

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 outlined in the Washington State Department of Transportation Right of Way Manual M 26-01 and Local Agency Guidelines (LAG) Manual.

1. Below is a list of Agency staff, by name and position titles, who are qualified to perform specific ROW functions. Attached to these procedures are resumes for everyone listed within these procedures, which provide a summary of their qualifications. The procedures shall be updated whenever staffing changes occur.
 - a. The Agency has the staff with the knowledge and experience to accomplish the following ROW Disciplines:
 - i. **PROGRAM ADMINISTRATION:**
Oversee the delivery of the ROW Program on federal aid projects for the Agency. Ensures ROW functions are conducted in compliance with federal and state laws, regulations, policies, and procedures.

Responsibilities/Expectations:

 - Ensures the Agency's approved ROW Procedures are current, including staff qualifications, and provides copies to consultants and Agency staff;
 - Oversight of ROW consultants;
 - Ensure that the hired consultants meet the minimum requirements outlined in ROW Manual Chapters 2 & 8 and Chapter 3 for Appraisal and Appraisal Review.
 - 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 before offers are made;
 - Oversight and approval of Waiver Valuations per policy;
 - Oversight and approval of Administrative Settlements per policy;
 - Ensure that Administrative Settlements are reviewed and accepted by the Local Agency Coordinator prior to final signature.
 - Ensure the Agency has a relocation appeal process before 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 25.171, 25.1726, and the No ROW Checklist (LPA-008).

Brandon Hicks – Transportation and Engineering Director, Bill Lindauer – City Engineer

Note: Staff included under Program Administration must have completed the eLearning Administrative Settlement and No ROW Verification training available at <https://wsdot.wa.gov/business-wsdot/support-local-programs/local-programs-training/right-way-training-education>

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 or consultants who meet the requirements outlined in ROW Manual Chapter 3 to perform appraisal work;
- Prepare ROW Funding Estimate (not required to be completed by an appraiser & only when there are federal funds in the ROW Phase);
- Prepare Waiver Valuation;
- Obtain specialist reports;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management.

Contract with a qualified consultant

iii. APPRAISAL REVIEW:

Review appraisals on federal aid projects for the Agency to ensure they are adequate and reliable, have reasonable supporting data, and approve appraisal reports. Ensure appraisals are adequately supported, 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 or consultants that meet the requirements outlined in ROW Manual Chapter 3 to perform appraisal review work;
- 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.

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/consultants to perform acquisition activities for real property or real property interests, including donations;
- Staff and consultants must meet the requirements outlined in ROW Manual Chapters 2 & 8
- To avoid a conflict of interest, when the acquisition function prepares a Waiver Valuation, only acquires property valued at \$15,000 or less;
- Provide and maintain a comprehensive written account of acquisition activities for each parcel;
- Prepare Waiver Valuation justification and obtain approval;
- Prepare Administrative Settlement and obtain approvals;
- 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.

Contract with a qualified consultant

Note: Staff included under Acquisition must have completed the eLearning Administrative Settlement training available at <https://wsdot.wa.gov/business-wsdot/support-local-programs/local-programs-training/right-way-training-education>

v. **RELOCATION:**

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

Responsibilities/Expectations:

- Only qualified staff/consultants are used to perform relocations that meet the requirements outlined in ROW Manual Chapters 2 & 8.
- Prepare and obtain approval of relocation plan before starting relocation activities;
- Confirm relocation appeal procedure is in place;
- Provide required notices and advisory services;
- Make calculations and provide recommendations for the Agency approving authority before 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 are removed from the ROW;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management.

Contract with a qualified consultant

vi. **PROPERTY MANAGEMENT:**

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

Responsibilities/Expectations:

- Only qualified staff/consultants are used to perform property management that meets the requirements outlined in ROW Manual Chapters 2 & 8.
- 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 a change in access control along the interstate;
- Maintain property records;
- Ensure occupants and personal property are removed from the ROW;
- Maintain a complete, well-organized property management file;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management.

Brandon Hicks – Transportation and Engineering Director, Bill Lindauer – City Engineer, both with assistance from qualified consultant or WSDOT staff as needed

- 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 must work closely with its Local Agency Coordinator (LAC) and Local Programs to ensure all requirements are met. The LAC will perform spot-check reviews on selected federal aid or federal aid-eligible projects. **The LAC must be given an opportunity to review all offers and supporting data before offers are made to the property owners.** The number of spot-check reviews depends on the project scope, the complexity of acquisitions, the local agency's level of experience, and past performance. Spot check reviews may not be required on all projects, but will lessen the risk of delays during ROW Certification. The LAC may request additional information or parcel files to ensure local agency compliance.
- The Agency's Administrative Settlement Procedures, indicating the approval authorities and the procedures involved in making administrative settlements, need to be included with these procedures (see Exhibit A).
- An Agency wishing to take advantage of the Waiver Valuation process for properties valued up to \$35,000 or less must complete Exhibit B of these procedures.

2. All projects shall be available for review by the FHWA and Local Programs ROW at any time, and all project documents shall be retained and available for inspection during the plan development, ROW, and construction stages and for three years following Local Programs' acceptance of the projects.
3. Local Programs ROW may rescind its approval of the agency's procedures 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 apply to all or part of the approved functions.

Debbie Sullivan, Mayor

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

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 trail cost weighed against other factors.

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

Positions(s)	Maximum Settlement
City Engineer	Just Compensation plus up to an additional \$5,000
Transportation & Engineering Director	Just Compensation plus an additional \$5,000 to \$25,000
Mayor or City Administrator	Just Compensation plus an additional \$25,000 to \$100,000

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 25.11 of the Washington State Department of Transportation Local Agency Guidelines and Chapter 4.11.3 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

EXHIBIT B

Agency's Waiver Valuation

The City of Tumwater, hereinafter (Agency), desiring to acquire Real Property according to 23 CFR, Part 635, Subpart C, 49 CFR Part 24, and State directives, and desiring to take advantage of the waiver valuation 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, has a low fair market value, and the compensation estimate (including the cost to cure items) and the estimated property value are under \$35,000.
- B. The Agency must make the property owner(s) aware that an appraisal has not been completed on the property for offers of \$15,000 or less.
- C. The Agency must inform the property owner(s) that an appraisal has not been completed on the property for offers over \$15,001 and up to \$35,000, and that an appraisal will be prepared if requested by the property owner(s).
- D. Special care should be taken in preparing the Waiver Valuation, as no review is mandated, the preparer needs to ensure that the compensation is fair and that all the calculations are correct.

Procedures

- A. A Waiver Valuation is prepared using comparable sales found and verified during preparation.
- B. The Waiver Valuation is approved by the Agency staff listed under Program Administration within these Right of Way Procedures. Once the local agency coordinator has completed a spot check for the project, an offer to the property owner(s) is authorized upon signature.

Debbie Sullivan, Mayor

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

EXHIBIT C

Relocation Appeal Procedures

Any person aggrieved by a determination as to eligibility for, or the amount of any payment for relocation assistance authorized by 49 CFR 24.10, Chapter 8.26 RCW, and the regulations at Chapter 468-100 of the Washington Administrative Code (WAC) has the right to appeal to the City Administrator. While there is no required format for the appeal, at a minimum each appeal shall contain the following:

1. Date of the appeal
2. Name of the aggrieved person(s) (“appellant(s)”)
3. Parcel Tax Number
4. A statement of issues/concerns
5. An explanation of what the appellant is claiming; all facts, reasons, and any supporting evidence as to the nature of the grievance or why the appellant is otherwise aggrieved.
6. The relief requested
7. Contact information of the appellants

Appeals may be mailed or emailed. Mailed appeals must include the following:

8. Signature of the appellants.

The aggrieved person must file the written appeal with the City of Tumwater City Clerk within sixty (60) calendar days after receiving written notification of the agency’s determination of the person’s claim. Failure to timely file an appeal shall result in waiver of any appeal right.

Within fourteen (14) calendar days of receipt of an appeal, the City will evaluate the appeal to determine if it is complete. The City will send written notice to the appellant informing them if the appeal has been determined to be complete or requesting additional information. If additional information is necessary to process the appeal, the City will request the appellant file any additional information within ten (10) calendar days.

Within fifteen (15) calendar days of (a) receiving the requested additional information, or (b) the deadline for receiving the requested additional information if sufficient additional information is not received, the City will issue and mail to the appellant a written decision on the appeal based on applicable relocation assistance regulations. A written decision on appeal issued by the City pursuant to this section shall be the City’s final decision and the City shall inform the appellant that they may seek judicial review of the City’s determination.

Debbie Sullivan, Mayor

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager