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## Right-of-Way

### Project Development

[www.fhwa.dot.gov/federal-aidessentials](http://www.fhwa.dot.gov/federal-aidessentials)

*Following all Federal and State regulations governing right-of-way acquisitions helps ensure a successful project*



Many highway projects require the acquisition of property rights for the project's right-of-way.

Right-of-way activities may occur during any phase of the project development process,

which includes the planning, National Environmental Policy Act (NEPA) review, design, right-of-way, and construction program areas. These phases often overlap, and right-of-way regulations govern the right-of-way activities that occur in these program areas.

Since each project is unique and laws vary from State to State, understanding your State laws and the Federal regulations before you start your project development process will help to ensure a successful project. Let's look at the project development process to see how right-of-way activities may be involved.



During the planning phase, an agency identifies the need and purpose for a project and

determines its feasibility. A project's feasibility is based on input from transportation planners, engineers, right-of-way specialists, environmental specialists, and the public.

An agency must also determine what priority to give a project and how to support it financially. Often the project's preliminary engineering phase will begin before the planning phase is complete.

The NEPA process is one of the main activities of the preliminary engineering phase to assess the project's environmental impacts and obtain Federal Highway Administration (FHWA) approval of the project's environmental document. To be eligible for Federal right-of-way funding, a project must be consistent with the long-range plans that provide a comprehensive blueprint for State transportation needs 20 years into the future.

Depending on whether the project is located in a rural or urban area, these long-range plans may include the Metropolitan Transportation Plan and Statewide Transportation Plan, both of which prioritize projects and consider all factors that may impact future transportation. In addition, two short-range programs -- the Statewide Transportation Improvement Program (STIP) and the Transportation Improvement Program (TIP), include State projects that are expected to receive Federal funding within the next four years. Your agency needs to verify that your project is included in its metropolitan area's TIP.

The project design phase includes completing surveys, preparing right-of-way plans or maps, and performing cost estimates. Once an Authorization to Proceed is given, right-of-way activities can begin.

When the design is sufficiently complete, an agency can appraise, negotiate, and acquire all of the necessary properties and ensure that all displaced landowners and tenants are appropriately relocated. Before construction begins, the agency must secure, clear, and properly manage the acquired properties.

The agency must also issue a right-of-way certification before construction can begin. This certification states that all properties needed for the construction, operation and maintenance of the project have been acquired and that all affected or displaced persons, businesses, and farms are relocated to safe and sanitary facilities.

In addition, the certification verifies that the agency complies with the Uniform Act and all relevant Federal regulations and State laws. Once the State accepts the certification, the agency can proceed to advertise the project for construction bids.

After construction, properties that are no longer needed for the project can be offered for sale or lease in accordance with the Federal regulations.



To see how one city works through the right-of-way acquisition process, let's look at an example of a city called Smithville.

To relieve congestion on its secondary roads, the city identified that it needed to extend a six-lane highway from downtown to the suburbs.

In the planning phase of the project, the city assessed the feasibility of the project,

determined a funding mechanism, and ensured that the project was consistent with the State and metropolitan area's transportation plans and programs, and completed the NEPA process.

Because the project required Federal funding for the right-of-way, the city is following Federal regulations and State statutes.



In the design phase, Smithville completed the surveys, prepared right-of-way plans, performed cost estimates, and determined which properties to acquire for the project. The city then sent a request to the State DOT to proceed.

After obtaining the authorization to proceed, Smithville began acquiring the right-of-way properties and relocated landowners and tenants according to Federal and State laws and regulations. The city managed all the acquired properties to ensure they were safe and secure.

Before construction began, Smithville issued a right-of-way certification verifying that all the necessary properties for the construction, operation and maintenance of the project were acquired, and that all affected homeowners and businesses were relocated. Once the State accepted the right-of-way certification statement, the city could advertise for construction bids for the project.

After construction of the highway extension was complete, Smithville determined that it no longer needed some project properties and could offer them for sale following the Federal regulations.

We have seen that right-of-way acquisition is a key component of project development and right-of-way project activities may occur at any time during the project development process. By following all Federal, and State regulations that govern right-of-way activities, your agency can

help ensure that a project's acquisition costs can remain eligible for Federal funding.

The staff at your State department of transportation is available to provide information

about right-of-way project development and administration, and offer guidance.

### Additional Resources

- Regulations pertaining to project development, real property management, property acquisition alternatives  
[http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title23/23cfr710\\_main\\_02.tpl](http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title23/23cfr710_main_02.tpl)
- Regulation pertaining to uniform relocation assistance and real property acquisition  
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr;sid=5f90caab488da5f817086e999d972d33;rgn=div5;view=text;node=49%3A1.0.1.1.18;idno=49;cc=ecfr>
- *Real Estate Acquisition Guide* for LPAs  
<http://www.fhwa.dot.gov/realestate/lpaguide/index.htm>
- Description of free FHWA Web-based training for LPA real estate acquisition  
[http://www.nhi.fhwa.dot.gov/training/course\\_detail.aspx?num=FHWA-NHI-141047&cat=&key=&num=&loc=&sta=%25&typ=3&ava=1&str=&end=&tit=&lev=&drl](http://www.nhi.fhwa.dot.gov/training/course_detail.aspx?num=FHWA-NHI-141047&cat=&key=&num=&loc=&sta=%25&typ=3&ava=1&str=&end=&tit=&lev=&drl)

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