Welcome to the:

Sufficient Property Rights (Flowchart) Training Webinar

Webinar attendees

WSDOT, Local Agencies, and Consultants

In person attendees

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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.

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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.

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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;
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?

1. Determine if the project will cause a taking of land or property rights.
2. If a taking occurs, the project owner must acquire the property rights or interest.
3. The property rights or interest can be acquired through eminent domain or negotiated with the property owner.

Questions:
- Are there any existing easements or rights of way?
- Are there any environmental or historic considerations?
- Are there any existing leases or contracts?

Additional Information:
- Eminent domain is a legal process that allows the government to take private property for public use.
- Negotiated acquisition involves协商ing with the property owner for a fair value.

Resources:
- Federal Acquisition Regulations (FAR) for government projects.
- State and local laws regarding property rights and acquisition.

Contact:
- Local Agency for project-specific information.

Note: The above information is a general guide and may vary depending on the specific project and location.
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

#1
Does your agency already own all of the land (or property rights) necessary to construct, operate and maintain the proposed project (existing ROW)?
Land, Property Rights, Interests Needed?

Answer to Question #1 is Yes

#1
Does your agency already own all of the land (or property rights) necessary to construct, operate and maintain the proposed project (existing ROW)?

Go to Question #6

#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

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

Answer to Question #6 is Yes

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

Go to Box #7

#7
No ROW or Property Rights Needed (No ROW Certificate Needed)
Land, Property Rights, Interests Needed?

Answer to Question #6 is No

#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 Question #9

#9
Was any of the existing ROW previously purchased or donated specifically for the current project (early acquisition)?

- 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

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

Go to Box #7

#7
No ROW or Property Rights Needed (No ROW Certificate 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**

- 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)

**Go to Question #2**

- Does your agency solely need temporary rights (aka permit) to perform work exclusively for the benefit of the property owner and does not cause compensable damage (as determined by the appraiser or AOS preparer listed in the Agency’s Approved Procedures), which work may not be done if agreement cannot be reached (49 CFR 24.101(c)(2))?
**Land, Property Rights, Interests Needed?**

**Answer to Question #2 is Yes**

Does your agency solely need temporary rights (aka permit) to perform work exclusively for the benefit of the property owner and does not cause compensable damage (as determined by the appraiser or AOS preparer listed in the Agency’s Approved Procedures), which work may not be done if agreement cannot be reached (49 CFR 24.101(c)(2))?

**Go to Box #7**

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

- 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
Does your agency solely need temporary rights (aka permit) to perform work exclusively for the benefit of the property owner and does not cause compensable damage (as determined by the appraiser or AOS preparer listed in the Agency’s Approved Procedures), which work may not be done if agreement cannot be reached (49 CFR 24.101(c)(2))? 

- 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

#3
Do you need land or property rights from another Agency, or land or property rights from a private owner to construct your project?

#7
No ROW or Property Rights Needed (No ROW Certificate Needed)

- 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

- 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)

Go to Boxes #4 & #5

#3
Do you need land or property rights from another Agency, or land or property rights from a private owner to construct your project?

#4
Develop ROW Plan, Property Acquisition Plan, or other appropriate document and determine the type of property rights needed (e.g. fee, permanent easement, temporary construction easement (TCE), other instrument). See Determining Type of Property Rights Necessary Flow Chart.

#5
ROW Certificate will be 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.
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

#1
Does the agency need exclusive use and occupancy (fee) of the property (operations)?

• 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

#1
Does the agency need exclusive use and occupancy (fee) of the property (operations)?

#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 document 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

- 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

Go to Box #3

#1
Does the agency need exclusive use and occupancy (fee) of the property (operations)?

#3
Does the agency need an indefinite non-exclusive use and occupancy (easement) of the property (maintenance)?
Type of Property Rights Necessary

Answer to Question #3 is Yes

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

Go to Box #4

- Will you acquire a permanent or non-permanent easement?
Type of Property Rights Necessary

Answer to Question #4 is Term

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

Go to Boxes #8 & #9

#4
Will you acquire a permanent or non-permanent easement?  

#8
Prepare and submit design life analysis documentation (see LAG Manual 25.23 Acquiring Sufficient Property Rights section)

#9
Did you obtain WSDOT and FHWA approval of the easement term prior to execution?

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1. Permanent or non-permanent easement refers to the duration of rights granted to the public for the use of property.
Type of Property Rights Necessary

Answer to Question #9 is Yes

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

Go to Boxes #10, #6, #7

#9
Did you obtain WSDOT and FHWA approval of the easement term prior to execution?

#10
Non-permanent easement is acquired

#6
Develop ROW Plan, Property Acquisition Plan, or other appropriate document 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
Type of Property Rights Necessary

Answer to Question #9 is No

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

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

#9
Did you obtain WSDOT and FHWA approval of the easement term prior to execution?

#8
Prepare and submit design life analysis documentation (see LAG Manual 25.23 Acquiring Sufficient Property Rights section)

#10
Non-permanent easement is acquired

#6
Develop ROW Plan, Property Acquisition Plan, or other appropriate document 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
Type of Property Rights Necessary

Answer to Question #4 is Permanent

Will you acquire a permanent or non-permanent easement?  

Go to Boxes #5, #6 & #7

#4
Will you acquire a permanent or non-permanent easement?

#5
Permanent easement is acquired

#6
Develop ROW Plan, Property Acquisition Plan, or other appropriate document 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 = permanent easement
- Develop ROW plan
- ROW Certificate is needed
**Type of Property Rights Necessary**

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<thead>
<tr>
<th>Answer to Question #3 is No</th>
<th>Go to Box #11</th>
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<td><strong>#3</strong></td>
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<td>use and occupancy (easement)</td>
<td>occupancy (TCE) of property to</td>
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<td>of the property (maintenance)?</td>
<td>construct the project?</td>
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- Temporary use Construction
- Not intended for perpetual or exclusive rights
Type of Property Rights Necessary

Answer to Question #11 is Yes

- Temporary use during construction
- Owner is government agency

Go to Box #12

#11
Does the agency Only need temporary use and occupancy (TCE) of property to construct the project?

#12
Is the owner a governmental agency?
Type of Property Rights Necessary

Answer to Question #12 is Yes

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

Go to Boxes #13, #6 & #7

- #13 Temporary property rights are obtained from the other Agency
- #6 Develop ROW Plan, Property Acquisition Plan, or other appropriate document 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
Type of Property Rights Necessary

**Answer to Question #12 is No**

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

**Go to Boxes #14, #6 & #7**

- #14 Temporary construction easement is acquired
- #6 Develop ROW Plan, Property Acquisition Plan, or other appropriate document 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
Type of Property Rights Necessary

Answer to Question #11 is No

- 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

Go to Box #15

- Only need temporary use and occupancy (TCE) of property to construct the project?

- Does your agency solely need temporary rights (aka permit) to perform work exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached?
Type of Property Rights Necessary

Answer to Question #15 is No

Go to Boxes #14, #6 & #7

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

#15
Does your agency solely need temporary rights (aka permit) to perform work exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached?

#14
Temporary construction easement is acquired

#6
Develop ROW Plan, Property Acquisition Plan, or other appropriate document 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
Does the Agency's project cause a damage outside of Agency's existing ROW 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)?

**Answer to Question #15 is Yes**

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

**Go to Box #16**

- #16
  Does the Agency's project cause a damage outside of Agency's existing ROW 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)?
Type of Property Rights Necessary

Answer to Question #16 is Yes  

Go to Boxes #14, #6 & #7

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

#16  
Does the Agency's project cause a damage outside of Agency’s existing ROW 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 document 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
Does the Agency's project cause a damage outside of Agency's existing ROW 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)?

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

#16

#17
Temporary Rights are obtained

#18
No ROW or Property Rights 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.