

Chapter 15

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15-1 Acronyms

ALPE	Assistant Local Programs Engineer
AOS	Administrative Offer Summary
CA	Certification Acceptance
CFR	Code of Federal Regulations
DCE	Documented Categorical Exclusion
ECS	Environmental Classification Summary
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
GC	Governmental Agreement for Aid
HQ	Headquarters (usually WSDOT <u>LP</u> Headquarters)
LAC	Local Agency Coordinator
LACR	Local Agency & Consultant Reviewer
LAG	Local Agency Guidelines
<u>LPRM</u>	Local Programs <u>Right of Way</u> Manager (Headquarters)
LP	Local Programs (Headquarters)
LPE	Local Programs Engineer (Region)
LPA	Local Public Agency
PFE	Project Funding Estimate
QA	Quality Assurance
QC	Quality Control
RES	Real Estate Services
RCW	Revised Code of Washington
ROD	Record of Decision
ROW	Right of Way
URA	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation

15-2 Purpose

This chapter explains the requirements and conditions to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. This chapter is to be used by WSDOT and local agencies for guidance and oversight of right of way projects that will require certification by the Federal Highway Administration (FHWA).

15-3 Authority

[23 CFR 1.11](#)

[23 CFR 635.105](#)

[49 CFR Part 24](#)

[WAC 468-100](#)

[RCW 8.26](#)

15-4 References

[Construction Manual M 41-01](#)

[Environmental Procedures Manual M 31-11](#)

[Local Agency Guidelines M 36-63](#)

[LP Web Page](#)

[Local Project Search](#)

[STIP](#)

15-5 Policy

The acquisition of private property for public use is governed by a host of state and federal rules and regulations. On federal aid projects, the WSDOT ROW Program has overall responsibility for the acquisition, management, and disposal of real property. Through the Stewardship Agreement between WSDOT and FHWA, WSDOT is responsible for ensuring that all aspects of LPA projects are carried out in compliance with federal statutes, regulations, and policies. WSDOT Local Programs (LP) is the lead office for ensuring this compliance. The Headquarters [LPRM](#) is the lead in ensuring LPAs are acquiring ROW in accordance with the URA and [49 CFR Part 24](#).

LACs are WSDOT's primary oversight agents. They provide technical assistance and ensure compliance with federal statutes, regulations, and policies for the LPA ROW Program. LACs look for opportunities to attend project tours with LPAs on all projects with federal funding when or if they are available.

15-6 Training

Instructor-led and/or web-based training will be available. This training is required for WSDOT RES Supervisors, Region LPE/ALPE, LACs, and any staff involved in oversight of federally funded LPA projects. Training is recommended for project engineers, project development engineers, and project managers. Training will be made available to both consultants and local agencies.

Real Estate Training Spreadsheet (Under Construction)

Local Agency 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).

15-7 Forms/Resources

Spot Check or Certification Review Package

[Project Review Worksheet](#)
[Parcel Review Worksheet](#)
[Residential Relocation Review Worksheet](#)
[Non-Residential Relocation Review Worksheet](#)
[Personal Property Only \(PPO\) Review Worksheet](#)
[Certification Review Oversight Report](#)
[Certification Review Transmittal Letter \(Cert 1 or 2\)](#)
[Certification Review Transmittal Letter \(Cert 3\)](#)
[Sample Size Determination Form](#)
[Certificate Letters – Chapter 17](#)
[Certificate Worksheets – Chapter 17](#)
[RES-300 Diary](#)
[List of Probing Questions](#)
[Local Agency Active Project Status Report](#)
[FHWA Annual Statistical Report](#)

[LPA-011](#)
[LPA-012](#)
[LPA-013](#)
[LPA-014](#)
[LPA-015](#)
[LPA-016](#)
[LPA-017](#)
[LPA-018](#)
[LPA-019](#)

15-8 Definitions

Active Project – A project where offers have been made to property owners for the acquisition of real property interests.

Excepted Parcel Certificate #3s – Projects where the right of way has not been cleared and it is necessary for the contractor to work around certain parcels. This type of certificate can only be used in very unusual circumstances and with prior approval of FHWA. Under this type of certificate, the agency ensures that both property owners and occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the R/W are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

Obligation of Federal Funding – 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.

Time-Based Certificate #3s – Projects where agreements have been reached on all parcels and there is a reasonable expectation that payment and relocation will be completed prior to bid opening. It is expected that the certificate will be upgraded to a #1 or #2 prior to bid opening.

15-9 Oversight Roles/Responsibilities/Expectations

Region Local Agency Coordinator

Role

The Local Agency Coordinator (LAC) acts as the liaison between the LPA and WSDOT and is the sole point of contact for ROW acquisition issues. The LAC is a permanent WSDOT employee recognized to have broad experience in all areas of ROW work, with expertise in acquisition and in at least one of four other areas – land title, appraisal, relocation, or property management.

This position provides guidance and technical support to LPAs and identifies ROW issues early in the process. The LACs provide specific training regularly and as they determine necessary. The LACs involve the LPRM and the LPE in any contentious issues or if the LPA indicates they do not agree with the LAC's guidance. This position ensures that all property rights acquired by the LPA followed applicable statutes, regulations, and policies.

LAC Responsibilities/Expectations/Key Functions

- Provide/facilitate training to LPAs.
- Assist LPAs with getting ROW procedures approved or revised.
- Assist LPAs with documenting eligibility to receive ROW funding authorization.

- Coordinate with the LPE/ALPE.
- Involve the local agency in all conversations (both verbal and in writing) with consultants where the LAC is providing project specific guidance to the consultant hired to perform ROW activities.
- Proactively reach out to LPAs to have a pre-ROW acquisition contact for federal aid projects.
- Answer LPA questions, provide assistance, and ask probing questions of LPA to gain understanding of the project.
- Provide input regarding suggested process improvements to LPRM.
- Perform spot check reviews prior to receiving the request for ROW certification from the LPA to ensure there are no surprises at certification.
- Perform ROW acquisition certification reviews utilizing the appropriate review worksheet, [List of Probing Questions](#), and either the Sample Size Determination Form (LPA-019) or supply the methodology used to determine the selected sample size.
- Prepare a [certification review package](#) using the templates provided.
- Signs ROW Certification and submit to LPRM for processing.
- Participate in QA and QA/QC reviews.
- Track and report Region LAC activities using the Local Agency Active Project Status Report.
- Coordinate with LPAs regarding the FHWA Annual Statistical Report, and obtain data from the LPAs and transmit to the LPRM.

Region Local Programs Engineer/Assistant Engineer

Role

Responsible for delivery of the LPA construction program in the regions, this position coordinates with the LAC as soon as a federal aid eligible project is identified with the acquisition of property rights.

Responsibilities/Expectations

- Notify LAC of projects with ROW as soon as possible even if only local funds are used in the ROW phase. This will improve the coordination between Local Programs Engineers and the HQ LP.
- Keep open communication with the LAC regarding project progression and priorities and provide immediate communication of at-risk issues as they arise.
- Provide relevant project information to LAC on federal aid projects when unusual conditions or concerns arise.
- Transmit updates, comments, and questions to the LP as necessary.
- Awareness that ROW issues could be more than just a ROW phase – e.g., if there are encroachments that need to be cured.
- Maintain project file documenting eligibility of the LPA to receive ROW Funding Authorization, including the LAC review of Right of Way Plan, Project Funding Estimate or True Cost Estimate, and the approved Relocation Plan (if required).
- Support LAC.
- Identify communication protocol between LACs, LPAs, and LPEs.

Local Programs Right of Way Manager (LPRM) – Headquarters

Role

This position manages the LPA ROW Program and has ultimate responsibility for ensuring that ROW acquisition for LPA projects is carried out in compliance with federal laws and regulations. This position is also responsible for overseeing delivery of the LPA program and providing policy guidance and direction to Region LPEs regarding ROW issues. Coordinates with the LACs, LPEs, and FHWA on issues related to LPA ROW acquisition. The LPRM manages Approved ROW Procedures, certifies local agency projects under certificate 1, 2, & time based certificate 3s, and coordinates with FHWA for their approval of all excepted parcel certificate 3s & qualified certificates. The LPRM also provides oversight, guidance, direction, and training to the LACs when dealing with federal aid transportation improvement projects. Also provides support and training to the LACs and assists in providing training to LPAs and consultants.

Responsibilities/Expectations

- Prepares and signs WSDOT Concurrence Letters to certify federally funded local agency projects under certificate 1, 2, and time based certificate 3 and coordinate with FHWA for their approval of all excepted parcel certificate 3s and qualified certificates.
- Support LACs as necessary, answering questions and clarifying policy issues.
- Involve FHWA and LP as necessary regarding compliance issues, interpretations, clarifications, etc.
- Develop/update policies as warranted in response to regulatory changes or new FHWA policy.
- Consult with LP in the development of policies and procedures. Coordinates with RES to ensure policy is compatible with RES policy.
- Coordinate with LP on all issues that affect LPA projects and contacts LP on any issues that may jeopardize certification on a project or that require FHWA participation in issues resolution.
- Provide training to LPAs and consultants.
- Develop, provide, and track training for LACs.
- Prepare an annual assessment of LPA training needs.
- Track and manage Approved ROW Procedures and GC Agreements for LPAs statewide.
- Manage a list of approved consultants/LPA staff.
- Conduct QA/QC reviews for one to two projects per year statewide and report findings. Additional reviews performed at the discretion of HQ LP. (See [Section 15.20](#))
- Maintain and update ShareDot site and the LP ROW Services webpage
- Facilitate regular meetings with LACs to discuss current issues.

- Track and report LPA program activities, i.e., certifications, reviews, local agency variance from approved procedures, oversight issues, best practices, shared experiences. Report annually to FHWA on LPA program activities.
- Provide articles for the LTAP newsletter as needed.
- Coordinate with Real Estate Services Administrator and/or Program Managers to determine if proposed policy changes will have an impact on Real Estate Services.

Local Programs (LP)

Role

This department is responsible for overseeing delivery of the LPA program and providing policy guidance and direction to Region LPEs. Coordinates with the LPRM, LPEs, and FHWA on issues related to LPA ROW acquisition.

Responsibilities/Expectations

- Consult with the LPRM in the development of policies and procedures that impact ROW and proposed change to the **LAG** relevant to ROW.
- Coordinate with LPRM on all issues that affect LPA projects and any issues that may jeopardize certification on a project or that require FHWA participation in issues resolution.
- Notify or involve LPRM in conversations regarding of non-ordinary ROW issues on projects that require additional assistance from ROW.
- Transmit questions to the LPRM and Director of Real Estate Services as necessary.
- Notify the LPRM of potential changes in oversight processes and methods that may impact ROW activities.
- Support LPRM, LPEs, and LACs as circumstances warrant.
- Submit project authorizations to FHWA for final approval.
- Schedule and track LPA training through the LTAP center.

HQ Real Estate Services Program Managers

Role

These positions issues policy and procedure for all state agencies engaged in real estate activities covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. They maintain a *Right of Way Manual* that is current with state laws and federal regulations to ensure compliance by all Real Estate Services personnel and local agencies delivering federal aid projects.

Responsibilities/Expectations

- Coordinate with LPRM to determine if proposed policy changes will have an impact on Local Programs.
- Coordinate the review of annual manual revisions to make sure necessary changes are reflected in **Chapter 25** of the LAG.
- Coordinate right of way training opportunities.

FHWA ROW Program Manager

Role

This position provides oversight, guidance, and direction to the WSDOT RES Program and to Local Programs ROW Services on federal aid highway transportation and roadway projects.

Responsibilities/Expectations

- Interpret the URA and regulations.
- Clarify policy issues.
- Provide guidance and feedback on compliance issues.
- Track program trends.
- Perform regular process reviews.
- Assist in providing training to WSDOT, LPAs, and consultants.
- Approve ROW Excepted Parcel Certificate #3, as well as Qualified Certificate #1, #2s, and time based #3s submitted by LPAs through WSDOT.
- Work with WSDOT to create programmatic approvals to streamline process.

15-10 Communication/Coordination

Communication is essential to allow WSDOT to fully perform their oversight responsibilities. It also provides a mechanism for LPAs to initiate contact if they have any questions. The following are some specific communication tools.

Answer LPA Questions, Provide Technical Assistance, and Ask Probing Questions

The LAC responds to requests from LPAs to provide technical assistance, advice, and answer questions. The LAC explains and clarifies the URA and its implementing regulations in the [49 CFR Part 24](#), [RCW 8.26](#), [WAC 468-100](#), [LAG Chapter 25](#), and this manual. The LAC is expected to assist the LPA to identify and correct issues during the acquisition process, and to contact HQ LP as needed. The LAC keeps open communication with the LPE/ALPE and with the LPRM. The LAC will involve the LPE/ALPE, and LPRM in any potentially contentious decisions or if the LPA indicates they do not agree with the LAC's guidance. The LAC will coordinate with the LPE/ALPE on project related issues.

Documentation of Contact With the LPA

Each LAC shall maintain written documentation of important issues, contacts, and developments which could be a diary or emails. For example, if the LAC finds problems, then there should be a diary entry or sufficient emails to tell the story. This would also include guidance and/or direction and conversations by email or phone calls with consultants hired by the local agency to perform ROW activities for their project. It is important to document the file to remember key events, and keeping a diary is considered a best practice. Diary entries for normal contacts are sometimes useful, but the intent of having the LAC keep diary entries is to be able to have a written record of what was communicated with the LPA in case there are later questions about whether the LPA has complied with LAC requests. If the LAC determines a written record is necessary, it should:

1. Be retained in a project file and should summarize important contacts and developments (tell the story).
2. Include copies of important emails in the project file.

How Do the Region Local Programs Engineers Find Out About LPA Projects?

- The LPE may be contacted by the LPA about a project the LPA may want to make eligible for future federal funding or want instructions now that their project is on the STIP.
- The LPE's office may receive a courtesy copy of a funding assignment letter sent to the LPA by LP.
- The LPA submits a funding package via [DOT Form 140-101](#).
- The LPA submits a ROW plan for review.

How Do the LACs Find Out About LPA Projects?

- The LPE provides information about the project. Sometimes WSDOT won't yet know if there is a ROW phase.
- The LPA contacts the LAC directly.
- The consultant for the LPA contacts the LAC directly.

Once the LAC Finds Out About the Federally Funded Project From Local Programs or the LPA, What is the LAC's Next Step?

- If notification comes from the LPA, then the LAC will contact Local Programs to inquire if the project is federally funded. If the LPA is just trying to preserve eligibility for federal funding at a later date, they need to contact Local Programs to request a compliance review and provide charge numbers.
- Ask probing questions from the review worksheet.
- Obtain a copy of the ROW plan from the LPA if it has not been submitted already.
- Contact via phone call or email (keep Local Programs informed).
 - Experienced agency with a good history – phone call may be sufficient.
 - Inexperienced agency with an experienced consultant – phone call may be sufficient with both LPA and consultant.
- Decide if and when meetings are necessary (depends on the agency, the consultant involved or the complexity of the project).
 - Things to consider when determining when a project is complex include: number of acquisitions, relocations (mixed use and/or non-residential), partial acquisitions that may impact the use of the remainder, project controversy, etc.
 - Complex projects may require several meetings throughout the project (monthly status meetings, quarterly, etc.).
 - Non-complex projects may require an initial meeting with follow up by phone.
- Attend a project tour if available.
 - Physically viewing a project is a great way to prompt conversation and view the parcels being acquired.

- Maintain communications with LPA and LPE throughout their ROW phase. Local Programs responsibility is to the Local Agency since they are the owner of the federal aid project. The LAC needs to include local agency staff in any communication (verbal or written) in which the LAC is providing project specific guidance and/or direction to a consultant.
- Update approved procedures if necessary.

Outreach to Local Agencies From Local Programs and LACs

- LP will communicate the importance of the pre-ROW acquisition contact to the LPAs.
- Through training and communication, WSDOT will advise LPAs to identify projects with ROW phases or projects where they would like to preserve federal eligibility early during the project prospectus stage. WSDOT will provide guidance to the LPA if a ROW phase is necessary post-prospectus.
- Region Local Programs will continue to communicate and coordinate LPA ROW activities.
- LACs will initiate contact with LPAs if they hear of a federal aid project with a ROW phase.
- County-wide or region-wide LPA meetings.
- Annual, quarterly, or semi-annual LPA meetings.
- LTAP web page postings.
- Write articles for LTAP newsletter.
- Emails to LPAs.
- Training – NHI, IRWA, and WSDOT staff.
- Conferences – AASHTO, IRWA, APWA, and outside networking sources.
- LAC will assist LPA with getting ROW procedures approved or revised.

Pre-ROW Acquisition Contact

Proactively Reach Out to LPAs to Have a Pre-ROW Acquisition Contact for Federal Aid Projects

The LAC should contact the LPA as soon as they learn or are notified of an LPA project, even if the LAC learns or is notified after acquisitions have started. The intent of this early contact with the LPA is for the LAC to gain an understanding of the proposed project and the ROW needs. It is the time to decide on the frequency of spot checks and an opportunity to discuss any possible risks. This contact can be an in-person meeting, an email, a phone call, a GoTo Meeting, or other forum deemed sufficient by the LAC.

The purpose of the pre-ROW Acquisition Contact with the LPA is to gain understanding of the proposed federally funded LPA project and ROW needs. The pre-ROW acquisition contact with the LPA is highly encouraged but it is not a requirement, and the lack of a pre-ROW contact will not affect certification of the LPA project in the event early contact does not take place. The LAC should, however, proactively reach out to LPAs to initiate this early contact.

There are a variety of ways an LAC can learn about a project. The two most common ways are the LPA contacts the LAC or the LPE contacts the LAC. Regular communication between the LPE/ALPE and the LAC will foster improved project awareness. Ideally, contact by the LPA will occur by the time project design is 30 percent complete. It is at this stage that the LAC can begin to assess ROW needs with some certainty. The Local Agency Active Project Status Report can also be a useful communication tool.

Project Specific Knowledge

Development of a Project Funding Estimate or True Cost Estimate can disclose many of the effects of the projects, but nothing compares to an actual physical inspection accompanied by engineering staff having in-depth knowledge of the project design. The number of parcels, complexity, or degree of project effect should govern the LAC's need to meet with the LPA in person or by phone.

Probing Questions to Ask the LPA

- Ask the LPA if they have had any contact with Local Programs (most of the time they haven't made contact with Local Programs if there is no federal funds available to apply for, etc.)?
- Is the Agency on ROW Procedures? Are they complete and current?
- Is there a Local Agency Agreement (work order)? OR Is a "J" Agreement or equivalent needed?
- Are there federal funds involved in the right of way phase or in other phases only?
- Will there be a right of way phase, and how will it be funded?
- Status of right of way plan?
- Status of True Cost Estimate or Project Funding Estimate?
- Status of environment clearance? NEPA?
- Is Relocation anticipated? Is there personal property or people in the acquisition area?
- Are there encroachments in the existing right of way?
- Are there any anticipated hardships? For example, health issues among potential displaced persons that may require early acquisition.
- Have you prepared a relocation plan? If so, has it been submitted to WSDOT for approval?
- Does the LPA have a Relocation Appeal Procedure in place? Does their appeal process contain the required elements as defined in 49 CFR 24.10?
- How did you acquire the existing right of way?
- Is there early acquisition? If so, did you follow your Approved ROW Procedures? Was the URA process followed?
- Will you be acquiring access rights?
- If an AOS is proposed to be used to determine value, is the value problem uncomplicated and anticipated to be less than \$25,000, including cost-to-cure items?

Communication Protocols

LAC-Region Local Programs Staff

Share project-specific information as it becomes available, such as when an LPA contacts the LAC with early acquisition questions or when the LPE receives an LP letter notifying the LPA that they are receiving project funding.

LAC-LPRM Communication

Regularly occurring LAC meetings.

LAC Diaries – Description of types of activities to include in diary, summary of activities, direction provided, and observations.

Project-specific meetings as needed.

LPRM-LPA Communication

Coordinate and/or write articles for LTAP newsletter.

Project-specific meetings as needed.

15-11 LPA-Approved ROW Procedures

LP is the approving authority for each Agency's Approved ROW Procedures (see LAG Manual [Chapter 25.2](#) & LPA Forms LPA001-001 & LPA-003). The Standards and Procedures Engineer is the approving authority. The process to get procedures approved is as follows:

1. LPAs are required to update their procedures for one or more of the following reasons:
 - a. Staff turnover.
 - b. Approved procedures are more than three years old. If so, the procedures are examined to determine if they require updating.
 - (1) **Note:** If the LPA 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.
 - (2) **Caution:** If a LPA is thinking of doing early acquisition for an unfunded project, the LPA needs to have updated procedures.
 - c. A change is requested regarding who can perform specified activities.
 - d. Revisions to the Local Agency Program, such as statutory, regulatory, or policy changes.
2. LPAs contact LACs for input and LPAs draft new procedures.
3. LPAs submit unsigned, draft procedures either to the LPE or the LAC as per the LPE's communication protocol.
4. LACs review draft procedures and provide feedback to LPA or comment to the LPRM as appropriate.
5. LPRM reviews draft and prepares edits to include any additional WSDOT requirements.

6. LPRM signs acceptance approval letter and sends to LPA with a copy to the LAC, LPE, and the LPA Consultant Reviewer.
7. If the LAC feels the LPA is not performing, the LAC can require a change to procedures during a project. The LAC will discuss this with the LPE and LPRM before deciding to proceed with modifying procedures. Any changes to procedures will be approved through the normal approval process.

LPAs are required to complete and submit the FHWA Annual Statistical Report to WSDOT as stated in their Approved ROW Procedures. The report should contain those parcels that were acquired or relocated within the reporting period.

It is important for LPAs to know that they should be aware their project could be selected for a spot check review.

LACs Assist LPAs With Getting ROW Procedures Approved or Revised

Procedures should match the expertise level of the LPA staff and processes (how they do business) the LPA employs to accomplish their projects' ROW phases. The LAC should request any updates to approved LPA procedures at the same time the LAC requests information from the LPA for the Annual FHWA Statistical Report. All future revised procedures will include language that all federal aid projects are subject to oversight reviews at any time during the acquisition process as required by WSDOT's oversight program. If at any time during a project the LAC feels the LPA is not performing as required, the LAC may require a change to the LPA's Approved ROW Procedures. The LAC will discuss this with the LPE/ALP and LPRM prior to taking such action. Any changes to procedures will be subject to the normal approval process. Notice to the LPA that they need to fill out the FHWA Annual Statistical Report will be one of the stipulations within their procedures.

15-12 Funding

See [LAG Section 25.4](#) for specifics on right of way funding authorization and the notification process.

LACs Assist LPAs With Documenting Eligibility to Receive ROW Funding Authorization

Review and provide comments to the LPA and the LPE/ALPE on the LPA's approved Right of Way Plans, Project Funding Estimates, or True Cost Estimates. The LAC also coordinates the review of any Relocation Plan with the LPRM or another WSDOT RES employee with relocation expertise.

Charge Codes

The following are different ways in which a charge code can be created:

Local Agency Agreement

The purpose of the Local Agency Agreement is to obligate federal funding. A work order is established to which labor charges may be applied up to the dollar amount provided in the STATE line. With LPAs and LPEs prior approval, may provide or coordinate Region RES staff in providing direct de minimus assistance with right of way work to the LPA.

See [LAG Chapter 21](#), The Project Prospectus.

Governmental Agreement for Aid and Task Assignment

The purpose of the Governmental Agreement for Aid ([DOT Form 224-076](#)) is to provide general terms and conditions under which WSDOT RES will provide real estate services for an LPA's project under a Task Assignment. The GC is reviewed and approved by the [LPRM](#) and is valid for an initial five-year period. The GC may be renewed for an additional three years. The LPA will submit a written request to the [LPRM](#) for review and approval.

Task Assignment – A Task Assignment is a supplement to the GC that is project specific. It includes a description of the proposed project, the work that the LPA is requesting WSDOT RES to perform, an estimated costs of the work, and a date by which all work is to be completed. If additional costs or time is required, an amendment to the Task Assignment may be requested by the LPA. A work order is established to which labor and overhead costs may be charged, and may be tied to the work order pertaining to the Local Agency Agreement for the project. If there is no Local Agency Agreement, then a reimbursable J Agreement is required.

Reimbursable “J” Agreement

A reimbursable “J” agreement is for an identified purpose and is normally used when there is no other funding agreement in place. It is coordinated by the LPE and sent to the LPA for execution. The preparation of “J” agreements varies from region to region.

LAC Position Funding

Time spent providing LPAs with technical assistance, training, and document review and processing is charged to an overhead work order established and managed by Local Programs. If the LAC needs advise from other WSDOT staff and there is no available work order, the LAC will work with their Region Local Programs Office to establish a reimbursable agreement or provide a funding source for the technical experts help in resolving critical issues.

15-13 Early Acquisition

[Section 6-3](#)
[LAG 25.42](#) through
[25.46](#)

Early acquisition, sometimes also referred to as advanced acquisition, is when property is acquired for a project before a NEPA decision (DCE (aka ECS), FONSI, ROD) has been made. Early acquisition can be done using either Local Agency funding or Federal funding.

For Local Agency funding, follow one of the two processes below:

- Early Acquisition with match/credit
- Early Acquisition without match/credit

Federal funds can be used for acquisition of property for a project in advance of the overall project NEPA decision using the following processes:

- Protective buying
- Hardship acquisition
- Federally Funded Early Acquisition

When early acquisition occurs, FHWA must concur that the acquisition did not influence the selection of the project's alternative or the LPA's decision to fund the project. The process that has been established to get this concurrence is for the LPA to complete Appendix N and attach it to the ECS. It is not the LAC's responsibility to ensure that Appendix N is sufficiently filled out. If the LAC becomes aware that the LPA is pursuing early acquisition, they should advise the LPA regarding the need to follow the early acquisition process identified in the WSDOT [NEPA Categorical Exclusions - A Guidebook for Local Agencies](#) and form template available online at the [LP Environmental Services](#) web page.

The LPA may request advisory and review services by the LAC for their early acquisition parcels, which should be funded by a reimbursable agreement. Such activity shall be conducted as per the [LAG](#) and this manual.

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 it can be included in the ROW Certification review. Without documentation showing the parcel was acquired in accordance with the URA, the parcel cannot be certified, which can jeopardize federal participation on the project.

Early Acquisition Compliance Reviews

Early acquisition compliance reviews are essentially the same review as a certification review for projects that have ROW acquisition but do not currently have federal funds designated/assigned to the project. An LPA can request a compliance review after the acquisition is complete to ensure that their acquisition activities have been done in compliance with the URA, and the project is eligible for federal funding.

Records Retention

The LPA is required to keep their files on the early acquisition parcels for three years after construction is authorized.

15-14 PFE/Relocation Plans/Right of Way Plans

When a preferred project design alternative has been selected, an LPA will need to obtain a PFE with a [complete data package](#) and parcel worksheets if the LPA intends to either:

- Use the appraisal waiver process, or
- Seek ROW funding authorization.

An LPA seeking to secure, or to maintain eligibility of their project to receive, federal funds needs to always have an approved Right of Way or Property Acquisition Plan, as well as a Relocation Plan if persons, businesses, non-profit or farms, or personal property only, is/are occupying future right of way (see [Completing the Project/ File Review in Section 15-17](#)). If federal funds are either the ROW or Construction phases of the project and the project has relocation needs, a Relocation Plan will need to be completed and submitted to the LAC for review and approval prior to starting relocation activities. In addition, the LAC can themselves, or with assistance from other WSDOT staff experts, review preliminary and final versions of the Project Funding Estimate and Right of Way Plans, and provide advice to the LPA.

15-15 Regulatory Issues

A [Local Agency Certification Compliance Results & Level of Involvement](#) (Guide) was developed by WSDOT/FHWA. It provides a description of potential regulatory issues the LAC may encounter through normal communication with an LPA, and as a result of a spot check or certification review. This Guide summarizes who has the authority to make a decision on how to deal with a potential problem. WSDOT and FHWA has approved this Guide. The Guide is available on the [LPA/ROW Resources](#) webpages. If anyone proposes to deal with an identified issue differently than as presented in the spreadsheet, you will immediately need to contact the [LPRM](#).

15-16 Spot Check Review

Spot check reviews are a proactive measure intended to lessen the risk that LPAs engage in improper practices that result in irreversible problems or compliance issues that could delay or 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 LPA identify problems before they become compliance issues. WSDOT's acquisition file review process is intended to ensure that the LPA has in fact completed the ROW acquisition process in compliance with federal regulations before we make our certification to FHWA.

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 LPA's level of experience, and the LPA's past performance. Spot check reviews are not required on all projects, unless required by the LPA's Approved ROW Procedures (as specified in the cover letter by Local Programs). The LAC should, at a minimum, perform spot check reviews on at least a 25 percent of the annual active LPA projects in their region. 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.

The LAC will compute the minimum number of LPA project reviews based on the number of annual active projects in their region for that particular year. For example, if the LAC has 20 active projects then a minimum number of five projects must have spot check reviews based on the 25 percent requirement (number of annual projects x 25 percent = number of projects to spot check).

If a spot check review on a project is determined to be necessary by the LAC, it is anticipated that there will be a minimum number of files reviewed for smaller, less complex projects and a larger percentage of files reviewed for larger and/or complex projects or acquisitions. The LAC will utilize the sample template to compute the number of files to be reviewed or they will supply their methodology on how they selected their sample size to review.

The LAC is expected to identify and assist the LPA in correcting issues during the acquisition process, and to involve the ALPE/LPE and the LPRM on regulatory issues per the Local Agency Certification Compliance Results and Levels of Involvement document. The LAC provides timely follow up with LPAs on results of spot check reviews. If compliance issues exist that are questionable or irreversible, the LAC will involve the LPE/ALPE and the LPRM.

Possible elements and associated risks that need to be considered in developing the frequency of spot check reviews may include:

1. Legal nature of the property ownerships.
 - Individual, corporation, joint ownership, condominium, cooperatives, not-for profits, public entities, public official ownerships – potential conflicts of interest, etc.
2. Physical nature and location of the property.
 - Waterfront, tidelands, geo-tech hazards, active resource extraction, urban, rural, etc.
3. Occupancy of the property.
 - Owner, tenant, residential, business, non-profit, farm, long-term, short-term, etc.
 - Relocation assistance.
 - Functional replacement of public facilities.
4. Effects of the project design on real estate.
 - Partial acquisition, total acquisition, easements, grade separation, access rights, light, view and air, etc.
5. Complexity of appraisal issues.
 - Tenant owned improvements, multiple remainders, unique improvements, special benefits, timber, minerals, crops, etc.
6. Property management.
 - Are there encroachments to be cleared?
 - Environmental issues/commitments.
7. Experience level of staff/LPA or consultant(s) with real estate acquisition under the URA.
8. Staff/LPA or consultant(s) past record of issues with URA compliance.

Completing the Spot Check Review

The major difference between a spot check review and a certification review is that the project is not complete, so the LAC should focus on the actions taken by the LPA 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.

15-17 Certification Review

Prior to certifying to FHWA that an LPA has acquired the rights necessary to construct its project, WSDOT requires that the LPA certify to WSDOT that the right of way acquisition work has been completed in compliance with the federal regulations. It is important to be certain the LPA has complied with the federal regulations because FHWA holds WSDOT accountable for compliance, not the LPA. If FHWA determines that a project is not eligible for federal aid because of a ROW compliance issue, they will seek reimbursement of the funding from WSDOT, not the LPA. It would then be up to WSDOT to seek reimbursement from the LPA.

Approximately six weeks prior to advertising its project for construction, the LPA submits its Right of Way Certificate #1, #2, or four weeks for #3s with Certificate Worksheet to the Region Local Programs Office. The Right of Way Certificate should show the current status of right of way acquisitions on the project, not a projection of what the agency hopes it will be at some point in the future. The typical process is the Local Programs Office forwards the certificate to the Region LAC for action. Whenever an agency desires to obtain a Certificate #3, it should be discussed with the LAC, LPE, Local Programs, and LPRM as soon as it is known or determined that such a certificate will be requested.

After receiving the certificate request, the LAC:

1. Checks with Local Programs to make certain the appropriate labor charge codes are in place.
2. Checks to make sure agency has current approved right of way procedures.
3. Ascertains the size and complexity of the job to determine whether additional help or specific experts to assist in the review are necessary.
4. Contacts the agency to schedule the review of project right of way acquisition files. LAC should consider including LACR if QA/QC Review is needed (See [Section 15-20](#)).

Completing the Project/File Review

Project acquisition files are reviewed for compliance with the agency's Approved ROW Procedures, [LAG Chapter 25](#), and [49 CFR Part 24](#). This review should be done utilizing the Project Review Worksheet ([LPA-011](#)), the Parcel Review Worksheet ([LPA-012](#)), and the Relocation Review Worksheets ([LPA-013](#), [LPA-014](#) & [LPA-015](#)) as appropriate (see [LAG](#) appendices) as a guide. The LAC will use either the sample size determination form to help determine the scope of the certification review or will write a methodology section in the certification report that describes the reasoning for determining the selected sample size. If the LAC feels a larger sample size is necessary, they may increase the sample size at their discretion. If they feel the sample size is too large, they can contact the LPRM about using a smaller sample. If a smaller sample size is used, the LAC will document the reasoning and obtain LPRM concurrence.

Specific areas to be reviewed.

1. **Right of Way Plan (LAG Subsection 25.41)**

- a. A R/W Plan indicating the property required to build and maintain the transportation project is required. A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.

The Agency's approved R/W plan shall contain essential data needed for appraisal and negotiation activities as listed in [LAG Subsection 25.41](#).

- b. A best practice is to identify enough of the property around the acquisition to know if there are any issues (e.g. wells, septic systems, reserve drain field areas, irrigation systems, etc).

2. **Appraisal Waiver (LAG Subsection 25.52)**

- a. Did the agency follow its established procedures for the Waiver Process?
- b. Is the AOS preparer qualified per LAG requirements?
- c. If the LPA is using the updated Appraisal Waiver Procedure, is the total estimate of just compensation greater than \$10,000 but less than \$25,000? If yes, did the offer letter state that an administrative offer was being made and an appraisal was not completed, and an appraisal would be prepared if requested by the property owner? If under old procedure, was appraisal offered for all AOS's?
- d. Does the Administrative Offer Summary address all rights that are required to construct, operate, and maintain the proposed improvements?
- e. Are the areas and rights evaluated consistent with the right of way plan/PS&E?
- f. Is there adequate "value finding evidence" to support the compensation estimate?
- g. Has the estimate been rounded to a reasonable amount?

Appraisal (LAG Subsection 25.51)

- a. Is the appraiser qualified per LAG requirements?
- b. Did he/she appraise the same property rights as are shown on the right of way plan/PS&E?
- c. Was the property owner offered the opportunity to accompany the appraiser on the inspection of their property?
- d. Does the appraisal appear to be complete and comply, overall, with all [Chapter 4](#) requirements?

Appraisal Review (LAG Section 25.6)

- a. Did either an agency staff member who has been approved by WSDOT, a WSDOT staff reviewer, or an appraiser from the WSDOT Approved Reviewer list review the appraisal?
- b. Does the review appear to be complete and in compliance with [Chapter 5](#)?
- c. Is it based on the most recent right of way plan/PS&E?
- d. Has the reviewer provided a breakdown of compensation?
- e. Is the Determination of Value rounded to a reasonable amount?
- f. Is there sufficient analysis by the reviewer?
- g. Has reviewer determined whether there is an uneconomic remainder?

3. Set Just Compensation (LAG Section 25.7)

- a. Has the agency's appropriate authority established just compensation at not less than the approved appraisal/AOS? This can be accomplished either on a separate document or by signing a concurrence statement at the end of the appraisal review or Administrative Offer Summary as shown in [LAG Appendix 25.176](#).

4. Offer Letter (LAG Subsection 25.93)

- a. Has the agency made a written offer in the amount of the established just compensation?
- b. Is the offer consistent with the right of way plan and the area to be acquired (i.e., are revised offers made for any changes made to the right of way plan)?
- c. If federal aid is used in the right of way phase, is the date of offer subsequent to environmental and ROW phase approval?
- d. Is the date of offer subsequent to approval of just compensation?
- e. Does the letter include a breakdown of the just compensation, basic condemnation information, and information on the \$750 statutory evaluation allowance?
- f. If the offer is an administrative offer, has agency taken care not to infer that an appraisal was completed?
- g. Did the agent provide the owner with *Property Needs and You* booklet or other document explaining their rights?
- h. If not, is there sufficient documentation in the diary showing that the owner's rights were adequately explained?
- i. Were optional clauses added if appropriate (relocation, early acquisition, etc.)

5. Administrative Settlement (LAG Section 25.11)

- a. If the agency has settled at an amount greater than the approved just compensation, is the settlement approved in compliance with agency procedures?
- b. Is it based on the correct amount and properly justified?

6. **Donated Property** ([LAG Section 25.10](#) and [LAG Appendix 25.177](#))
 - a. If all or a portion of the required right of way has been donated, is there a donation statement for the amount donated?
 - b. Has the appraisal also been waived?
7. **Title Report** ([LAG Section 25.8](#))
 - a. Does the agency have reasonably current evidence of title? This is a matter of judgment, but in an active market updates may be required if the report is more than six months old. The preferred evidence of title is a preliminary commitment for title insurance from a title insurance company, with supplements as required. At a minimum, a last deed of record is necessary, but such minimal evidence should be accepted only on low value or minimal property rights acquisitions (e.g., permit).
8. **Title Clearing** ([LAG Section 25.8](#))
 - a. The title to acquired parcels should be cleared so that the agency has its interest in the parcel subject only to encumbrances that are deemed to be reasonable. The agency should assess the risk of each encumbrance and determine whether or not it needs to be cleared. Low value transactions can be given more latitude than high value (see [Chapter 8](#) for specific examples).
 - b. Has the agency provided documentation of the title clearing so the reviewer can determine the encumbrances are acceptable?
9. **Acquisition Document(s)** ([LAG Section 25.9](#) and [Chapter 6](#))
 - a. Has the agency acquired the property rights (deed, easement, lease, permit, access rights, etc.) necessary to construct, operate, and maintain the proposed improvements?
 - b. Is the term of any non-permanent right that was acquired long enough to support the proposed improvements (a minimum of 20 years; however, it will depend on the level of federal investment and could be significantly more than 20 years)? Is there a termination clause in acquired non-permanent rights? Has FHWA approved the non-permanent right per [LAG 25.23](#)?
 - c. Is any cancellation clause that may be included acceptable? Specific requirements:
 - (1) Has the deed (or other acquisition instrument) been properly recorded?
 - (2) Does the legal description match the right of way plan? Was the same convention used for writing the legal as for drawing the plan (e.g., metes and bounds, stations, and offsets)? Can the reviewer follow the legal on the plan?
 - (3) Is grantor the same as shown on latest title supplement? Has the correct person signed for grantor? Does the signatory have authority to sign? Is there documentation (corporate resolution, etc.)?
 - (4) Is the conveyance document properly notarized? Did the notary use the correct acknowledgement for the type of ownership and signatories?

[LAG 25.23](#)

10. Proof of Payment

- a. Copy of payment check is preferable. Use judgment for other sources of payment verification, such as a voucher.
- b. Is there a bill for payment of, or other evidence of services provided and payment for reimbursement of the \$750 Statutory Evaluation Allowance?

11. Negotiator Disclaimer (LAG Section 25.9)

- a. Has the individual involved with the negotiation provided a signed disclaimer with language?
 - (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.

12. Diary (LAG Section 25.15)

- a. A diary of right of way activities must be provided for each acquisition file. Brief notes or a collection of letters and emails does not constitute a diary. The diary needs to be a complete history of the acquisition. See [LAG Section 25.15](#) or the [FHWA's Acquisition Guide for LPAs](#) for more details. All persons who participate in negotiations with a property owner to acquire real property interests will maintain a diary.
- b. Has every negotiator signed their diary?

13. Relocation (LAG Section 25.12)

- a. Is there is relocation on the project?
 - (1) Yes, is there an approved relocation plan?
 - (a) Yes, was it completed per approved procedures (e.g., staff, consultant, WSDOT)? As part of the right of way review, a relocation expert from Region or Headquarters should review all relocation files for compliance with the Uniform Relocation Act.
 - (b) If no, start communication with the LPA or their consultant to develop a relocation plan.
 - (2) Does the Agency have a Relocation Appeal Procedure in place that is consistent with 49CFR 24.10, and do they include the process in their relocation notices?

14. Other

- a. Is there any evidence in the file that might imply the owner has been coerced (e.g., rapid condemnation, inappropriate reference to condemnation, lack of adequate time to consider the offer, denial (implicit or explicit) of any rights provided under the Uniform Act, etc.)?
- b. Are files organized in a way that documents can be readily found and an auditor or other reviewer can independently (without aid of the acquisition agent) determine that the property was acquired in compliance with the federal rules?

15-18 Results of Review (Spot/Certification)

The LAC is expected to provide review worksheets ([LPA-011](#) to [LPA-016](#)), the Sample Size Determination Form (LPA 019) or a methodology write up, and other relevant project-specific details for each spot check or certification review. Upon completion of the review the LAC will prepare a Certification Review Transmittal Letter ([LPA-017](#) or [LPA-018](#)) and a Certification Review Oversight Report ([LPA-016](#)) if corrective actions have been identified. If corrective actions are identified, concurrence by the LPRM is required before sending the report to the LPA. A copy of the Certification Review Oversight Report and Certification Review Transmittal Letter will also be sent to the LPE and LPRM. This report will summarize what was reviewed, any issues and a steps taken by the LAC to define an acceptable remedial action, and the steps taken by the LPA to perform any remedial actions. If there are no corrective actions the Certification Review Oversight Report is not necessary as the information will be captured on the LAC Status Report.

Review Package

The following items should be included in the spot check or certification package that is sent to HQ LP:

- [LPA-011](#) Project Review Worksheet
- [LPA-012](#) Parcel Review Worksheet
- [LPA-013](#) Residential Relocation Worksheet (if needed)
- [LPA-014](#) Non-Residential Relocation Review Worksheet (if needed)
- [LPA-015](#) Personal Property Only (PPO) Review Worksheet (if needed)
- [LPA-016](#) Certification Review Oversight Report (only needed if corrective actions are identified)
- [LPA-017](#) or [LPA-018](#) Certification Review Transmittal Letter
- [LPA-019](#) Sample Size Determination Form
- Copy of R/W Plan or equivalent (large enough and with sufficient resolution to read)

Certification Package

- Appropriate certificate with signatures.
- Certificate worksheet.

ROW Certificate Signature

The LAC signs the LPA certificate and forwards it to the LPRM for processing. Refer to [Chapter 17](#) for certificate letter templates.

Post Review Tasks and Responsibilities

After the review is complete, [LAG Section 25.13](#) requires that the LAC send a Certification Review Transmittal Letter ([LPA-017](#) or [LPA-018](#)) to the agency. The original copy of the letter is sent to the agency official who requested the right of way certification. Additional copies are sent to the person at the LPA who is responsible for the right of way activities, the LPRM, the appropriate Region LPE.

Certification issues will be identified in the Certification Review Oversight Report and the LAC should contact HQ LP as necessary. The LAC provides timely follow up with LPAs and includes the consultant if appropriate on results of the certification review. If compliance issues exist that are questionable or irreversible, the LAC will involve the LPE/ALPE and the LPRM. The LAC will send the completed certification report to the LPRM and LPE.

1. If the coordinator determines that project right of way is ready for certification, the close out letter will detail the findings of the review and discuss any deficiencies found. Concurrently with issuing the close out letter, the LAC will sign the LPA's Right of Way Certificate for inclusion in the certification package to be transmitted to the HQ LP Office.
2. If the coordinator determines that project right of way cannot be certified, the LPE should be informed as soon as possible and given the opportunity for input into subsequent action. In cases of egregious violations of the federal rules, consequences can be as severe as loss of federal aid, loss of Certification Acceptance Status, or loss of authority to independently acquire right of way. None of these actions will be taken without the Region LPE and LPRM involvement.

Most problems are far less significant and may simply be corrected prior to signing the Right of Way Certificate. In these cases, a letter should be sent to the LPA, with distribution as discussed above, that details the deficiencies encountered and the corrective actions required before certification can be approved. The LAC will work with the agency to help the LPA comply with the federal regulations and provide any necessary training. If corrections are relatively significant and/or numerous, it may be necessary to schedule another review with the agency. However, in less serious situations and with concurrence of the LPRM, the project can often be allowed to go to construction advertisement with some simple follow up such as a faxed or scanned document, or an agency assurance that they will complete the requested corrections as soon as possible. When the corrective actions are complete to the satisfaction of the LAC, the certification will be signed and processed as discussed above. A close out letter should then be sent to the agency confirming that the certification is complete.

All projects must ultimately have a Right of Way Certificate #1 or Certificate #2. In cases where an agency has been allowed to advertise construction with a Certificate #3, the agency is still responsible for completing remaining relocation work and/or acquiring the remaining rights necessary to construct the project in a timely manner. In the case of a excepted parcel Certificate #3, it is particularly important to work with the

agency and monitor progress on completing any FHWA conditionals in their Certificate #3 approval letter. Be certain that timelines are included for completion of conditional elements. These can often be the barriers to allowing bid opening or contract award. When the right of way work is complete, the coordinator will review the new information to determine if a Certificate #1 or #2 can be issued. If a clear certificate can be issued, it will be processed as discussed above.

Each time a Right of Way Certificate is issued, the information should be entered on the worksheet used to complete the FHWA's year-end Statistical Report.

15-19 ROW Certification vs URA Compliance Letter

Based on changes to the 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. See [Appendix 25.171](#) of the LAG Manual for case studies.

RW Documentation Requirements Based on Funding Source When a Project has RW Acquisition	ROW Certificate	URA Compliance Letter
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)

Per 23CFR 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 49CFR Part 24. The requirements of 49CFR 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 used if federal funds are in the Construction phase and the project has ROW acquisition.

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.

Title 23 requires that acquiring agencies comply with 49CFR Part 24. The requirements of 49CFR 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 environmental requirements, Buy America, and Title VI requirements.

WSDOT Oversight – Criteria and Process

Criteria to be eligible for a URA Compliance Letter:

- Federal funds in the PE Phase only
- Locally funded but federalized by NEPA
- Locally funded but involves interstate

Process:

- Region Local Programs confirms:
 - The agency will not seek federal funds in ROW or CN phases of the proposed project and federal funds will be in PE phase only; or
 - The agency does not have any federal funds in the project and it has been federalized due to NEPA; or
 - There are no federal funds in the project but the project involves interstate
- Local Programs Program Management authorize/obligate funds if federal dollars are in the PE of the project
- Local Programs send a URA Compliance Letter to the local agency once the Project Prospectus is completed by the agency
 - cc of letter should go to the local agency's ROW section
- A copy of the URA Compliance Letter will be filed in the agency file
- Local Programs ROW will track all URA Compliance Letters provided to local agencies
- Local Programs ROW will perform annual ROW URA Compliance Reviews (CR) similar to the PMRs for the purpose of reviewing projects that have been issued a URA Compliance Letter

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 will 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. WSDOT will perform a CR on a random sample (not less than 25%) of the projects receiving URA Compliance Letters once the project has been advertised for construction. A 100% of the local agency led interstate projects will be reviewed by WSDOT.

These CRs will be:

- Performed by LPRM and will use the same oversight checklists as the certification reviews described in [Section 15-17](#) of this chapter.

CR Preparation – LPRM through the Region Local Programs Engineer will schedule a CR with the Agency and will request that the LAC and the agency staff person responsible for the Program Administration function under their Approved ROW Procedures participate in the review. The local agency should have all pertinent documentation ready for the scheduled review. All deficiencies will be identified for the agency at the time of the CR. Copies of documentation not available at the time of the review shall be submitted to Local Programs within 30 calendar days. After the 30-day period, the final CR letter will be sent to the agency.

CR Deficiencies – If no major deficiencies are found in the local agency’s ROW management methods, the local agency will be informed in writing of the review team’s findings and recommendations. If major deficiencies exist, the local agency will be asked to take corrective action with 60 days. If the deficiencies include issues that cannot be fixed, WSDOT will issue a letter advising what action will be taken and next steps.

If deficiencies exist in the agency’s ROW procedures, management practices, or if specific project errors are found, WSDOT’s administrative response might be one or more of the following:

- No action against the agency if WSDOT determines the deficiencies to be minor.
- Joint conference with the Local Agency, Region Local Programs Engineer, and the Director, Local Programs or the director’s designee.
- Limit or withhold the agency’s Approved ROW Procedures to the extent deemed necessary.
 1. Allow certification on future federal aid projects on a project-by-project basis.
 2. Direct WSDOT supervision for all URA compliance ROW projects.
- Loss of federal aid on future ROW projects.

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

15-20 Reporting and Tracking

The LAC will track and report the following Region LAC activities to the LPRM on a monthly basis using the Local Agency Active Projects Status Report. The LAC will collect annual LPA ROW statistics on all federally funded projects each fiscal year (October 1st – September 30th) and forward those reports to the LPRM by October 15th so the stats can be included in the FHWA Annual ROW Statistical Report. The LAC will also forward a copy of the Certification Package to the LPRM for retention in the official LPA file that will be retained in HQ LP prior to the LPRM forwarding the request for certification to FHWA.

Program Trends

The LPRM will take the information from the certification package, the spreadsheet, and the statistical report to analyze and report program trends that can be used to identify training needs. This information will be provided annually to FHWA.

ShareDot

The LAC, LPRM, and Local Agency Consultant Reviewer will utilize ShareDot to obtain and share information internally within WSDOT.

15-21 Oversight Feedback Reviews (OFR) for ROW

The August 2011 FHWA Final Report on the *Evaluation of WSDOT's Oversight of the Local Public Agency ROW Program* identified recommendations to improve WSDOT's oversight of the LPA ROW Program and to prevent future regulatory compliance issues. Pursuant to the *Federal-Aid Highway Program Stewardship and Oversight Agreement* between WSDOT and FHWA, one of the methods of oversight is to perform reviews of the LPA ROW program. Process reviews are an integral and essential part of the stewardship process and is required by [23 CFR 710.201\(b\) & \(h\)](#).

A Oversight Feedback Review (OFR) will be completed on one to two projects annually, on a statewide basis. The selected region LAC will include the LPRM when scheduling a spot check and/or ROW Certification review for the selected LPA project. The OFR is a way of preventing mistakes and avoiding problems in order to certify ROW for federally funded transportation projects. OFRs will address ROW procedural activities implemented by the LPA to ensure that state and federal regulations for acquiring ROW are met. In addition the OFRs will review the quality of all factors involved in ROW acquisition by the LPA such as controls, processes, performance and records, knowledge, skills, experience, qualifications and oversight. The purpose of the OFR is to determine if there are any common non-compliance issues, and provide best practice guidance to both LACs and LPAs on how to avoid such issues in the future. Additional reviews can be done at the discretion of the LPRM.

OFR Deficiencies – Upon completion of the review, if deficiencies are found in the local agency's ROW management methods or the LAC review methods, the LPRM will provide the review feedback and will highlight best practices to both the LAC and the local agency.

If major deficiencies exist, the local agency will be asked to take corrective action with 60 days. If the deficiencies include issues that cannot be fixed, WSDOT will issue a letter advising what action will be taken and next steps.

If deficiencies exist in the agency's ROW procedures, management practices, or if specific project errors are found, WSDOT's administrative response might be one or more of the following:

- No action against the agency.
- Joint conference with the Local Agency, Region Local Programs Engineer, and the Director, Local Programs or the director's designee.
- Limit or withhold the agency's Approved ROW Procedures to the extent deemed necessary.
 1. Allow certification on future federal aid projects on a project-by-project basis.
 2. Direct WSDOT supervision for all federally funded ROW projects.
- Loss of federal aid on future ROW projects.

Upon completion of the QA/QC Reviews, the LPA Consultant Reviewer will prepare a report of findings.

During the review the following checklists will be used to evaluate WSDOT's compliance with LPA oversight requirements:

- [LPA-020](#) Project OFR Review
- [LPA-021](#) Parcel OFR Review
- [LPA-022](#) Relocation OFR Review

PMR – Project Management Review

LP performs a project management review for LPAs to maintain CA status.

15-22 Records Retention

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\(f\)](#) 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.

15-23 LAG Chapter 25

Any interested party (LACs, LPAs, Local Program's staff, etc.) may suggest improvements or changes to [LAG Chapter 25](#) which may be taken under consideration. The LPRM will be WSDOT's primary Real Estate Service's point of contact and will evaluate whether the requested changes are feasible and consistent with federal statutes, regulations, and policies with assistance from FHWA. The LPRM will work with LP and FHWA to facilitate changes and updates to the chapter.

