

Sufficient Property Rights (Flowchart) Webinar
Additional Questions (March 2015)

Question: A Local Public Agency (LPA) in my region is considering purchasing wetland credits from a wetland bank. Do payments of these credits constitute an acquisition, and if so would these acquisition need to be listed on the right of way certification parcel worksheet?

Answer: There are two scenarios for wetland mitigation: purchasing wetland bank credits and creating a new wetland. Purchasing wetland credits from a wetland bank is not considered an acquisition since there is no transfer of title or property interest in the land itself. Therefore, cash payments into wetland mitigation banks do not require right of way (ROW) certification. If you are acquiring real property (or an interest in real property) for wetland mitigation, or other environmentally related purpose used to mitigate impacts created by the federal-aid project, the acquisition must follow the Uniform Act and must be on the right of way (ROW) certification. (23 CFR 710.513)

Question: What is a "ROW phase?" vs. a "ROW certification"?

Answer: The phase of the federal-aid project in which property and/or property rights are acquired is called the ROW phase. Upon the completion of all ROW acquisition and relocation, the LPA provides a ROW certification to "certify" the acquisition and relocation were completed in compliance with Chapter 25 of the LAG Manual/49 CFR Part 24, and the project is clear for construction. A ROW certification is required to authorize the construction of the project.

Question: Is an approved railroad crossing order sufficient? Or is an easement also necessary?

Answer: The question cannot be answered without additional information. Reliance on the name or title of the instrument as the determinant is not recommended. The factual circumstances related to a temporary taking determine the applicability of the Uniform Act and 49 CFR Part 24.

Question: Is a temporary construction permit appropriate where a permanent feature e.g. sidewalk is to be constructed on the private property side - i.e. to provide a smooth transition. So, does sidewalk qualify as minor work? The City does not intend to maintain the sidewalk on the private side.

Answer: The work as described above is inconsistent with the provisions of 49 CFR 24.101(c) (2) because it is neither "temporary", nor is it "exclusively for the benefit of the property owner". Sidewalk improvements benefit the public in general, and are not considered to be exclusively beneficial to an adjacent property owner. The LPA should acquire a temporary easement for the area needed to **construct** the sidewalk, and fee or a permanent easement for the area needed to **maintain** the sidewalk improvement. Even if the position of the City is not to maintain the back side of the sidewalk as stated in the question, the City must still consider future maintenance and/or repair needs for the sidewalk, such as cracks that could create ADA issues. This is why it necessary to ensure sufficient property rights are obtained to construct, operate **and** maintain the proposed federal-aid project.

Question: Are there situations where both a beneficial permit and a TCE could be needed for one parcel?

Answer: Yes. However, to avoid property owner confusion, 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.

Question: Do temporary uses trigger the ROW phase?

Answer: Yes, temporary uses can trigger a ROW phase when such uses are necessary to construct the project.