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Project Development Preparing the PS&E Right-of-Way Coordination and Certification Requirements

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Agencies are required to certify proper right-of-way coordination prior to construction on Federal-aid projects



If you have ever developed a Federal-aid highway project for construction, you know how important it is to have the physical and legal possession of property, or right-of-way, needed to build the project. Without having the needed right-of-way for a project, you may encounter issues that can quickly bring construction to a halt, costing you time and money.

As a local public agency and steward of the Federal-aid Highway Program, it is important to know what it takes to properly deliver a Federal-aid project. The Federal Highway Administration, or FHWA, requires agencies to certify that right-of-way-related requirements have been fulfilled before authorizing a project for construction. We are going to talk about these right-of-way-related requirements to help you avoid problems with authorizing your project for construction.

First, let's explain some commonly used terminology and background relating to Federal right-of-way requirements. In highway construction, right-of-way is a term used generally to describe physical property, or specific interests in property, needed to construct a project. When you acquire right-of-way for Federal-aid projects, you are obtaining the physical and legal possession of property or certain rights to property, which may include the relocation of

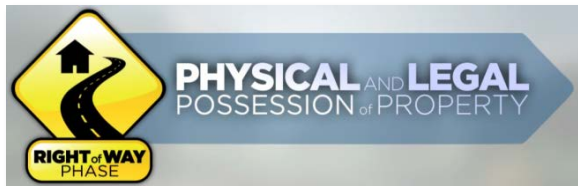
affected parties.

You must comply with all right-of-way requirements if your project will affect something FHWA refers to as "real property." Real property is a term used to describe land, improvements to land, fee interests, easements, air or access rights, or the rights to control land, such as leases.



The primary law governing right-of-way acquisition and relocation activities on Federal-aid projects is referred to as the Uniform Act, short for the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The Uniform Act and other Federal right-of-way requirements are in place to protect and treat fairly those who are affected by a Federal-aid project.

When you need to acquire property, or certain rights or interests to property in order to build your project, you must comply with the Uniform Act. The Uniform Act requirements apply when Federal-aid is used for any phase of a project. For example, if you use local funds only for right-of-way acquisition and plan to use Federal-aid only for the construction phase, you must still comply with the Uniform Act to be eligible to receive these Federal funds. The Uniform Act requirements also apply when only a temporary easement is necessary for constructing a project.





Right-of-way coordination should be initiated as soon as you determine if it will be required. Some projects may require many parcels or relocations, making the right-of-way acquisition process complex and

challenging to resolve. Acquiring right-of-way can take considerable time to conduct appraisals, negotiations, and ultimately settle an agreement with those affected by your project. Be prepared for situations by allowing extra time during the project design for this coordination to take place.

Your State department of transportation, or State DOT, may allow you, the local public agency, or LPA, to manage the right-of-way acquisition for your project. The agency responsible for acquiring right-of-way is normally determined by the project agreement between you and your State DOT.

As you are developing your Federal-aid highway project, here are some valuable tips that should

Valuable tips to keep your project on track:

help keep your project on track:

- During the design phase of a project, you should identify the boundaries of the work and determine if construction activities will affect any property adjacent to those you own.
- Notify the appropriate agency personnel that there will be right-of-way acquisition needed so the process can begin.
- Good communication with those responsible for acquiring the right-of-way for your project is key for keeping your project on schedule. This will help you identify issues early on as right-of-way acquisition can become complex and will allow you time to make needed



adjustments to the project design.

After completing the design work, every Federal-aid project must reach a major milestone before construction can be authorized. This milestone is the approval of your project's plans, specifications and estimates more commonly referred to as a PS&E. A right-of-way certification statement is required to be submitted with your project's PS&E, confirming the appropriate right-of-way coordination has taken place. You are allowed to advertise your project for bids only after your project's PS&E has been approved.

The right-of-way certification statement is a standard requirement that applies to all Federal-aid projects, even for projects that do not require acquisition of any right-of-way. This requirement helps convey that all property needed to construct the project have been acquired and all persons have been relocated in accordance with the Uniform Act and other applicable requirements.



You are responsible for working with your State DOT to establish a right-of-way certification for Federal-aid projects. Each State DOT has procedures and documentation requirements for providing a project right-of-way certification; however, the specific circumstances of each project must be addressed by including one of the following:

- A statement that "no right-of-way acquisition is required for the project" applies when all proposed work will occur within existing right-of-way.
- A statement that "all right-of-way has been acquired for the project." This statement must also include that the property was acquired in accordance with all applicable requirements covering the acquisition of real property, and the agency has legal and physical possession of all right-of-way needed for the project.

- A statement that “the necessary right-of-way has not been acquired and arrangements have been made for remaining right-of-way clearance work to be undertaken during construction.” Under this circumstance, you must include appropriate notification in the bid proposal of any right-of-way clearance that will occur concurrently with the project construction.

If individuals or families have been displaced by your project, you must also include a statement that “all individuals and families have been relocated to decent, safe and sanitary housing.” Under this circumstance, this statement certifies agencies have complied with all Federal requirements for administering the Highway Relocation Assistance Program.

Right-of-way-related issues can cause delays or even bring a project to a halt. In order for you to avoid these problems, remember that right-of-way coordination and certification requirements apply to all Federal-aid construction projects. In some cases, the right-of-way coordination can become very complex and take time and effort to resolve before construction begins. You can help prevent unnecessary project delays or costs during the construction of your Federal-aid project by early coordination of right-of-way.

Additional Resources

- Federal regulations that apply to Federal-aid highway projects prior to authorizing construction
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=bfca8e76cb20fc9cc274cd227545d698&rgn=div6&view=text&node=23:1.0.1.7.23.3&idno=23>
- Link to *Real Estate Acquisition Guide For Local Public Agencies*
<http://www.fhwa.dot.gov/realestate/lpaguide/>
- Information on the Uniform Act and related regulations and guidance
<http://www.fhwa.dot.gov/realestate/ua/index.htm>
- Right-of-way regulations that apply to Federal-aid projects
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=a8f684e5ad28bcffb7aa4537224d5325&rgn=div5&view=text&node=23:1.0.1.8.39&idno=23>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00024 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.