

Right of Way Procedures

The City of Tumwater (Agency), needing to acquire real property (obtain an interest in and/or possession of) in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and applicable federal regulations (49 CFR Part 24) and state law (Ch. 8.26 RCW), and state regulations (Ch. 468-100 WAC) hereby adopts the following procedures to adhere to all applicable laws, statutes, and regulations. The Agency is responsible for the real property acquisition and relocation activities on projects administered by the Agency and must acquire right of way (ROW) in accordance with the policies set forth in the Washington State Department of Transportation Right of Way Manual M 26-01 and Local Agency Guidelines (LAG).

Below is a list of Agency staff, by names and position titles, that are qualified to perform specific ROW functions. Attached to these procedures are resumes for everyone listed within these procedures, which provides a summary of their qualifications. The procedures shall be updated whenever staffing changes occur.

1. The Agency has the staff with the knowledge and experience to accomplish the following ROW Disciplines:

- i. **PROGRAM ADMINISTRATION:**

Oversee delivery of the ROW Program on federal aid projects for the Agency. Ensures ROW functions are carried out in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Ensures Agency's approved ROW Procedures are current, including staff qualifications, and provides copies to consultants and Agency staff;
- Oversight of ROW consultants;
 - use of consultant contract approved by WSDOT
 - management of ROW contracts
 - management of ROW files
 - reviews and approves actions and decisions recommended by staff & consultants
 - Overall responsibility for decisions that are outside the purview of consultant functions
- Sets Just Compensation prior to offers being made;
- Oversight and approval of Administrative Offer Summaries (AOS) per policy;
- Oversight and approval of Administrative Settlements per policy;
- Ensure Agency has a relocation appeal process in place prior to starting relocation activities;
- Obligation authority for their Agency;
- Obtain permits (Non-Uniform Relocation Act (URA));
- Ensures there is a separation of functions to avoid conflicts of interest.

- Verifies whether ROW is needed, and that the property rights and/or interests needed are sufficient to construct, operate and maintain the proposed projects (see LAG Appendix 25.174, 25.175, & 25.176).

Brandon Hicks, Transportation and Engineering Director OR Bill Lindauer, Engineering Services Manager OR Mary Heather Ames, Transportation Manager OR Nhan Vo, Senior Engineer

Note: Staff included under Program Administration must have completed the eLearning Administrative Settlement and No ROW Verification training available at <http://www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm>

ii. **APPRAISAL**

Prepare and deliver appraisals on federal aid projects for the Agency. Ensures that appraisals are consistent and in compliance with state and federal laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Use only qualified agency staff approved by WSDOT to perform appraisal work;
- Use Appraiser from WSDOT's Approved Consultant List if Agency does not have qualified staff;
- Prepare ROW Funding Estimate (not required to be completed by an appraiser & only when there are federal funds in the ROW Phase);
- Prepare AOS;
- Obtain specialist reports;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

Contract with a qualified consultant.

iii. **APPRAISAL REVIEW:**

Review appraisals on federal aid projects for the Agency to make sure they are adequate, reliable, have reasonable supporting data, and approve appraisal reports. Ensures appraisals are adequately supported and represent fair market value and applicable costs to cure and are completed in compliance with state and federal laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Use only qualified agency staff approved by WSDOT to perform appraisal review work;
- Use review appraiser from WSDOT's Approved Consultant List if agency does not have qualified staff;

- Ensures project wide consistency in approaches to value, use of market data, and costs to cure;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

Contract with a qualified consultant.

iv. **ACQUISITION:**

Acquire, through negotiation with property owners, real property, or real property interests (rights) on federal aid projects for the Agency. Ensures acquisitions are completed in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Use only qualified staff to perform acquisition activities for real property or real property interests, including donations;
- To avoid a conflict of interest, when the acquisition function prepares an AOS, only acquires property valued at \$10,000 or less;
- Provide and maintain a comprehensive written account of acquisition activities for each parcel;
- Prepare AOS justification and obtain approval;
- Prepare Administrative Settlement and obtain approval;
- Prepare Right of Way Funding Estimate (when there are federal funds in the ROW Phase);
- Review title, and recommend and obtain approval for acceptance of encumbrances;
- Ensure acquisition documents are consistent with ROW plans, valuation, and title reports;
- Provide a negotiator disclaimer;
- Maintain a complete, well organized parcel file for each acquisition;
- Coordinate with engineering, program administration, appraisal, relocation, and/or property management as necessary.

Contract with a qualified consultant.

Note: Staff included under Acquisition must have completed the eLearning Administrative Settlement training available at
<http://www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm>

v. **RELOCATION:**

Provide relocation assistance to occupants of property considered displaced by a federally funded projects for the Agency. Ensures relocations are completed in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Prepare and obtain approval of relocation plan prior to starting relocation activities;
- Confirm relocation appeal procedure is in place;
- Provide required notices and advisory services;
- Make calculations and provide recommendations for Agency approving authority prior to making payment;
- Provide and maintain a comprehensive written account of relocation activities for each parcel;
- Maintain a complete, well organized parcel file for each displacement;
- Ensure occupants and personal property is removed from the ROW;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary.

Contract with a qualified consultant.

vi. **PROPERTY MANAGEMENT:**

Establish property management policies and procedures that will assure control and administration of ROW, excess lands, and improvements acquired on federal aid projects for the Agency. Ensures property management activities are completed in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

- Account for use of proceeds from the sale/lease of property acquired with federal funds on other title 23 eligible activities;
- Keep ROW free of encroachments;
- Obtain WSDOT/FHWA approval for change in access control along interstate;
- Maintain property records;
- Ensure occupants and personal property is removed from the ROW;
- Maintain a complete, well organized property management file;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary.

Brandon Hicks, Transportation and Engineering Director OR Bill Lindauer,
Engineering Services Manager OR Mary Heather Ames, Transportation Manager

OR Nhan Vo, Senior Engineer all with assistance from qualified consultant or WSDOT Staff as needed.

- b. Any functions for which the Agency does not have qualified staff, the Agency will contract with another local agency with approved procedures, a qualified consultant, or the WSDOT. An Agency that proposes to use qualified consultants for any of the above functions will need to work closely with their ROW Local Agency Coordinator (LAC) and Local Programs to ensure all requirements are met. When the Agency proposes to have staff approved to negotiate who have limited experience in negotiation for FHWA funded projects, the LAC must be given an opportunity to review all offers and supporting data prior to offers being made to the property owners.
 - c. The Agency's Administrative Settlement Procedures indicating the approval authorities and the procedures involved in making administrative settlement needs to be included with these procedures (see Exhibit A).
 - d. An Agency wishing to take advantage of the AOS process, properties valued up to \$25,000 or less, need to complete Exhibit B of these procedures.
2. All projects shall be available for review by the FHWA and WSDOT at any time and all project documents shall be retained and available for inspection during the plan development, ROW, construction stages, and for a three-year period following acceptance of the projects by WSDOT.
 3. Approval of the Agency's procedures by WSDOT Local Programs may be rescinded at any time the Agency is found to no longer have qualified staff or is found to be in non-compliance with the regulations. The rescission may be applied to all or part of the functions approved.

Debbie Sullivan, Mayor

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

Date

EXHIBIT A

Agency's Administrative Settlement Policy

The City of Tumwater, WA ("AGENCY"), shall make every reasonable effort to expeditiously acquire real property by negotiation. Negotiation implies an honest effort by the AGENCY to resolve differences with property owners. Offers can be flexible and negotiations should recognize the inexact nature of the process by which just compensation is determined. The AGENCY shall endeavor to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in the courts.

1. The AGENCY shall carefully consider and maximize the use of administrative settlements in appropriate situations. An administrative settlement or stipulated settlement is a negotiated settlement of a right of way acquisition case in which the AGENCY has administratively approved payment in excess of fair market value as shown on the AGENCY's approved determination of value (review appraisers' certificate). The AGENCY shall carefully consider and maximize the use of administrative settlements in appropriate situations.
2. Administrative settlements may be approved when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the following nonexclusive factors may be considered:
 - a. All available appraisals, including the owner's comparable sales not included in an appraisal, and the probable range of testimony in a condemnation trial.
 - b. Ability of the City to acquire the property, or possession, through the condemnation process to meet the construction schedule.
 - c. Impact of construction delay pending acquisition.
 - d. The negotiators recorded information, including parcel details and the owner's rationale for increased compensation.
 - e. Recent court awards in cases involving similar acquisition and appraisal problems.
 - f. Likelihood of obtaining a favorable jury results in local jurisdiction, opinion of legal counsel where appropriate.
 - g. Estimate of trial cost weighed against other factors

3. Authority – The AGENCY authority of administrative settlements in right of way acquisitions is as follows:

Position(s)	Current Applicable Staff	Maximum Settlement
Engineering Staff	Bill Lindauer, Mary Heather Ames, Nhan Vo	Just Compensation plus up to an additional \$5,000
Transportation & Engineering Director	Brandon Hicks	Just Compensation plus up to an additional \$25,000
Mayor	Debbie Sullivan	Just Compensation plus any additional amount

Prior to any written offer of final settlement made to the property owner or their representative, the administrative settlement shall be stated in a memorandum signed by the appropriate approving authority and placed in the parcel acquisition file. The memorandum shall be in accordance with Chapter 6 of the Washington State Department of Transportation Right of Way Manual. If the services of a consultant acquisition negotiator are utilized, the appropriate AGENCY staff person or official will be required to sign the administrative settlement memorandum.

4. The City Council considers approval of all warrants prior to providing payment.

Debbie Sullivan, Mayor

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

Date

EXHIBIT B
Waiver of Appraisal
Agency's Administrative Offer Summary (AOS)

The City of Tumwater , hereinafter (Agency), desiring to acquire Real Property according to 23 CFR, Part 635, Subpart C and State directives, and desiring to take advantage of the \$25,000.00 appraisal waiver process approved by the Federal Highway Administration (FHWA) for Washington State, hereby agrees to follow the procedure approved for the Washington State Department of Transportation (WSDOT) as follows:

Rules

- A. The Agency may elect to waive the requirement for an appraisal if the acquisition is simple and the compensation estimate indicated on the ROW Funding Estimate is \$25,000.00 or less including cost-to cure items. A True Cost Estimate shall not be used with this procedure.
- B. The Agency must make the property owner(s) aware that an appraisal has not been completed on the property for offers \$10,000 or less.
- C. The Agency must make the property owner(s) aware that an appraisal has not been completed on the property for offers over \$10,000 and up to \$25,000, and that an appraisal will be prepared if requested by the property owner(s).
- D. Special care should be taken in the preparation of the AOS as no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.

Procedures

- A. An AOS is prepared using comparable sales found at the time of preparation.
- B. The AOS is submitted to the Transportation and Engineering Director for approval. Upon signature a first offer to the property owner(s) is authorized.

Debbie Sullivan, Mayor

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

Date