

On federally funded ROW Projects-

Encroachment within Right of Way (ROW) by a Private Property

Owner:

If a private property owner is encroaching within agency-owned ROW this would be handled as a Property Management issue. These types of encroachments do not necessitate a ROW Phase for the project IF no new property rights (fee or temporary) need to be acquired.

Note: Form LPA 008-No ROW Checklist has been updated to make this clearer.

Within ROW but outside of Construction

If a private property owner encroachment (and no new property rights are needed from this owner) is within the project limits but outside of the project's construction limits and does not create a public safety concern, the encroachment needs to be cured by the agency using local funds only. However, certification or construction of the project would NOT be held up solely for the curing of the encroachment. The agency will need to provide their Local Agency Coordinator (LAC) a written memo outlining the encroachment, the method being used for curing (removal, surplus, ROW Agreement/permit), and the anticipated date the encroachments will be cured prior to the request for ROW certification. The agency will need to follow up with their LAC on the status of the encroachment until it is cured.

Within ROW & Construction Area (or if additional property rights are needed)

If an encroachment is within the construction area or if additional property rights are needed from a private property owner that is also encroaching within agency ROW, the acquisition of new property rights and the curing of the encroachment need to be completed before certification. The agency will need to provide their LAC with a written memo outlining the curing of the encroachment, the timeframe by which it will be cured, and the process they will follow if the encroachment is either not cured by that required date or agreed to be handled by the contractor during construction (see guidance for encroachments handled during construction). Please work with your LAC if your local jurisdiction has specific codes related to encroachments. Federal Funding does require that encroachments be cured, but your LAC can help you with language that may allow for the encroachment to remain while staying URA compliant.

Encroachment handled during Construction

If the private property owner does NOT remove the encroachment by the agreed-upon date, or if the resolution to cure the encroachment is for the contractor to handle it during construction, the agency will need to have an agreement with the private property owner to remove the item and place it on the private property owner's remainder or demolish it as part of the construction contract. This would be handled under a Construction Memo with the property owner that explains what would happen if their improvement located within the existing ROW is not removed by the agreed-upon date. Language would also need to be in the PS&E, so the contractor is fully aware. Once the Construction Memo has been executed and language included in the PS&E, the project is eligible for certification.

Agency has constructed outside of its ROW limits onto private property:

The agency will need to acquire all the necessary rights to cure their encroachment. If there are no other property rights needed for the project, there would still need to be a "ROW Phase" because acquisition rights are needed for the curing of the encroachment. The curing of the agency's encroachment will need to be covered with local funds. Eligibility for certification of the project will not occur until the all-project acquisitions have been completed.

NOTE: If there are known project encroachments, they need to be included on both the ROW plan, so the property owner and agency understand the location of the encroachment, and on the PS&E, so the contractor is aware and can follow up with the agency on resolution if it is still there at the time of construction.