have no relocation, the cell should not be left blank.
Res: If your project displaced a residential owner or tenant occupant from the parcel place an “X” in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.
Bus.: If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an “X” in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.
Farm: If your project displaced a farm, place an “X” in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.
NPO: If your project displaced a Non-Profit Organization (NPO), place an “X” in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.
PPO: If your project displaced Personal Property Only (PPO), place an “X” in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Calculated Totals Section:

Column Totals: Each column has a formula at the bottom that will “count” the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter.

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information in this section. The totals should be reconciled with the ROW plan to ensure all rights were acquired.

If you have multiple displacements for one parcel you will need to type in the number of displacements in the appropriate column and then change the formula in the total row from a “CountA” to an “Auto Sum”.

**Example:**

Best practices:
ROW Plan – for ease of certification it is recommended that you do not rely solely on Tax Identification numbers as they do not define a parcel acquisition. It is better to assign a parcel number that will identify the entire acquisition which could encompass multiple tax parcel numbers.

If your agency uses both tax parcel numbers and assigned numbers, the use of numbers must be consistent between the ROW plan, ROW certification, parcels, and all file documents.