

# Office of Real Estate Services - Project Development Guide

## Chapter 13

### Right-of-Way Certification Requirements

**23 CFR  
635.309(b) and (c)**

**REFERENCE**

The right-of-way (ROW) certification procedure for federally-assisted highway projects identifies the acquisition status of necessary ROW for the purpose of advancing a project to construction, sometimes referred to as PS&E (plans, specifications, and estimates). It addresses the status of any required relocation activities necessary on the project. The specific requirements for this action are found at 23 CFR 635.309 (b) and (c). Because of the importance of this action, it is critical that the contract administration staff of your agency knows the exact status of the project at the time the construction contract is advertised and awarded. Key elements of this status report include:

1. **Acquisition of ROW in accordance with laws and requirements** (so prospective contracts will not be stopped by related litigation);
2. **Relocation of people** (so that the contractor may enter upon the properties);
3. **Identification of encroachments and acquired structures within the ROW**, and an explanation of who will remove them; and
4. **Hazardous waste** identification that may be present at the site, with information on contractor's responsibility for safe disposal.

A certification per 23 CFR 635.309(c)(1) says that all residential occupants have been relocated to decent, safe and sanitary (DSS) housing. A statement per 635.309(g), states that ROW was acquired in accordance with applicable Federal Highway Administration (FHWA) directives, or that acquisition of ROW is not required.

**SUMMARY**

Section 635.309(b) pertains specifically to the certification requirements for federally-assisted highway projects, and requirements may be different for other Federal programs. Because of potential differences among Federal granting agencies, recipients should become familiar with the program requirements of their Federal funding agency.

### 13.1. FHWA PROJECT CERTIFICATION REQUIREMENTS

Prior to the FHWA authorization to advertise for bids of physical construction, **the acquiring agency shall prepare a statement that:**

- all ROW is clear, or if not, appropriate notification has been included in bid proposals of any work concurrent with highway construction;
- all people relocated to DSS, and one of the following applies:
  1. All needed ROW acquired, all occupants have moved; **or**
  2. Not all needed ROW acquired, but right of entry obtained on all parcels, and all occupants have moved; **or**
  3. Acquisition of ROW **not** complete, and occupants still on the project (**rare exceptions only, and only if in the public interest**) - requires full explanation, notices in bid proposals, and special assurances about occupant protection.
- advises that ROW acquired in accord with the FHWA directives, **and**
- advises that relocation assistance and payments rules followed, if required.

#### **KEY POINTS**

Per 23 CFR 635.309, prior to authorization to advertise bids for physical construction, **the acquiring agency shall prepare a certification statement, such that:**

1. All ROW clearance, utility and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed for proper coordination with the physical construction schedules. Where it is determined that the completion of such work is not feasible in advance of the highway construction, notification should be provided in the bid proposals identifying the work being completed concurrently with the highway construction.
2. All individuals and families have been relocated to DSS housing or the agency has made available to displaced persons adequate replacement housing in accordance with the provisions of the current FHWA directives covering the administration of the relocation assistance program in 49 CFR Part 24, and that one of the following has application:
  - a. All necessary ROW, including legal and physical possession and control of access rights, have been acquired. Trial or appeal of cases may be pending in court, but legal possession has been obtained. There may be some improvements remaining on the ROW, but all occupants have vacated the lands and improvements.

- b. Although all necessary ROW have not been fully acquired, the right to occupy and use all ROW required for the project have been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained, but right of entry has been obtained; the occupants of all the lands and improvements have vacated.
- c. The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with title 49, Code of Federal Regulations (CFR) 24.204. The agency may request authorization on this basis only in very unusual circumstances, and this exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if the FHWA determined that it will be in the public interest. The physical construction may proceed, but the acquiring agency shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the ROW are protected against inconvenience, injury or any action coercive in nature. When the acquiring agency requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore, including identification of each such parcel, will be set forth in the

49 CFR 24.102 (j) specifically declares:

Before requiring the owner to surrender possession of the real property, the agency shall pay the agreed purchase price to the owner, or in the case of condemnation, deposit with the court for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property.

In exceptional circumstances, with the prior approval of the owner, the agency may obtain a right of entry for construction purposes before making payment available to an owner.

### **CAUTION**

In some instances, states and local public agencies may acquire land from owners with 100% state or local funds before a Federal-aid project is fully developed. Acquisitions for a specific project acquired before the project has been authorized for Federal-aid may not have been accomplished under the Uniform Act procedures. When such property is incorporated into a Federal-aid project, the question may arise as to compliance with Uniform Act acquisition procedures. While each instance must be evaluated on its facts, generally Uniform Act procedures should be applied if a property is being acquired for a current or soon anticipated project. If the property was acquired earlier for an existing project or other purpose, the Uniform Act may not be applicable. The key here is that there was no attempt to

acquiring agency's request to proceed to construction. The request should include a realistic date when physical occupancy and use is anticipated. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

circumvent Uniform Act requirements and that the ROW can be certified for the current project. Check with your state Department of Transportation (DOT) or the FHWA Division Office for guidance.

**PREVIOUSLY OWNED  
PROPERTY**

3. ROW has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of ROW is not required.
4. Steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the relocation assistance program have been taken or that they are not required.

The following examples are provided for your use in the developing letters and documents to comply with the above requirements. Figure 13-1 is a certification letter that can be modified, and Figure 13-2 is a sample record of parcel activities that may be modified to document compliance with Federal and state laws if other review documents are not mandated by state procedures.

(AGENCY LETTERHEAD)

(Date)

(Name) Division Administrator, Federal Highway Administration

(Address)

Dear \_\_\_\_\_:

**RIGHT-OF-WAY CERTIFICATE**

**STATEMENT:** As required by 23 CFR Part 635, and other pertinent Federal regulations, right-of-way has been acquired in accordance with the current FHWA directives covering the acquisition of real property.

I hereby certify that all necessary rights-of-way, including control of access rights (when pertinent), have been acquired including legal and physical possession.

All lands and improvements (if appropriate) are vacant, and the (agency) has physical possession and the right to enter upon all lands.

I further certify that there were no individuals or families displaced by this project. Therefore, the provisions of the current FHWA directives, including 49 CFR Part 24, covering the relocation of displaced persons to decent, safe and sanitary (DSS) housing and availability of adequate replacement housing are not applicable to this project.

**Or,**

I further certify that there were \_\_\_ individuals or families displaced by the project. The provisions of the current FHWA directives, including 49 CFR Part 24, covering the relocation of displaced persons to decent, safe and sanitary (DSS) housing and availability of adequate replacement housing were followed on this project.

There are no improvements (if appropriate) to be removed or demolished as a part of this project.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_

Sincerely, \_\_\_\_\_

**Figure 13-1**

## PARCEL REVIEW REPORT

1. Project \_\_\_\_\_ 2. Parcel No. \_\_\_\_\_
  3. Authority to Appraise and Acquire (date) \_\_\_\_\_
  4. Area of Take \_\_\_\_\_ Sq. Ft. \_\_\_\_\_ Acres
  5. Is this an Uneconomic Remnant? \_\_\_\_ Outside R/W Limits? \_\_\_\_
  6. Conveyance Document Free and Clear of Encumbrances? \_\_\_\_\_
  7. Number of Appraisals \_\_\_\_\_ 8. Appraisers \_\_\_\_\_
  9. Amount \_\_\_\_\_ 10. Date \_\_\_\_\_
  11. Certificate \_\_\_\_\_
  12. Reviewer's Approval \_\_\_\_\_ 13. Date \_\_\_\_\_
  14. Date Approved for Negotiations \_\_\_\_\_
  15. Negotiator \_\_\_\_\_
  16. Did Appraiser or Review Appraiser Participate in Negotiations? \_\_\_\_
  17. First Offer (date) \_\_\_\_\_ 18. Amount \$ \_\_\_\_\_
  - Rev. Offer (date) \_\_\_\_\_ \$ \_\_\_\_\_
  19. FMV Letter (date) \_\_\_\_\_ 20. Amount \$ \_\_\_\_\_
  - Revised \_\_\_\_\_ \$ \_\_\_\_\_ 21. Reason \_\_\_\_\_
  22. Administrative Determination Approved by \_\_\_\_\_ \$ \_\_\_\_\_
  - Settlement (Date) \_\_\_\_\_
  23. Property vacated (Date) \_\_\_\_\_
  24. Condemnation Settlement Concurred in by \_\_\_\_\_ Date \_\_\_\_\_
- Land and Improvements, Total Interest Costs, and Attorney Fees \$ \_\_\_\_\_ \$ \_\_\_\_\_  
\$ \_\_\_\_\_

25. Was Owner Offered Retention of Improvements? \_\_\_\_\_
26. Total of Retention Values \$ \_\_\_\_\_
27. Date Approved \_\_\_\_\_
28. Date of Parcel Rodent Report \_\_\_\_\_
29. Value of Acquired Improvements \$ \_\_\_\_\_
30. Retention Value of Retained Improvements \$ \_\_\_\_\_
31. ATTACH PROPERTY IMPROVEMENT CONTROL REPORT
32. No. of Businesses \_\_\_\_\_ Type of Business \_\_\_\_\_
33. No. of Families \_\_\_\_\_
34. Total People Relocated \_\_\_\_\_
35. Relocation Assistance/Services Offered \_\_\_\_\_
36. TOTAL SETTLEMENT AMOUNT \$ \_\_\_\_\_
37. ADJUSTED FAIR MARKET VALUE \$ \_\_\_\_\_
38. Difference \$ \_\_\_\_\_
39. Excess lands \$ \_\_\_\_\_
40. I have reviewed the documentation for this acquisition and believe that costs are distributed correctly.
- Reviewer and Date \_\_\_\_\_

**Figure 13-2**