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**Remarks and Instructions**

The complete manual, revision packages, and individual chapters can be accessed at [www.wsdot.wa.gov/publications/manuals/m22-01.htm](http://www.wsdot.wa.gov/publications/manuals/m22-01.htm).

For updating printed manuals, page numbers indicating portions of the manual that are to be removed and replaced are shown below.

Chapter	Remove Pages	Insert Pages
Title Page	1 – 2	1 – 2
Chapter 25 Right of Way	25-1 – 25-33	25-1 – 25-33

Please contact William Wonch at 360-705-7379 with comments, questions, or suggestions for improvement to the manual.

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Washington State Department of Transportation  
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Engineering Services  
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**Washington State  
Department of Transportation**

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# Local Agency Guidelines

M 36-63.36

June 2018

**Local Programs**  
Engineering Services

## Americans with Disabilities Act (ADA) Information

### English

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

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

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## 25.1 General Discussion

[LP ROW Services website](#)

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

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

[49 CFR 24.101\(b\)](#)  
[49 CFR 24.101\(d\)](#)  
[ROW Manual Section 25.2](#)  
[LPA-001](#)  
[LPA-003](#)

**If there is federal funding on ANY phase of the project (P.E., ROW, or construction), ROW must be acquired in accordance with the agency's Approved ROW Procedures, federal/state requirements, the guidelines outlined in this manual, as well as the policies and procedures in the *Right of Way Manual* in order for the project to be eligible for federal funding.** ROW acquired prior to July 1, 1971, is exempt. In addition, the local agency must comply with Title VI requirements identified in [Chapter 28](#).

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

WSDOT may, by written agreement (approved ROW Procedures), use the services of land acquisition organizations of 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.

It is the responsibility of WSDOT to fully inform political subdivisions of their responsibilities in connection with federally-assisted 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 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).

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Chapter 31

**.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 has determined that the consultant agreements for ROW services must meet the consultant contracting requirements.

## 25.2 Approval of Right of Way Acquisition Procedures

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23 CFR 710.201(a)

23 CFR 710.201(h)

LPA-001

LPA-003

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When an agency intends to use federal funds in any phase of a project, the 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 are normally considered current if they are less than three years old, and there have been no changes to staff approved to perform ROW activities within the agency. Procedures will need to be updated for one or more of the following reasons:

1. Staff turnover
2. Approved procedures are more than three years old. However, if the local agency does not have a federal aid project in the foreseeable future, the procedures do not need to be updated even if they are beyond the three-year time period. If the local agency is thinking of doing early acquisition for an unfunded project, the local agency needs to have updated 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 Region Local Programs Engineer 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 agency ROW positions are defined in the Right of Way Procedures form. The level at which an agency will be approved will depend on the agency's staff qualifications. 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 Region 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 WSDOT 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. When staff changes or additions occur, the 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 agency should agree to follow this manual and the *Right of Way Manual* M 26-01 or the agency's own manual if they have a WSDOT/FHWA approved ROW manual.
2. Agreement will list agency's current staff and position(s) performing the separate functions of program administration, appraisal, appraisal review, acquisition, relocation, and property management. All agency staff who perform any of these separate functions should be listed. **Note:** 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](#).

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[LAG 25.51](#)

[LAG 25.6](#)

[LAG 25.91](#)

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[LAG 25.52](#)

[LPA-003](#)

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[49 CFR 24.10](#)

[RCW 8.26.085](#)

[WAC 468-100-010](#)

[ROW Section 12-5.5](#)

3. Resumes for all current staff, including their position(s) and a brief statement of their qualifications pertaining to the function they are performing.
4. Waiver Valuation procedures.
5. A procedure for handling administrative settlements including the approving authority(s) and process.

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 agency shall notify the LAC prior to starting relocation activities.

**Note:** Local Agencies need to submit FHWA Annual ROW Statistical Report for active federal aid projects by October 25 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 WSDOT. 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 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 NEPA approval or after NEPA approval but prior to the ROW being authorized. Those ROW activities that are eligible are identified in the table below:

Preliminary ROW Acquisition Activities Eligible for Preliminary Engineering Funds <a href="#">23 CFR 710.203(a)(3)</a>	Pre-NEPA or Post-NEPA & Pre ROW Authorization
Title Searches and Review	X
ROW Planning w/ROW Staff and/or Consultants	X
ROW Plan Preparation	X
ROW Design Development (determining ROW needs)	X
Public Meetings/Hearings (projects w/ROW)	X
ROW Estimates & Schedules (scoping)	X
PFE*/True Cost Estimate	X
Appraisals (including inspections) and AOS*	X
Right of Entry (testing, surveying, etc.)	X
Relocation Plan/Study (includes survey of occupants)*	X
WSDOT Technical Assistance/Review for activities listed above	X
LAC Review of ROW Activities (if required by Approved ROW Procedures)	X

\*Completing an appraisal/PFE/Relocation Plan during the PE Phase is an agency risk decision. If a local agency chooses to complete an appraisal, project-funding estimate (PFE), or relocation plan too early, it may require a subsequent update or a new one to be completed again. FHWA cannot 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 should 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 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

[Appendix 25.178](#)

[LPA-011](#)

[LPA-012](#)

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 provides useful reminders and should be used as guidance to ensure compliance.

### .41 Determining Whether or Not Right of Way (Acquisition) is Needed

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 the National Environmental Policy Act (NEPA) start date the agency may be required to demonstrate compliance with [23 CFR 710.501](#). The agency should contact their region 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.

[Appendix 25.174](#)

[Appendix 25.175](#)

**Advanced/early 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. Contact the LAC if you have questions.

[LAG 25.44](#)

- If it is later determined that ROW is needed, either a ROW Project Funding Estimate (PFE) or a True Cost Estimate, as applicable, a ROW Plan, and a Relocation Plan (if required) must be prepared and submitted to the Region Local Programs Engineer who will notify the Region LAC (who is responsible for review and approval). There are significant differences between the two forms of estimates and care must be used when selecting either the PFE or True Cost Estimate process. The Region LAC should be consulted when this decision is to be made. See Subsection 25.41 for explanations and requirements of the PFE and the True Cost Estimate.
2. **No ROW (acquisition) Needed** means that the proposed project can be built entirely within the 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.

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[Appendix 25.174](#)[Appendix 25.175](#)[Appendix 25.176](#)[Appendix 43.62](#)

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It is the responsibility of the 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. The agency will complete and sign the Design Approval Documentation form that acknowledges they have completed reviewing existing property rights. In the case of a non-CA agency, the agency will work with the Local Programs Engineer. The No ROW Needed Verification Checklist is a tool 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 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. Local Programs will provide training to local agency staff responsible for these functions. The training will focus on the importance of reviewing the PS&E to make sure it is consistent with the no ROW determination. Local Programs will maintain a list of CA agency reviewers who have completed the training. Non-CA agencies will need to work with WSDOT Local Programs staff to complete the verification process.

If ROW needs change, the agency will follow the current process of updating the design approval, project prospectus, and NEPA. It is also recommended that the 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 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 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.
- BIA (Bureau of Indian Affairs) – 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 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 proper 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.

[ROW Chapter 11](#)

**Use of WSDOT Property** – The Region Local Agency Coordinator (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.

[23 CFR 710.409](#)[23 CFR 620](#)[23 CFR 635.309](#)[Appendix 25.175](#)**.43 Determining Acquisition of Property and/or (Sufficient) Property Rights**

**Fee** – Fee title should be acquired when the 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 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.

[LAG 25.42](#)

**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.

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

[49 CFR 24.101\(c\)\(2\)](#)

**Permits** – A permit or right of entry is not an interest in land. It only provides basic permission to enter upon property to a named entity for a specific purpose, usually for a specific period of time. It cannot be transferred and can be terminated or revoked by the owner at will. In most situations, permits are used when no other property rights are to be acquired from the same ownership as part of the same project, and are normally obtained without the payment of compensation (commonly referred to as

mutual benefits) because the provisions of the Uniform Act do not apply in these situations. The term mutual benefit is not defined in federal regulations and is often misunderstood and incorrectly applied 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.

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[LAG 25.42](#)

All rights acquired for the project, including advanced/early acquisitions must be shown on the right of way plan.

**Property Right vs Right to Enter**

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

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[ROW Chapter 6](#)

Exempt

[RCW 18.85.151\(6\)](#)

[RCW 18.85.081](#)

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

[NEPA Categorical Exclusions – A Guidebook for Local Agencies](#)

**.44 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, or ROD, for projects developed with an Environment Impact Statement (EIS); a Finding of No Significant Impact, or FONSI, for projects developed with an Environmental Assessment (EA); or, a Categorical Exclusion (DCE/ECS). WSDOT 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. Those acquisitions occurring after the initiation of NEPA but prior to NEPA approval are referred to as “concurrent early acquisitions”. *Advance acquisition*, as discussed in subsection 4 below, is a term that refers specifically to hardship acquisitions and protective buying.

In each case, federal guidelines must be followed in the acquisition process. The 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.

An agency may use eminent domain, but the 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 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.

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23 CFR 710.501

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 on 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 agency should contact their region LPE and Environmental Engineer to determine whether additional documentation is required. If NEPA cannot be approved, then the 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.

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23 CFR 710.501(b)

An agency may apply market value (or if donated, the current appraised value) 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 agency wants to apply the market value toward their share of project costs. The 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.

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Appendix 25.177

**Early and Advanced Acquisition Alternatives.** There are five alternative methods (item #4 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:

23 CFR 710.501(b)

1. **Agency-Funded, No Match or Reimbursement** – The 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 Agency will not be seeking either reimbursement or matching credit from FHWA. As noted above in the early acquisition alternatives, this alternative must fully comply with the Uniform Act and not have adverse environmental impacts or limits the choice of reasonable alternatives in the NEPA analysis for the project or the parcel.

23 CFR 710.501(c)

2. **Agency-Funded with Matching Credit** – In order for the Agency to use the acquisition costs of early acquisition as a credit toward the Agency’s matching share of a federal-aid project, the FHWA must concur in a written determination provided by the 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 to credit for the matching share of the project, the 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 Agency may use the current fair market value of the property.

23 CFR 710.501(d)

3. **Local-Funded with Reimbursement** – This option is not currently available in Washington State.

23 CFR 710.501(e)

4. **Federal-Funded Early Acquisition** – 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 (State Transportation Improvement Plan) 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 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 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 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.

23 CFR 710.503(a)

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 6-3.2 above also apply to hardship and protective buying.
- For federally-funded projects, FHWA approval for doing a hardship or protective acquisition is required.
- NEPA approval will be secured by following the 2015 Programmatic Categorical Exclusion Agreement.

23 CFR 710.503(c)

- A. **Hardship Acquisition** – A hardship acquisition is initiated by a property owner, not the acquiring 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 WSDOT's project schedule. Note, also, that the state is NOT required by federal regulation to agree to a hardship purchase request.

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

- B. **Protective Buying** – In order to do advance acquisition of a property under this option, the state 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.

Processing Early and Advanced Acquisitions. The decision whether to proceed with one of the early or advance acquisition options will be made by the 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.

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

[WAC 468-100-101\(2\)\(a\)](#)

[49 CFR 24 Appendix A](#)

**.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 agency may limit its search for alternative sites to a general geographic area. Where an 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.
- The agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The 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 with Headquarters Local Programs 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 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 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. Your agency is obligated to acquire a mitigation site for the project as failure to do so would likely result in the project becoming a “no go” and is not acceptable to FHWA. This is true even though your project may have multiple properties to choose from to comply with your environmental commitment.

**.46 ROW Funding Estimates** – There are two types of estimates:

1. **Project Funding Estimate (PFE)** is a detailed parcel-by-parcel estimate of total expected right of way acquisition costs and is used to obtain authorization and funding for the project. A PFE is **required** if any appraisals are planned to be waived, and the Agency intends to prepare waiver valuations for any of the parcels on the project. A PFE is based on market transactions (sales) that reflect the current real estate market. Ideally, it is completed by an appraiser, an appraisal reviewer, and a relocation expert. Other ROW staff with appropriate experience, including qualified consultants, may also prepare a PFE.
  - A Project Funding Estimate (PFE) is prepared for every project where right of way will be acquired, unless all properties to be acquired are to be appraised or donated.
  - As a minimum, the PFE contains the following information.
    - A parcel-by-parcel list of right of way costs with project summary totals reported on the Right of Way Project Estimate and Cost Breakdown.
    - A project data package including sales, sales map, neighborhood and project description, scope of sales search and, if applicable, damage studies, cost to cure documentation, and Assumptions and Limiting Conditions.

**Note:** The PFE Parcel Worksheet is included in the data package.

The Agent/appraiser assigned to do the PFE completes the estimate as follows:

- Inspect the project and becomes familiar with the engineering features of the plan.
- View individual parcels to determine the effects of acquisition.
- Prepares a Neighborhood and Project Description which defines existing uses, zoning, trends, transportation and utilities, economic influences, a synopsis of the project and its effect on parcels, and any changes in the aforementioned likely to be caused by the project.

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- Gathers sufficient comparable land sales and listings for the various types of parcels and remainders within the project. All sales shall be inspected, photos taken and written up on Market Data Sheets. (If the sales are to be used exclusively on parcels where the Agency has determined to waive the appraisal, the sales must be confirmed. In all other cases, a reasonable effort shall be made to confirm all sales. Unconfirmed sales will contain an explanation of the confirmation effort including the parties' names and phone numbers where attempts to make contact were unsuccessful.)

Appendix 25.172

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ROW Section 4-2

- Prepares project and sales vicinity map.
- Prepares PFE Parcel Worksheet for each parcel on the project.
- Includes any applicable damage studies.
- Includes cost-to-cure documentation for estimates and/or bids.
- Includes applicable Assumptions and Limiting Conditions if data Package will be referred to in the preparation of Abbreviated Appraisals.

*Note: Right of Way Manual* Section 4-2. 42.1, paragraphs E, F, and G do not apply to local agencies.

LAG 25.52

2. **True Cost Estimate** can be used only when all parcels are to be appraised or donated. The ROW PFE **must** be used if the agency wishes to make use of the waiver valuation procedure. A True Cost Estimate is a parcel-by-parcel estimate of total expected right of way acquisition costs drawn from the County Assessor's records, from replacement cost schedules for minor site improvements or estimates from local vendors, and is used to obtain authorization and funding for the project; therefore, in many cases the level of expertise required for its preparation may be less stringent than for a PFE. However, if damages to the remainder are severe, particularly in the case of a reduction in the highest and best use of a remainder property, a True Cost Estimate cannot be used as a legitimate measure of the total expected right of way costs. In such a case, a PFE will be necessary. Agencies are advised to contact their LAC when these types of situations arise.

A True Cost Estimate consists of three parts: a worksheet for each parcel to be acquired, a table summarizing all estimated acquisition costs and a project description.

- .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.

Appendix 25.170

The 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, and right of way certification activities, and illustrate the following information:

- Survey line or centerline for the alignment, including sufficient ties to physically locate the alignment. Please contact the Local Agency Coordinator 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 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 Region Local Programs Engineer.

[Appendix 43.62](#)

- Local Agency Agreement Supplement.
- Funding estimate of probable ROW costs and expenses broken down by parcel.
- Approved ROW plan (part of Approved Design Documentation).
- WSDOT approved relocation plan (if relocation is required, contact the RWTS 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 agency receives written authorization from LP 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 and funding estimate package requirements also apply if federal funds are in any phase of the project.**

[LAG 25.41](#)

*Note:* A PFE is not required unless the local agency intends to use the waiver valuation process for the preparation of Administrative Offer Summaries (AOSs).

**The AOSs must be based on the PFE. A True Cost Estimate cannot substitute for a PFE when preparing waiver valuation.**

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

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

ROW Chapter 4

49 CFR 24.102(n)(3)

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

49 CFR 24.103

WAC 468-100-102

**.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. If desired, a listing of WSDOT approved fee appraisers and appraisal reviewers is available from the Region LAC or via a link on the WSDOT Real Estate Services website at [www.wsdot.wa.gov/realestate](http://www.wsdot.wa.gov/realestate).

49 CFR 24.103(d)

WAC 468-100-102(4)

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

49 CFR 24.103(a)

WAC 468-100-102(1)

49 CFR Appendix 24.103

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LPA-218

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

1. The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised.
2. The estimate of just compensation for the acquisition. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages to remaining property in either the report or a separate statement.
3. The data and analyses (or reference to same) to explain, substantiate, and document the estimate of just compensation.
4. An adequate description of the physical characteristics of the property being appraised, including items identified as personal property. Local Programs created templates that are available for use but are not required if the agency has a similar form.

49 CFR 24.102(c)(1)

49 CFR 24.102(f)

RCW 8.26.180(2)

WAC 468-100-102

ROW Appendix 4-1

Part 1(A)(f)

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

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

**.52 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, based on the ROW Project Funding Estimate, 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 agency’s approved waiver limits. The PFE must be based on confirmed comparable sales and must reflect the current market.

For example, if the 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.

LPA-003

In March 2013, WSDOT updated its AOS policy. The local agency must update their Waiver Valuation Procedure, to reflect the new policy. Otherwise, the agency must continue to offer an appraisal for all AOS’s regardless of the amount, as specified in their procedures under the prior policy. Any project where acquisitions were initiated under a prior AOS policy must continue with that prior policy until completion of the project’s right of way phase.

If the LPA has updated their Waiver Valuation Procedure to reflect the new policy the following applies:

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

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

Section 25.51

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

## 25.6 Appraisal Review

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

The reviewing appraiser should be knowledgeable of the property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The reviewing appraiser must be either a WSDOT review appraiser, on the approved list of review appraisers maintained by WSDOT, or an employee of the acquiring agency, who is authorized by their approved ROW procedures to review appraisals. To qualify as an 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 should field inspect the property appraised as well as the comparable sales which the appraiser(s) considered in arriving at the fair market value of the whole property and of the remainder(s), if any. If a field inspection is not made, the file shall contain the reason(s) why it was not made.

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

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

LPA-214b

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

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

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

**.61 Uneconomic Remainders** – An uneconomic remainder 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 agency has determined has little or no value or utility to the owner.

For partial acquisitions, the review appraiser determines (if 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 agency must offer to purchase the remainder from the property owner.

Detailed instructions regarding the review appraiser's responsibilities for reporting and documenting uneconomic remainders 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 agency decides to follow WSDOT policy, it must apply it uniformly on the entire project.

## 25.7 Agency Concurrence for Setting Just Compensation

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

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

[ROW Section 6-1.2.B](#)

[LPA-214b](#)

It is the responsibility of the **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 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 **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 an 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 agency's approved Waiver Valuation Procedure. (The threshold for offering an appraisal depends on the Agency's approved Waiver Valuation Procedure in place at the time of the offer). The local agency is responsible for providing and paying for this appraisal.

## 25.8 Title

[ROW Chapter 8](#)

The 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 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 insure 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

[ROW Chapter 6](#)

[Exempt](#)

[RCW 18.85.151\(6\)](#)

[RCW 18.85.081](#)

**.91 Qualifications** – For local agency staff to be approved to acquire property without direct supervision by the LAC, they must have either an Associate Degree in real estate or a Bachelor 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 Procedures Approval letter.

[RCW 18.85.011](#)

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

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

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

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

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

[ROW Section 6-1.2.C](#)

**.93 Offer/Summary Statement** – Upon initiation of negotiations, the 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 Administrative Offer Summary (AOS) a copy of the comparable sales data, a written offer letter, including a summary of the basis for the amount it has established as just compensation for the proposed acquisition. At a minimum the offer letter shall include the following:

1. The amount established as just compensation.
2. A statement explaining that the offer is based either on an appraisal made by a qualified appraiser and reviewed by a qualified Review Appraiser, or an Administrative Offer Summary (AOS) under the Waiver Valuation Procedure). The LPA's current approved Waiver Valuation Procedure will determine the agency's 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 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.

When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required, especially if the acquisition area or the property interests to be acquired changes.

[LPA-350](#)

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

[Section 25.10](#)

[23 CFR 710.105\(b\)](#)

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

[23 CFR 710.505](#)

[23 CFR 710.507](#)

[49 CFR 24.108](#)

[RCW 8.26.180\(10\)](#)

[WAC 468-100-106](#)

[ROW Section 6-1.2.J](#)

[LPA-383](#)

**.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.

[LAG 25.21](#)

**.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.

[RCW 8.25.020](#)

**.96 Statutory Evaluation Allowance (SEA)** – The agency must notify the property owner of the availability of a statutory evaluation allowance not to exceed \$750 to help defray the owner's expenses actually incurred in evaluating the agency's offer. This statutory requirement only applies to offers made under the threat of eminent domain. Therefore, when an agency's offer is NOT under threat of eminent domain, either by choice or regulation (such as early/advance or voluntary acquisitions), the agency does NOT have to notify the owner of the \$750 SEA. An agency is not prohibited from offering the \$750 SEA on non-eminent domain offers; however, FHWA will not participate in the cost. Agencies must be consistent in their policy to offer (or not offer) the \$750 SEA to property owners, and apply it uniformly.

[49 CFR 24.9](#)

[WAC 468-100-009](#)

[LAG 25.16](#)

**.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 Region 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 fair-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 agency should take reasonable care to determine if properties needed for a project are contaminated. In the case where properties being acquired by the agency will become part of a state highway, the 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 federal aid highway project, in lieu of paying the fair market value for the real property interest, the local agency may provide compensation by replacing the publicly-owned real property with another facility which will provide equivalent utility.

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

[23 CFR 710.105\(b\)](#)

**.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

Section 25.94

LPA-383

Transportation Needs &  
You Brochure

[23 CFR 710.105\(b\)](#)

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

[23 CFR 710.505](#)

[23 CFR 710.507](#)

[49 CFR 24.108](#)

[RCW 8.26.180\(10\)](#)

[WAC 468-100-106](#)

[ROW Section 6-1.2.J](#)

Donations of right of way can be accepted only after the owner (includes non-federal government agencies) has been fully informed by the local agency in writing of their rights to receive just compensation and has released (in writing) the local agency from its obligation to have the property appraised. A copy of the donation letter issued to the property owner informing them of their rights available and the donation letter acknowledgment signed by the owner must be included in each parcel file. It is acceptable for an 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 okay as long as the 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 an 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 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 an 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 your Region LPE to determine if additional information is required. The value of publicly-owned real estate donated after June 8, 1998, is eligible for match credit.

## 25.11 Administrative Settlements

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

[ROW Section 6-12](#)

The Uniform Act requires that “The head of a federal agency shall make every reasonable effort to expeditiously acquire real property interests by negotiation.” Negotiation implies an honest effort by the acquiring 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

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

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[Section 25.10](#)

An administrative settlement or stipulated settlement is a negotiated settlement of a ROW acquisition case in which the agency has administratively approved payment in excess of fair market value as shown on the 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 as the agency may still be required to pay additional benefits as part of the relocation program. This is sometimes called a global settlement.

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 WSDOT through the Region LAC.
2. The local agency shall document the following and make it available for review by WSDOT if it is not already part of the agency's approved 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 justification must include an analysis of the circumstances of each individual parcel that convince the agency that an administrative settlement is in the agency's and public's best interest. This documentation shall be completed and approved by the designated local agency official prior to payment(s) being made. The list below is a sample of items to be considered for an administrative settlement, and should not be used as a template.
  - The negotiator's recorded information, including parcel details, estimates, bids, research information, all available appraisals, including the owner's and the owner's rationale for increased compensation. This is the most important part of the justification.
  - Recent trends in court awards in cases involving similar acquisition and appraisal problems and the length of time it takes to get on the court's schedule.
  - A statement can be made that condemnation will take additional time and money, but do not attach a dollar amount to the statement since it would be speculative. You should include items such as updating the appraisal for trial, pretrial, conference, staking of right of way, attorney's expenses, and witness

fees (appraisers, consultants, etc.) will be additional incurred costs. You should not speculate about increased project costs resulting from a delay. You could try to quantify your administrative costs resulting from condemnation proceedings such as additional staff time.

- Describe the trial risks based on experience in the particular jurisdiction (e.g., county, city).

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

Administrative  
Settlement  
eLearning Course

For additional guidance, reference [Appendix 25.173](#) and the *Right of Way Manual* Section 6-12. Agency staff responsible for writing and approving Administrative Settlements should take the web based training on how to write an effective administrative settlement. The course can be accessed by clicking from our Local Programs ROW Services Webpage using the following link: [www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm](http://www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm)

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

## 25.12 Relocation

[49 CFR 24 Subpart C](#)  
[ROW Chapter 12](#)

Those agencies that have trained staff and are approved by WSDOT through the procedures process to provide relocation services may do so. All other agencies should contact their Region LAC for advice on contracting with private consultants. WSDOT does not maintain a list of qualified relocation consultants.

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

If a project includes relocation, the local agency must submit a relocation plan to 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.

[LAG 25.43](#)

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 WSDOT for sample relocation plans or refer to [Right of Way Manual Chapter 12](#) for guidance. Contact the Region LAC for assistance in preparing relocation plans and carrying out relocation activities.

## 25.13 Right of Way Certification

Spot check reviews are a proactive measure intended to lessen the risk that local agencies engage in improper practices that result in irreversible problems, 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 LPA's awareness of the LAC's project monitoring and by providing an early opportunity for the LAC to help the agency identify problems before they become compliance issues. WSDOT's acquisition file review process is intended to ensure that the agency has in fact completed the ROW acquisition process in compliance with federal regulations before we make our 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 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 agency's level of experience, and past performance. Spot check reviews are not required on all projects, unless required by the agency's Approved ROW Procedures (as specified in the cover letter by Local Programs). However, the LAC is required to perform spot check reviews on active projects of those agencies having past performance problems, required by ROW Procedures, or if the agency lacks sufficient experience acquiring ROW under the URA.

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](#)).

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

After ROW acquisition has been completed and about two months before the federal aid project is to be advertised for contract, the ROW certification on agency letterhead must be submitted to the Region Local Programs Engineer. FHWA does not formally approve certifications on non-Interstate projects as they have delegated approval of all certificate 1, 2, and conditional 3s (time-based) and excepted parcel 3s on non-Interstate projects to WSDOT. Local Programs will allow agencies, with proper justification and WSDOT 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 WSDOT Certification Concurrence Letter sent to FHWA. WSDOT 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 certs 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.)

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

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

certificate 1 in order for the 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 Agency has legal and physical possession, and the project has been re-certified.

## 25.14 ROW Certification vs URA Compliance

[Section 25.2](#)

Right of Way Acquisition Procedures apply to all federal aid projects regardless of whether or not the project is to be certified. For example, if the condition of the agency’s ROW Procedures requires the LAC to review parcel files prior to making first offers, your agency must comply.

[2 CFR 200](#)

[Appendix 25.171](#)

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

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

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

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

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

[49 CFR 24.101](#)

[ROW Chapter 17](#)

Per [23 CFR 635.309\(b\)](#) and [\(c\)](#) the ROW certification procedure for federally-assisted highway 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 WSDOT/FHWA. Title 23 requires that acquiring 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. 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 are used in the Preliminary Engineering (PE) phase the project is required to follow the URA. This is true even if there is only \$1 of federal funding. 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.

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49 CFR 24.101

Title 23 requires that acquiring 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

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23 CFR 710.403(e)

If using FHWA funding, the acquiring 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. 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.

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

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

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

Should rights of way, including uneconomic remnants, acquired with FHWA funds become excess, they may be disposed of (sale, lease, easement, etc.) only with the approval of WSDOT. To request approval, the agency must complete and submit form [LPA-407](#). Once approved, the agency will receive a written notification from the Local Programs Right of Way Manager that they can move forward with their disposal process.

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

If the disposal is to a private party, the 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 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 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 Agency will include a reversion clause in the deed.

[23 CFR 710.105\(b\)](#)

Federal regulations provide for the use of airspace for non-highway 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 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

Region 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

[49 CFR 24.9](#)

[WAC 468-100-009](#)

[ROW Chapters 3, 6, 8, 9, 12, and 13](#)

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

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

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

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

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

## 25.17 Oversight of Consultants Hired to Perform ROW Activities

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

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

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

[LAG 25.2](#)

The Local Agency (typically the person approved to perform the “Program Administration” function on the Approved ROW Procedures) is responsible for overseeing the delivery of the ROW Program on federal aid roadway projects for their agency. The 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 WSDOT and the consultant. WSDOT’s 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 WSDOT;
- 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.

[LAG Chapter 31](#)

The following checklists are available as a tool for the 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 LPA’s approved procedures and the ROW acquisitions needed for the project. For instance, if the LPA is using consultants, the training should be for the LPA management approval activities (e.g., agency approval of just compensation, agency approval of administrative settlements, going to condemnation).

## 25.19 Document Retention

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

The acquiring 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 an LPA acquires a property or property interests under Early Acquisition procedures and later wishes to incorporate the property into a federally funded project, the LPA 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 changing any templates in the appendices.

- [25.170](#) Right of Way Plan Checklist
- [25.171](#) ROW Certification vs URA Compliance Case Studies
- [25.172](#) Sample Neighborhood Description
- [25.173](#) Vacant
- [25.174](#) Determining Whether or Not 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

## 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](#)