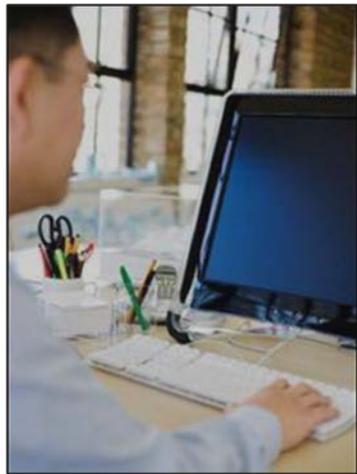




Welcome to the:

Sufficient Property Rights (Flowchart) Training Webinar

Webinar
attendees



Freephot.com

WSDOT, Local
Agencies, and
Consultants



signaturels.com/federal-way.php

In person
attendees



Webinar Presenter:

Dianna Nausley

**Local Programs Right of Way Manager
WSDOT, Local Programs, Olympia, WA**

Currently, Dianna Nausley works at WSDOT's Highways and Local Programs Division, where she manages the Right of Way Program. She and her staff provide oversight, training, and technical guidance in real estate matters to local agency staff and consultants. She is responsible for establishing policies and procedures for the right of way program, providing oversight of local agency work and certifies projects that have federal financial assistance.

nausled@wsdot.wa.gov

Phone Number - (360)705-7329

Webinar Presenter:

Dawn Fletcher Local Agency & Consultant Reviewer WSDOT Local Programs, Olympia, WA

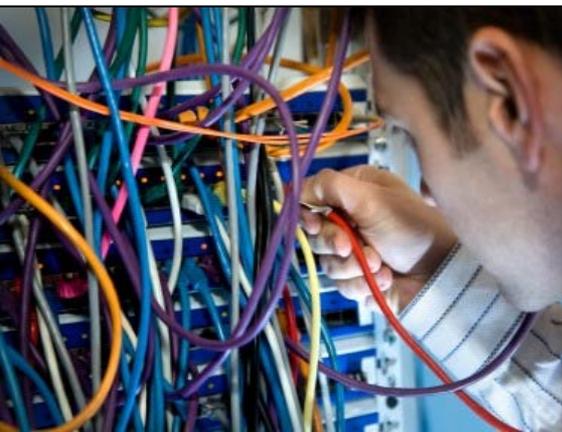
Currently, Dawn Fletcher works at WSDOT's Highways and Local Programs Division in the Right of Way Program. She is the Local Agency and Consultant Reviewer where her primary responsibility is to provide technical assistance, guidance, oversight and training regarding the provisions of the Uniform Act to local agencies and consultants involved in federally funded local agency roadway projects. She routinely provides on the job training to co-workers, consultants, and local agencies on technical matters pertaining to right of way. During her career, she has managed governmental real property transactions for three different Washington State agencies.

fletcdm@wsdot.wa.gov

Phone Number - (360)705-7325

Instructions for webinar attendees

- Press the orange arrow toggle button to show and hide the GoToWebinar control screen. This is the screen where the question pod is located.
- You are in listen-only mode and will be automatically muted. We have the ability to unmute your phone line if you have a question.
- The question pod is located on the right side of your screen. Simply type in your question or identify that you have a question by either raising your hand electronically or just typing “I have a question” in the question pod. We will address questions or unmute you to ask questions at the appropriate time. If your question is not being answered immediately it likely because it will be addressed during the presentation as we move forward. We will review all questions at the end of each flowchart to ensure we haven’t missed anything.



- Webinar slides will be available on the LTAP training website.
- You are encouraged to participate!

Photo courtesy of Pacific Technologies, Inc.

Instructions for in person attendees

- Turn wireless devices to silent mode.
- Please move side conversations out of the room so that the webinar attendees and in-person attendees can hear better.
- Please speak loudly and clearly when you have a question. We will try to repeat all questions.
- Restroom locations.
- Encouraged to ask questions & participate!





Training Objectives

You should be able to:

- Recognize when a Right of Way (ROW) phase/certificate is needed;
- Understand what is considered existing ROW that does not require a ROW phase/certification;
- Recognize early/advance acquisition, including ROW phase and certification requirements;



Training Objectives Continued.....

You should be able to:

- Understand the difference between permissive rights (permits) and property rights;
- Understand when the use of permissive rights (permits) are appropriate; and
- Understand how to determine the types of property rights needed to construct, operate, and maintain a project.

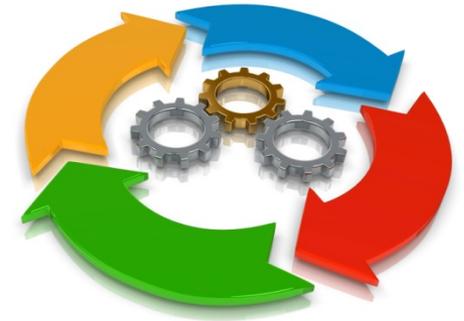
Background

- Reasons for creating the flow chart
 - Certification reviews
 - Confusion about sufficient property rights
 - Statewide Local Agency meeting feedback
 - FHWA Process Review

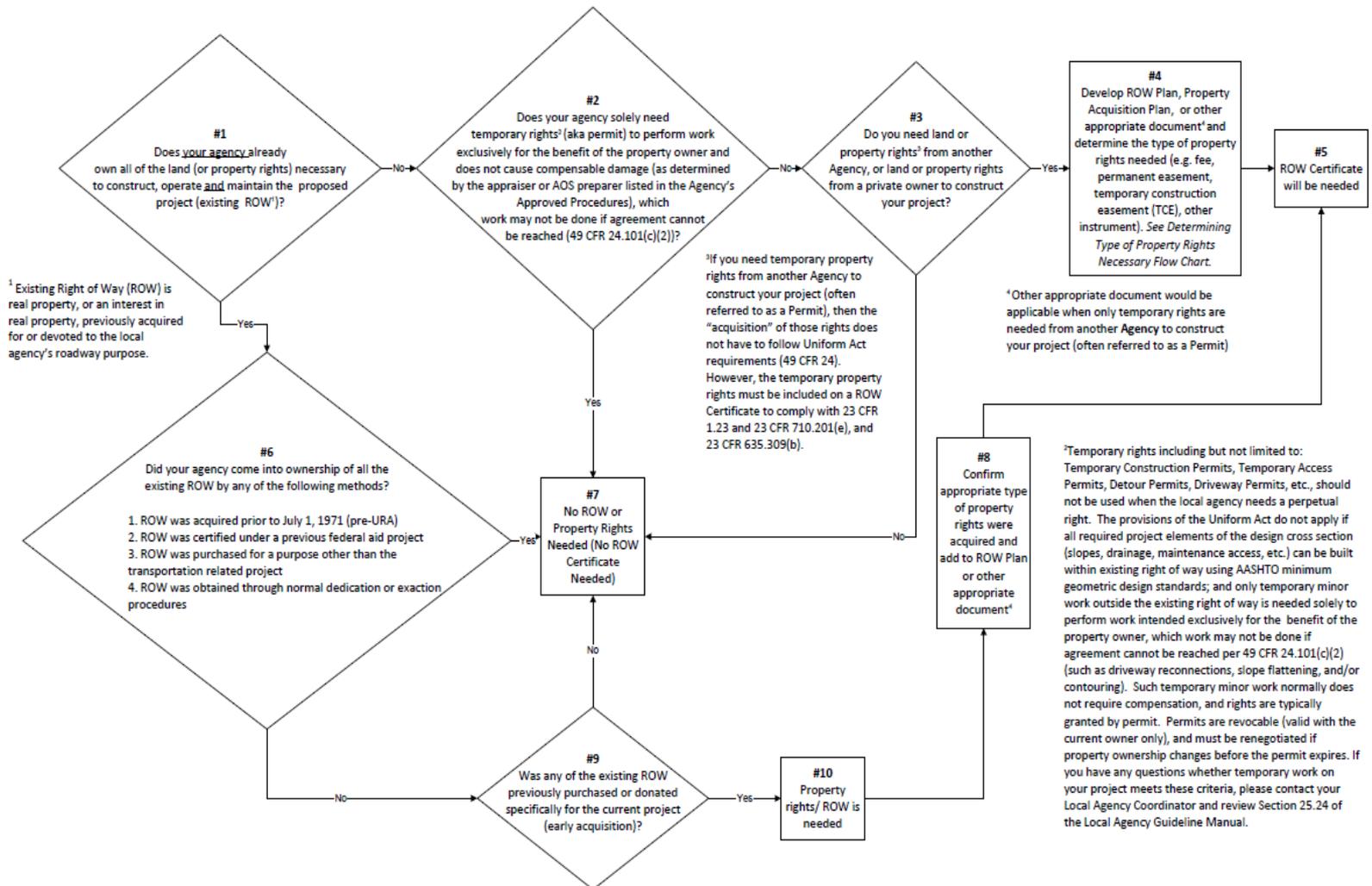


Flow Chart Development

- Team
 - WSDOT HQ Local Programs ROW
 - Local Agencies
 - FHWA
 - Consultants
- Process
 - Draft flow chart developed by WSDOT/FHWA
 - Multiple webinars for review and discussion
 - Team consensus
 - LAG revisions
 - Training



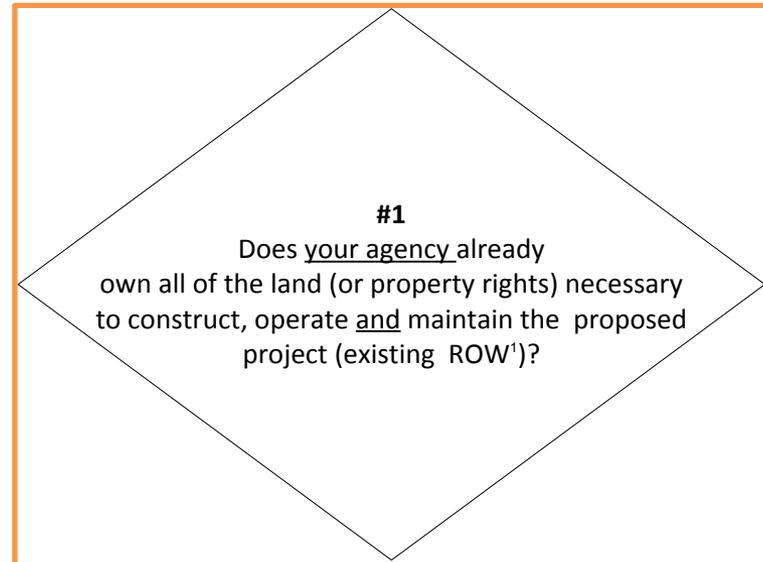
Determining Whether or Not Land or Property Rights or Interest are needed?





Land, Property Rights, Interests Needed?

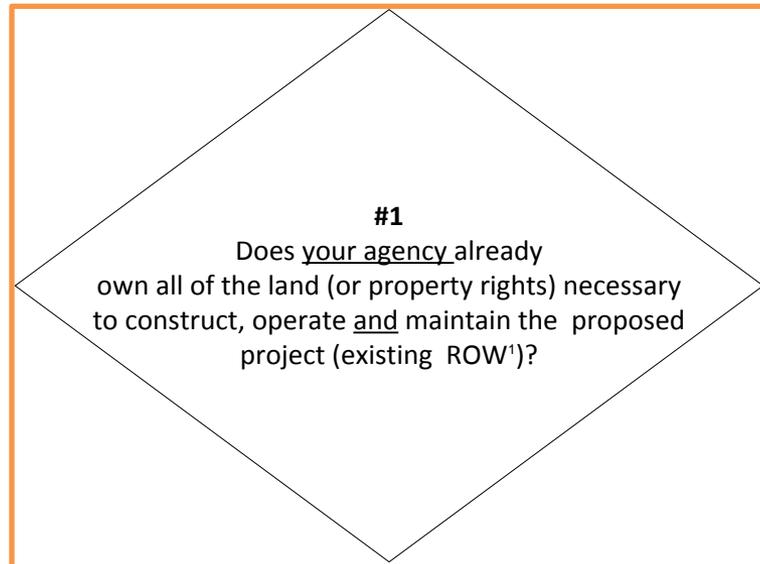
Question #1



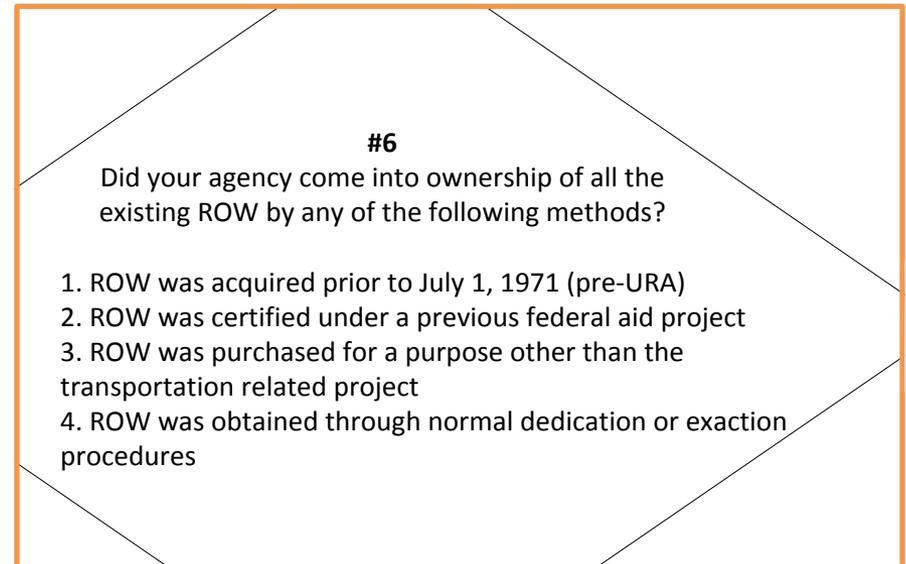
- Review proposed project limits
- Must have enough land to construct, operate, and maintain proposed project
- Land or property rights from a different owner = a ROW phase
- ROW phase could be local or federally funded but must meet URA requirements to be incorporated into federal aid project

Land, Property Rights, Interests Needed?

Answer to Question #1 is Yes



Go to Question #6



- Agencies should be ready to provide documentation to support method acquired

Land, Property Rights, Interests Needed?

Answer to Question #6 is Yes

#6

Did your agency come into ownership of all the existing ROW by any of the following methods?

1. ROW was acquired prior to July 1, 1971 (pre-URA)
2. ROW was certified under a previous federal aid project
3. ROW was purchased for a purpose other than the transportation related project
4. ROW was obtained through normal dedication or exaction procedures

Go to Box #7

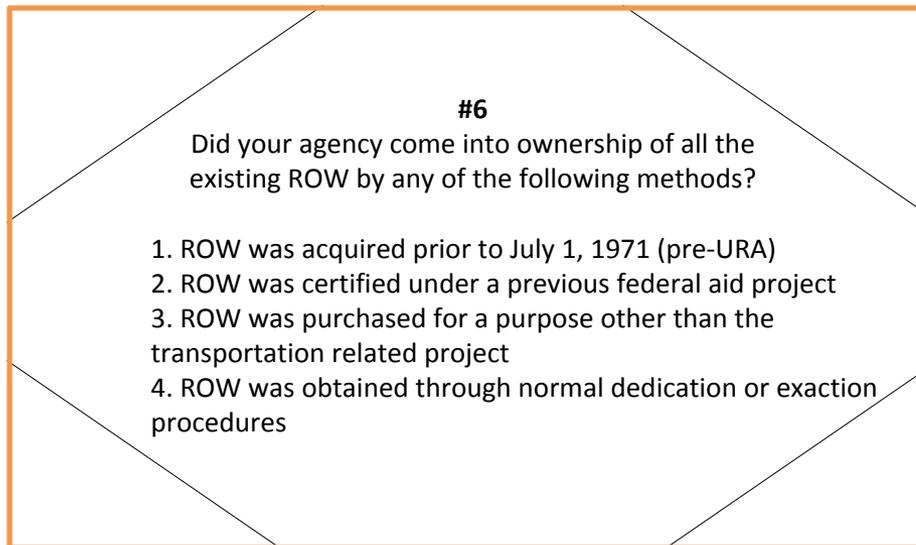
#7

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

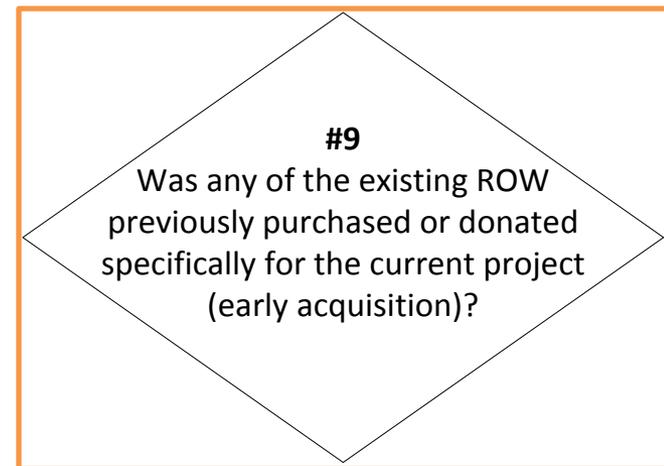
- Determined all property needed for your project is “existing ROW” & no other rights needed

Land, Property Rights, Interests Needed?

Answer to Question #6 is No



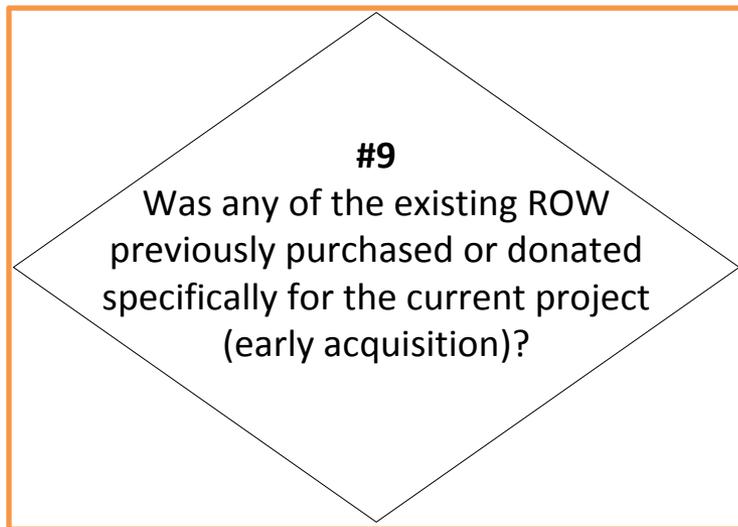
Go to Question #9



- Acquisitions completed prior to approval of NEPA = risk
- Must follow Uniform Act requirements regardless of funding to remain eligible for federal funds
- Appendix F required

Land, Property Rights, Interests Needed?

Answer to Question #9 is No



Go to Box #7

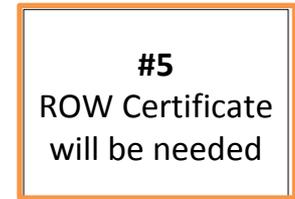
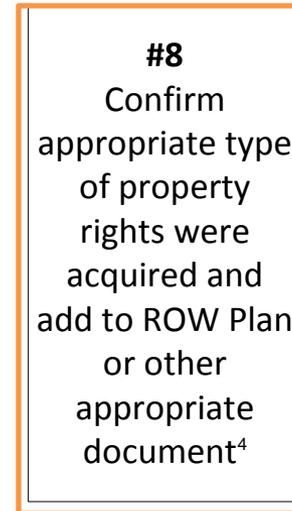
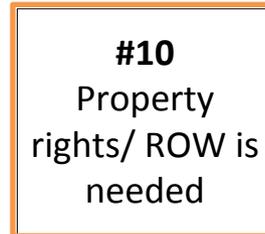
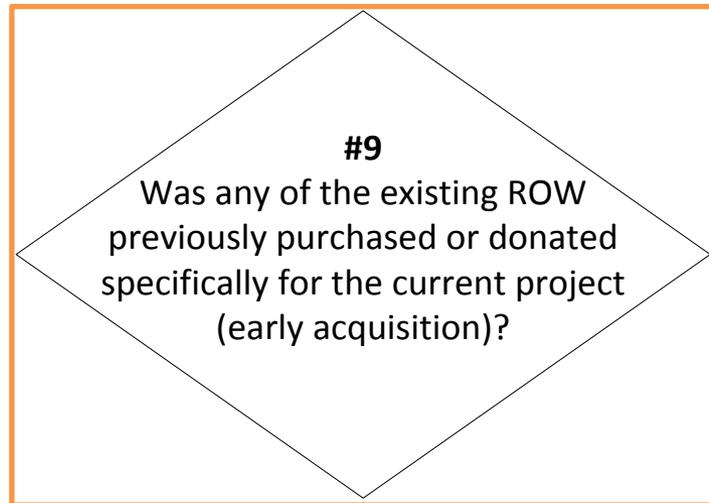


- Existing ROW was not previously purchased or donated specifically for the current project
- No early/advance acquisitions
- No other property rights needed

Land, Property Rights, Interests Needed?

Answer to Question #9 is Yes

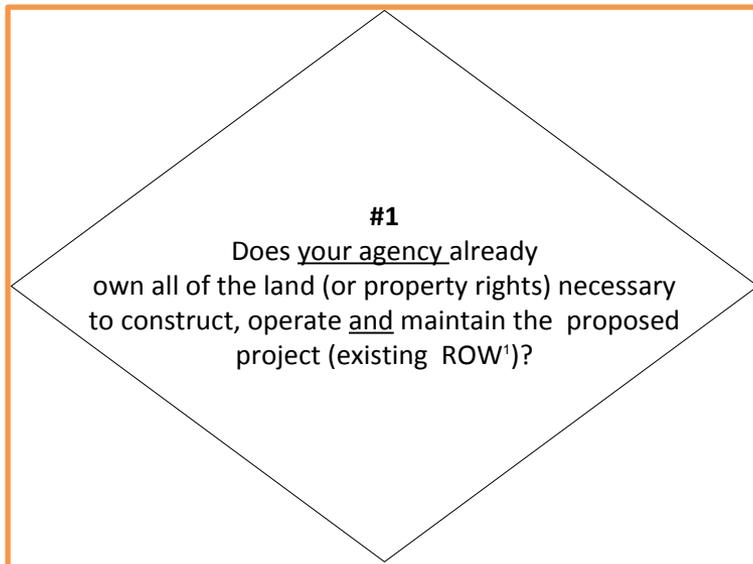
Go to Boxes #10, #8, #5



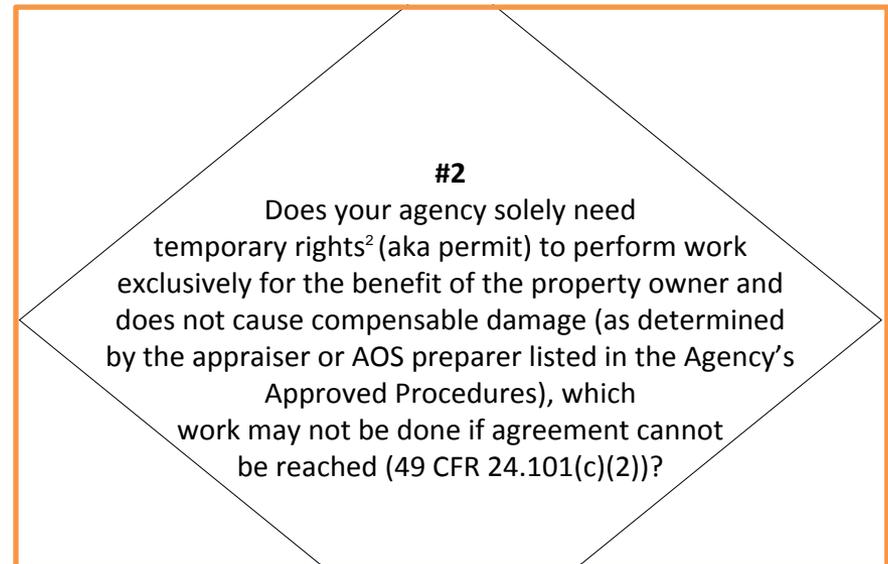
- Property rights acquired must be sufficient to construct, operate, and maintain proposed project
- Permits from other agencies must be included on the ROW plan and the ROW certification
- Don't forget Appendix F

Land, Property Rights, Interests Needed?

Answer to Question #1 is No



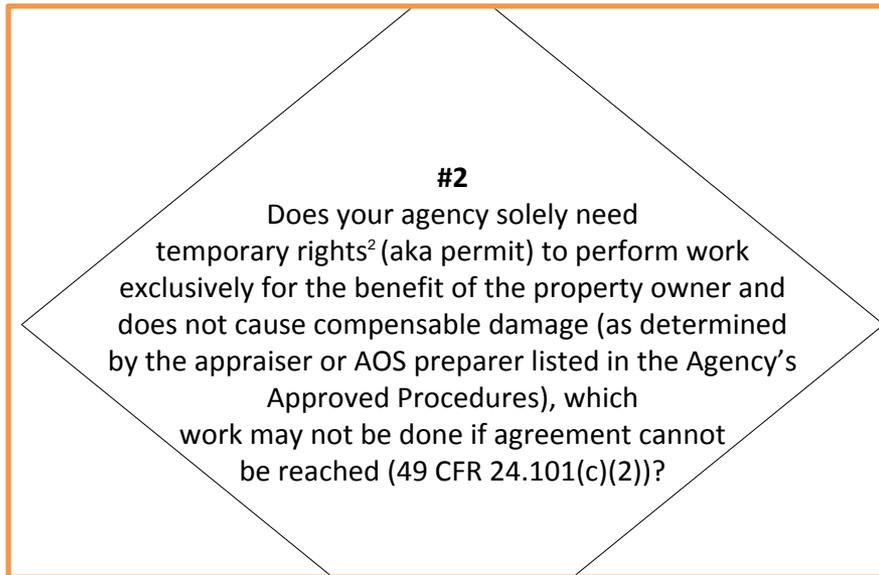
Go to Question #2



- Permissive rights only if temporary use
- Exclusively benefit to the owner (benefit can be incidental to agency)
- Property not needed for project
- Federal guidance to not follow URA- 49 CFR 24.101(c)(2)

Land, Property Rights, Interests Needed?

Answer to Question #2 is Yes



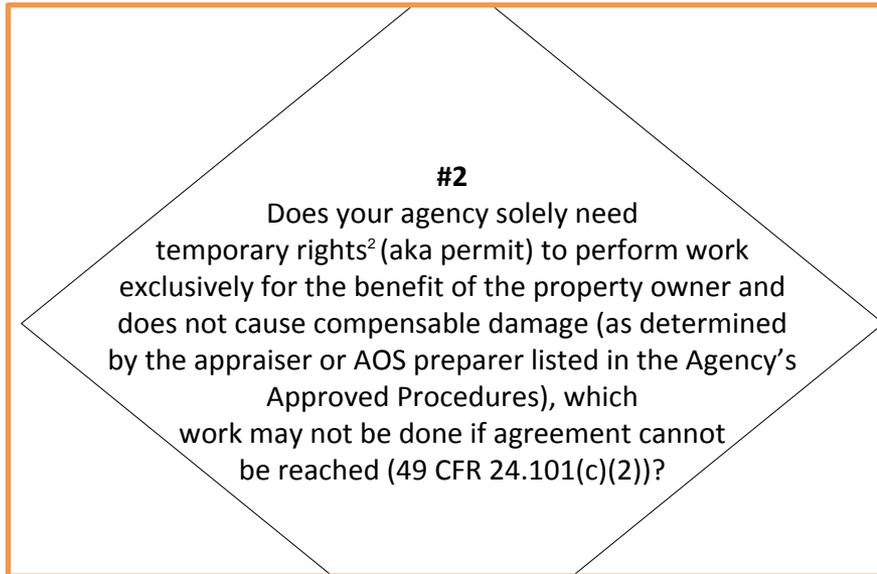
Go to Box #7



- 49CFR Part 24 Subpart B – Real Property Acquisition does not apply to temporary easements or permits if criteria in Question #2 is met by your agency – all other subparts of part 24 apply
 - Relocation of personal property located within permit area
- Benefits can be incidental to the agency
- Cannot result in damages to the remainder property
- Can construct project without permission to go on property

Land, Property Rights, Interests Needed?

Answer to Question #2 is No



Go to Box #3



- Agency does not need temporary rights to perform work exclusively for the benefit of the property owner
- Does not cause compensable damage
- Work does not have to be done if agreement cannot be reached with property owner
- Land or property rights from another agency or private property owner?

Land, Property Rights, Interests Needed?

Answer to Question #3 is No



Go to Box #7

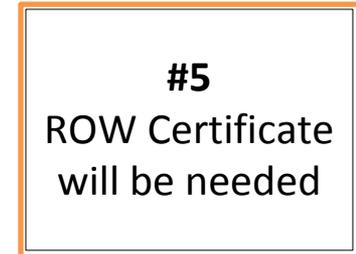
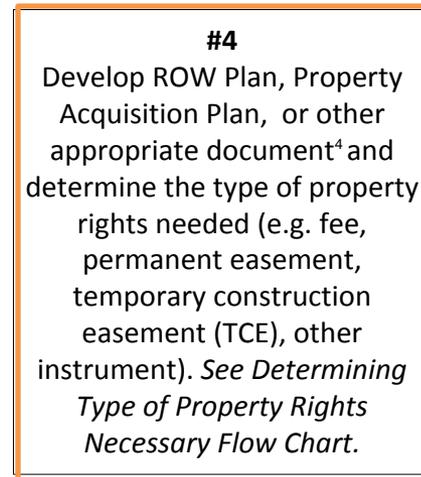


- Project can be built completely in the existing ROW (including temporary placement of personnel, materials and equipment); and/or
- Temporary rights solely needed to perform work that is exclusively for the benefit of owner, which does not have to be performed nor create a damage to the property if not performed (permissive rights)
- Do not need property or property rights from another owner (public or private)

Land, Property Rights, Interests Needed?

Answer to Question #3 is Yes

Go to Boxes #4 & #5



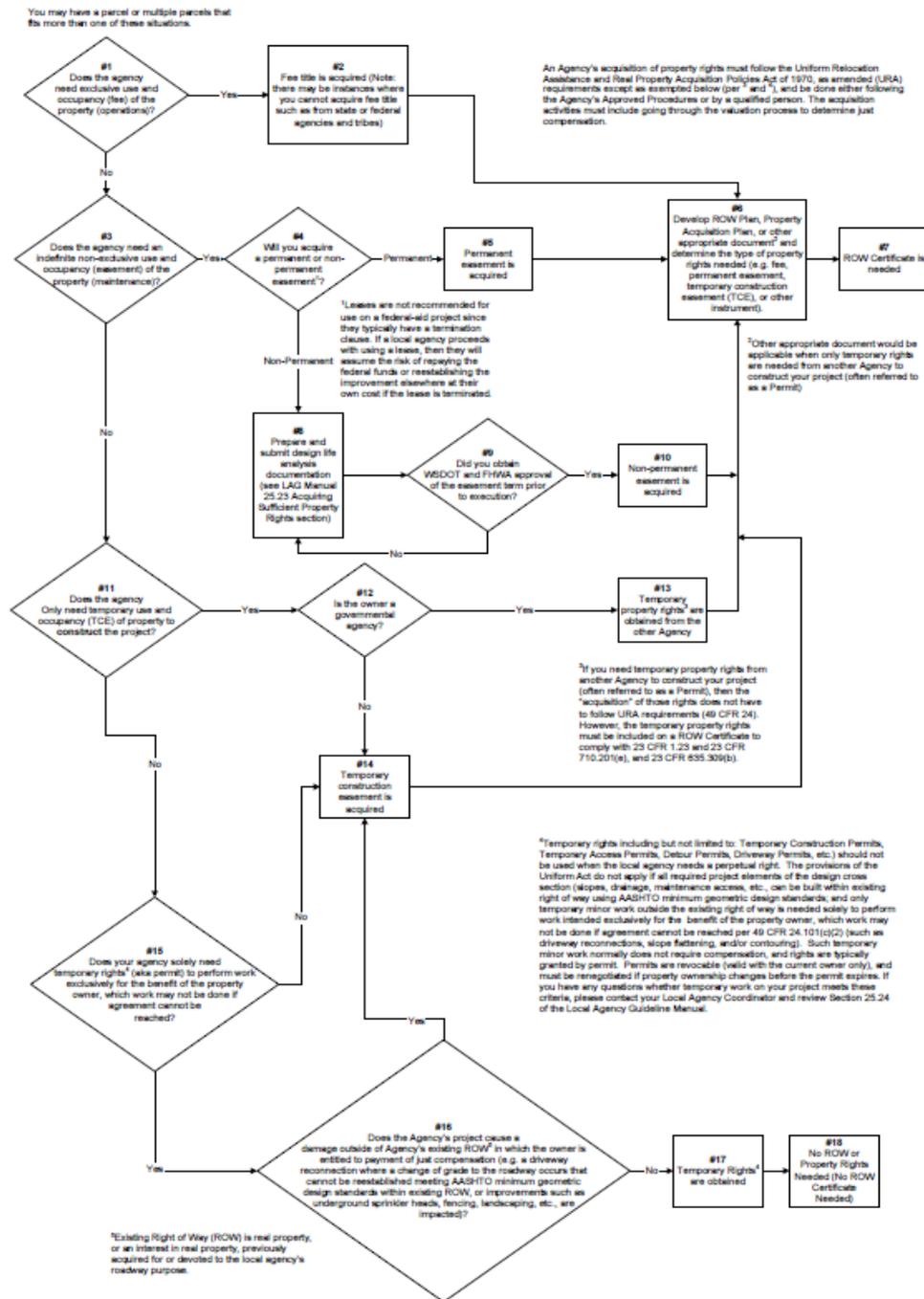
- Land and/or property rights are needed from private property owner or another agency (ROW phase)
- Project will require certification
- Determine appropriate property rights needed
- Develop ROW plan
- Permits from another agency does not have to follow URA but must be shown on the ROW certificate – must comply with 23 CFR 1.23 and 23 CFR 710.201(e), and 23 CFR 635.309(b)



If you have questions, please either type it in the question pod or, if you rather, just type in the question pod that you have a verbal question, and we can take you off of mute so you can ask the question.



Determining the Type of Property Rights Necessary





Type of Property Rights Necessary

- Permanent Rights
 - Fee
 - Easement (perpetual)
- Non-Permanent Rights
 - Easements (specified term)
 - Leases
- Temporary Rights
 - Permits
 - Temporary Construction Easement, etc.....



Type of Property Rights Necessary

Question #1

Note for all questions: a parcel or multiple parcels may fit more than one situation

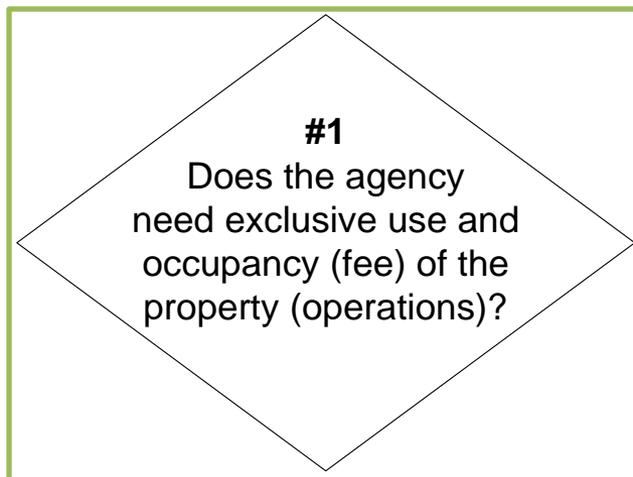


- Property should be acquired in fee
- Fee simple – unqualified ownership and power of disposition; all rights to control, use and transfer property at will acquired
- Typically acquire for area in which operational facilities will be located (improved highway, shoulders, and clear zones)

Type of Property Rights Necessary

Answer to Question #1 is Yes

Go to Boxes #2, #6, #7



#2
Fee title is acquired (Note: there may be instances where you cannot acquire fee title such as from state or federal agencies and tribes)

#6
Develop ROW Plan, Property Acquisition Plan, or other appropriate document² and determine the type of property rights needed (e.g. fee, permanent easement, temporary construction easement (TCE), or other instrument).

#7
ROW Certificate is needed

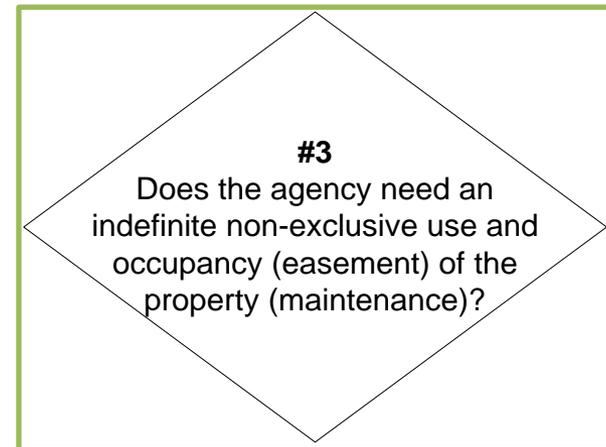
- Property type
 - Fee title = entire rights
 - Easement = property interest
- Develop ROW plan
- ROW Certificate is needed

Type of Property Rights Necessary

Answer to Question #1 is No



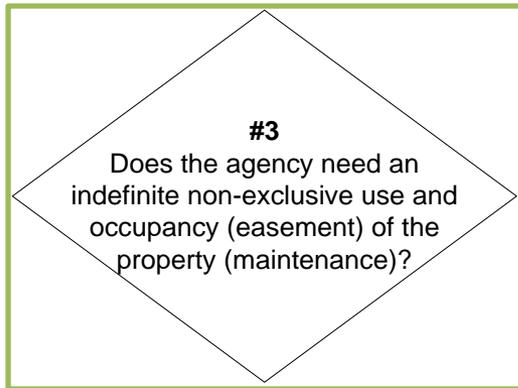
Go to Box #3



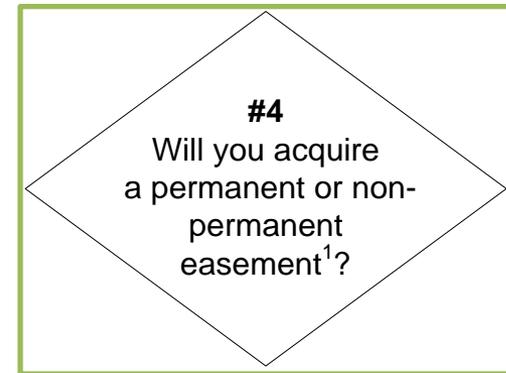
- Usually need non-exclusive rights for maintenance
- Easement = interest in land
- Agency keeps right to use land
- Land owner retains ownership of land
- Conditions specified in easement

Type of Property Rights Necessary

Answer to Question #3 is Yes



Go to Box #4

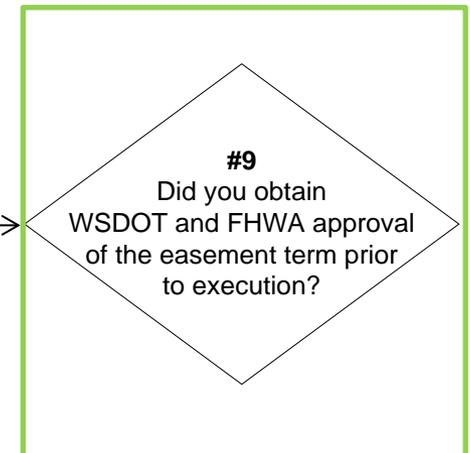
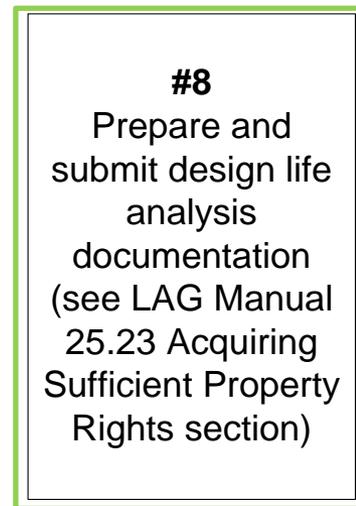
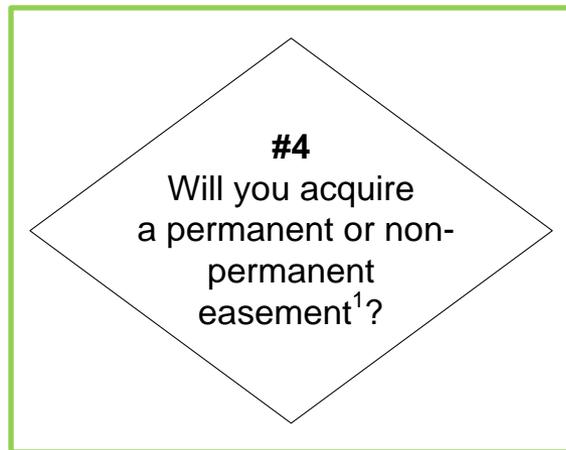


- Permanent easement - no end date
- Non-permanent easement – defined term
- Lease is not recommended (see footnote ¹)

Type of Property Rights Necessary

Answer to Question #4 is Term

Go to Boxes #8 & #9

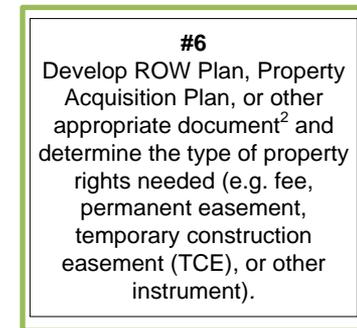
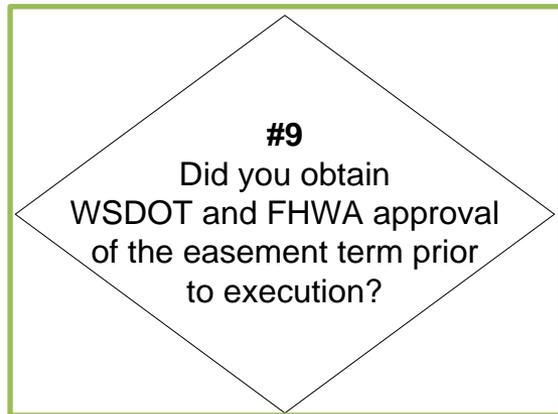


- Term must = design life of improvement (20 year minimum)
- Requires pre-approval
- If not sufficient, risk to agency/certification
- Exception: DNR Aquatic Lands

Type of Property Rights Necessary

Answer to Question #9 is Yes

Go to Boxes #10, #6, #7

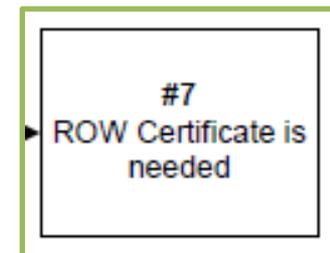
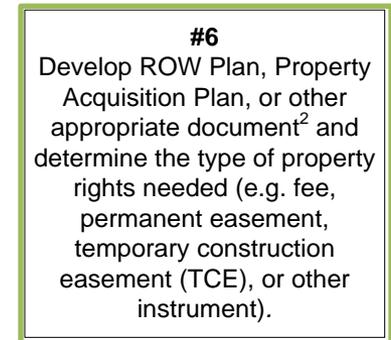
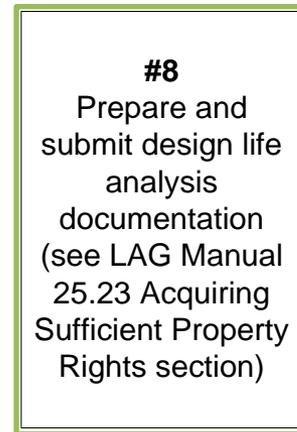
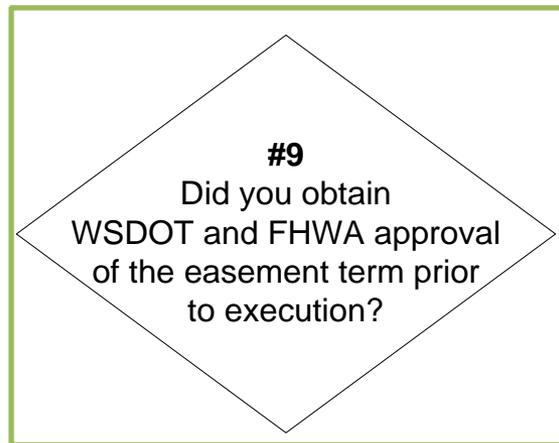


- Property type = non-permanent easement
- Develop ROW plan
- ROW Certificate is needed

Type of Property Rights Necessary

Answer to Question #9 is No

Go to Back to Box #8 before #10,
#6 & #7

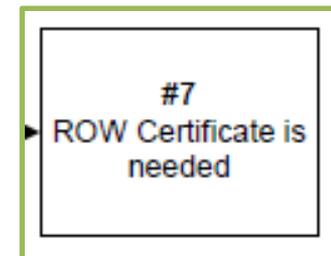
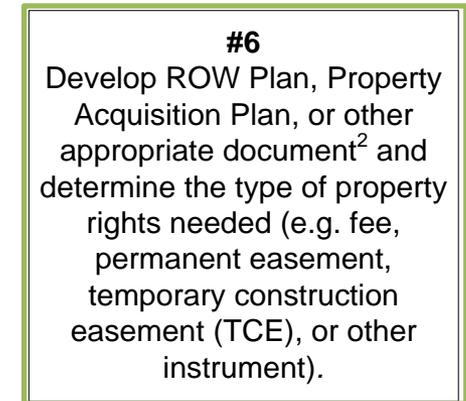
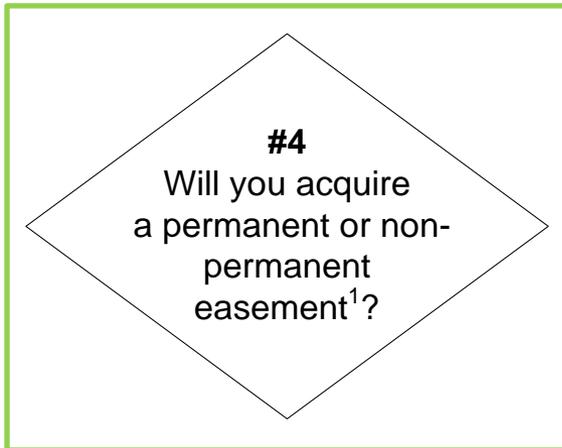


- Property type = non-permanent easement and/or lease
- Obtain required pre-approval of design life analysis
- Develop ROW plan
- ROW Certificate is needed

Type of Property Rights Necessary

Answer to Question #4 is
Permanent

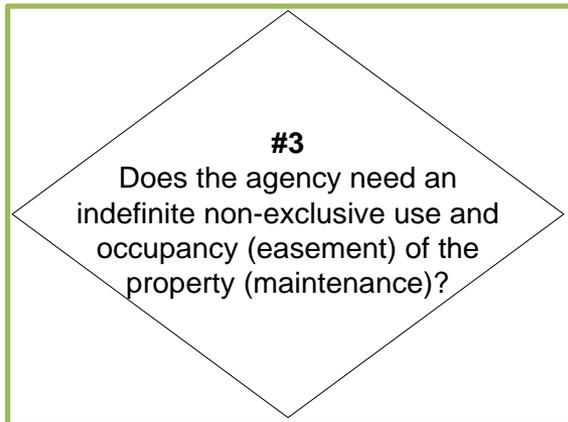
Go to Boxes #5, #6 & #7



- Property type = permanent easement
- Develop ROW plan
- ROW Certificate is needed

Type of Property Rights Necessary

Answer to Question #3 is No



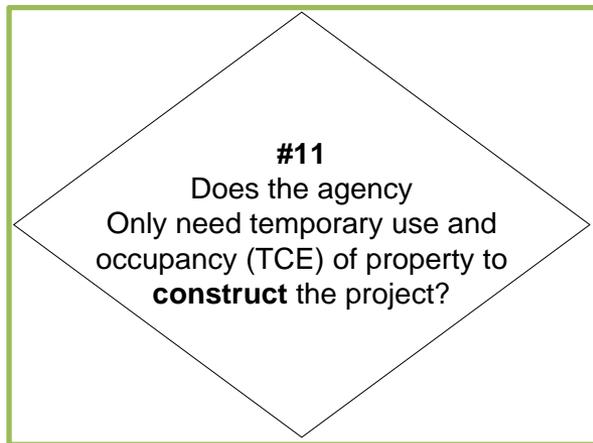
Go to Box #11



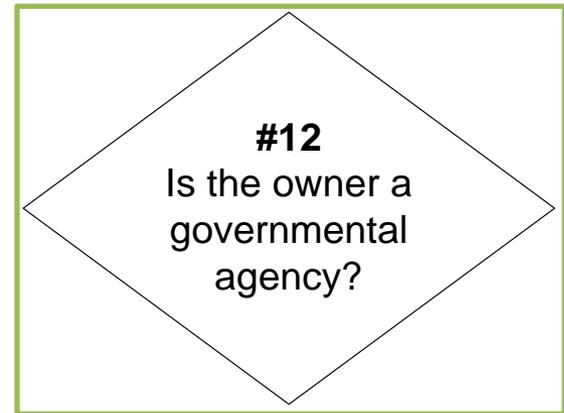
- Temporary use Construction
- Not intended for perpetual or exclusive rights

Type of Property Rights Necessary

Answer to Question #11 is Yes



Go to Box #12



- Temporary use during construction
- Owner is government agency

Type of Property Rights Necessary

Answer to Question #12 is Yes

Go to Boxes #13, #6 & #7



#13
Temporary property rights³ are obtained from the other Agency

#6
Develop ROW Plan, Property Acquisition Plan, or other appropriate document² and determine the type of property rights needed (e.g. fee, permanent easement, temporary construction easement (TCE), or other instrument).

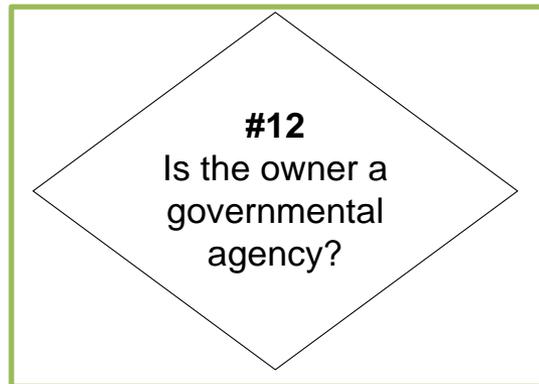
#7
ROW Certificate is needed

- Temporary rights for government agency
 - by permit (government to government)
 - not follow URA
 - requires ROW phase and ROW certification

Type of Property Rights Necessary

Answer to Question #12 is No

Go to Boxes #14, #6 & #7



#14
Temporary construction easement is acquired

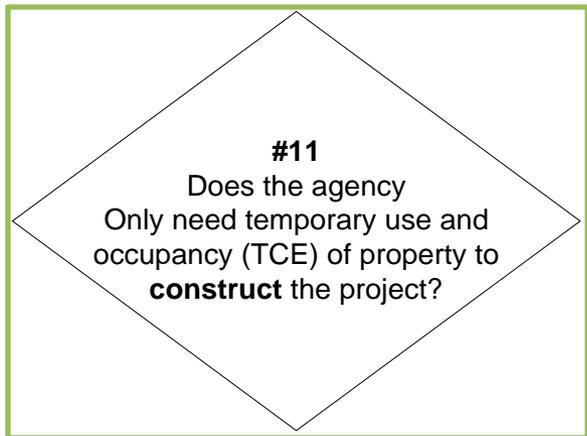
#6
Develop ROW Plan, Property Acquisition Plan, or other appropriate document² and determine the type of property rights needed (e.g. fee, permanent easement, temporary construction easement (TCE), or other instrument).

#7
ROW Certificate is needed

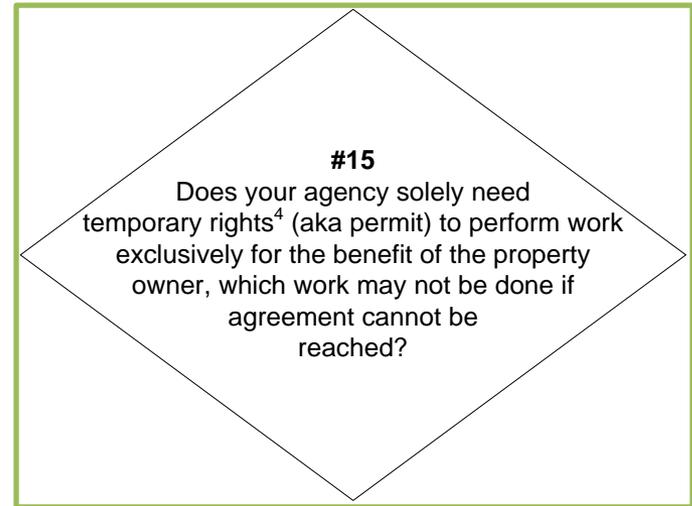
- Temporary Construction Easement
 - Not part of permanent ROW
 - Shown on ROW plan
 - ROW certification needed

Type of Property Rights Necessary

Answer to Question #11 is No



Go to Box #15

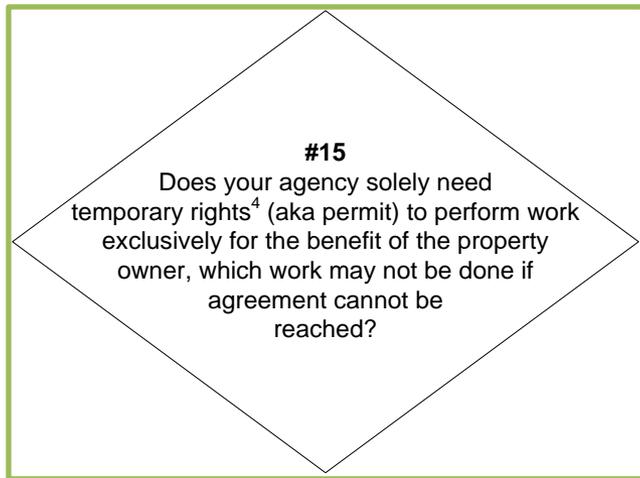


- Permit is a permissive right not a property right
 - Benefit to owner
 - Without payment of compensation
 - Revocable
 - Non-transferrable
 - Not sufficient for construction, operation, or maintenance of a project

Type of Property Rights Necessary

Answer to Question #15 is No

Go to Boxes #14, #6 & #7



#14
Temporary construction easement is acquired

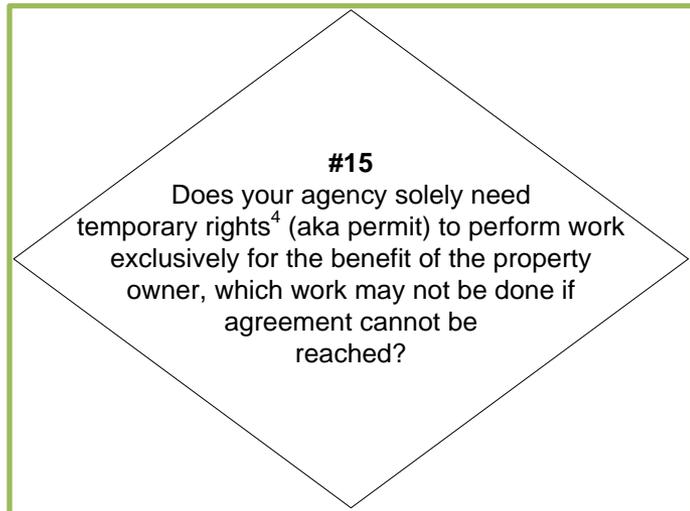
#6
Develop ROW Plan, Property Acquisition Plan, or other appropriate document² and determine the type of property rights needed (e.g. fee, permanent easement, temporary construction easement (TCE), or other instrument).

#7
ROW Certificate is needed

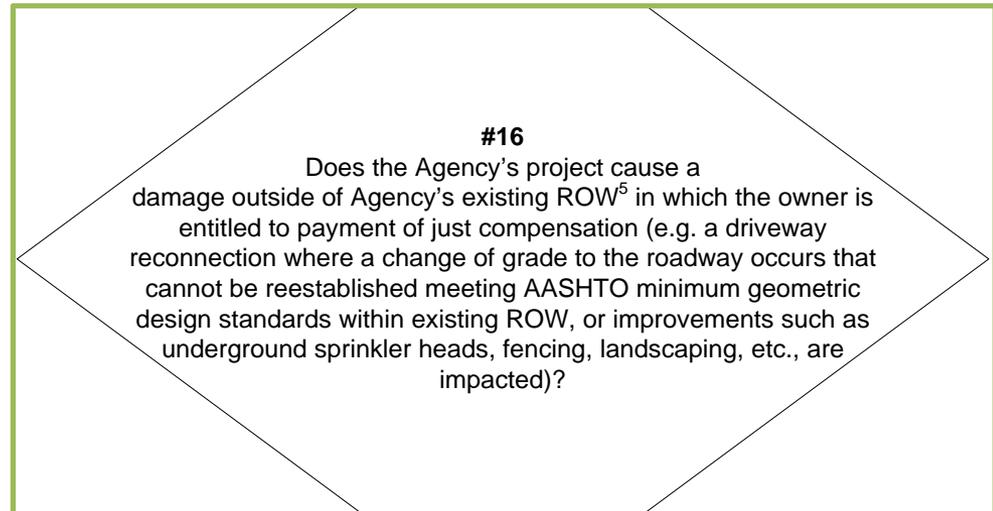
- Temporary Construction Easement
 - Must acquire if needed to construct your project
 - Must include on ROW plan
 - ROW certificate is needed

Type of Property Rights Necessary

Answer to Question #15 is Yes



Go to Box #16



- Temporary Construction Easement
 - If damages, owner entitled to payment of Just Compensation
 - Appraisal determines damages
 - Must follow URA process

Type of Property Rights Necessary

Answer to Question #16 is Yes

Go to Boxes #14, #6 & #7

#16

Does the Agency's project cause a damage outside of Agency's existing ROW⁵ in which the owner is entitled to payment of just compensation (e.g. a driveway reconnection where a change of grade to the roadway occurs that cannot be reestablished meeting AASHTO minimum geometric design standards within existing ROW, or improvements such as underground sprinkler heads, fencing, landscaping, etc., are impacted)?

#14

Temporary construction easement is acquired

#6

Develop ROW Plan, Property Acquisition Plan, or other appropriate document² and determine the type of property rights needed (e.g. fee, permanent easement, temporary construction easement (TCE), or other instrument).

#7

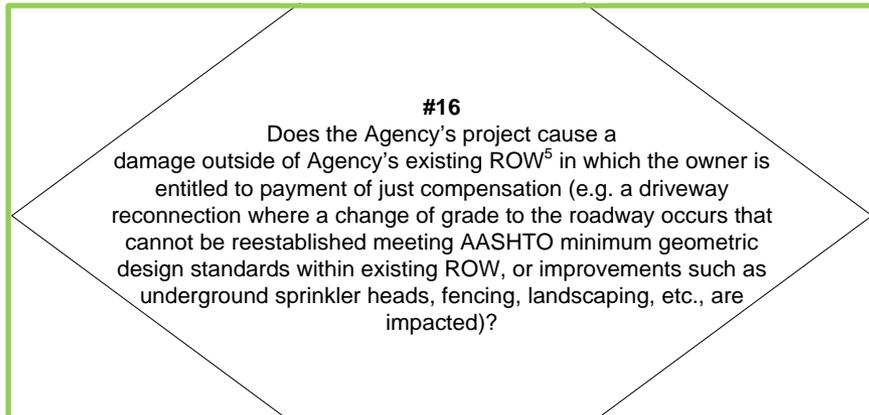
ROW Certificate is needed

- Temporary Construction Easement
 - Follow URA process
 - Value, establish just compensation, offer etc.....
 - Include on ROW plan
 - ROW certificate is needed

Type of Property Rights Necessary

Answer to Question #16 is No

Go to Boxes #17 & #18



- Permit
 - If no damages
 - Permission only (property not necessary for construction, operation or maintenance)
 - No ROW needed
 - No ROW certificate needed



If you have questions, please either type it in the question pod or, if you rather, just type in the question pod that you have a verbal question, and we can take you off of mute so you can ask the question.

