

2025 Annual ROW Meeting

WSDOT Local Programs Right of Way Services



LOCAL AGENCY COORDINATORS:
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ROUNDTABLE

ROWFE

- Q: When is a Right of Way Funding Estimate (ROWFE) necessary? Does the ROWFE need to be updated when project acquisitions change?
- A: If the ROW Phase of the project is federalized, the agency must submit a ROWFE to their LAC for approval. The ROWFE doesn't need to be updated unless the agency will need to request additional ROW funding from LP Program Management because of the changes.

Spot Checks

- Q: Do you need the Title Report for the Spot Check review?
- A: Yes, please refer to LP-002 for items to be submitted for Spot Check Review and Certification.



ROUNDTABLE

Expeditious Acquisition: 49 CFR 24.102(a) states: “The agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.”

- Q: This explanation of Expeditious Acquisition has no time frame associated with it that I could find to indicate what counts as “expeditious” or not, and it also focuses on negotiation, so how is it being applied and how is “expeditious” being measured?
- A: Expeditious Acquisition applies to the entire acquisition/negotiation process, which includes the property owner receiving payment to transfer ownership. Delays in payment for longer than 45 days due to internal Agency processes, including but not limited to holidays, internal employee exchange, and internal processes, aren’t acceptable. Payment and recording should happen simultaneously and “expeditiously.”



ROUNDTABLE

Diaries: The diary is one of the most important elements of an acquisition or relocation file. It is crucial that it be accurate and complete, for it is frequently the only document in a file that explains how a difficult or complex real property interest transaction proceeded.

➤ Q: What pertinent information needs to be included in the diary?

➤ A: Diaries need to provide a complete record of the transaction.

- They need to be well organized and factual, and they should be written to be understandable by someone unfamiliar with the transaction.
- Reference any appropriate documents in the file, such as brochures provided to property owners or estimates obtained to support an administrative record.
- Each diary entry shall clearly show the month, day, and year of the contact; the name of the individual who made such a contact; how the contact was made (i.e., in person or by phone); and the name(s) of the individual(s) contacted.
- Each diary entry shall provide a summary of the contact. It is not sufficient to enter a simple posting of events as they occurred. For example, **merely recording that the agent presented an offer or that “discussions were held” on a given date is insufficient.**

ROUNDTABLE

Diaries Continued:

- The entry should indicate, at the least, where the event took place, what questions the owner asked, and what answers the agent supplied.
- Multiple contacts should not be combined into one diary entry. These entries need to be made as soon as possible to ensure accuracy.
- Upon completion of activity entry, the specialist should initial each entry.
- Once a diary is complete, it must be dated and signed at the end.
- Diary entries must be limited to reciting the facts because the diary is subject to the rights of discovery by all parties in any court proceeding or appeal case. All persons who participate in negotiations with a property owner to acquire real property interests, whether a staff or consultant agent/negotiator, a member of an agency's administrative or executive branch, or an agency's attorney, shall maintain an appropriate diary or log of such activities and discussions with the property owner.
- **The cutting and pasting of various emails into the diary are not sufficient. Information taken directly from email correspondence often contributes to a good diary, but care should be taken to exclude extraneous information.**

ROUNDTABLE

Diaries-Multiple Contacts

- Q: What do you mean when you state that multiple contacts should not be combined into one diary entry?
- A: It is not appropriate to make a diary entry that states:
Over the past two weeks, I have made multiple attempts to speak with the property owner.

Instead, each attempt to contact the property owner should be a separate dated diary entry that includes the exact method used (e.g., calling and leaving a voicemail, sending an email, stopping by the property to leave a business card on the door).

ROUNDTABLE

Minimum Payment Policy

- Q: Does my agency have to have a Minimum Payment Policy?
- A: WSDOT's minimum payment policy does not apply to local agencies; however, a local agency can create their own minimum payment policy if desired.

Sharing Appraisals

- Q: When a Local Agency appraises a property, must they share the Appraisal with the property owners?
- A: Yes, the agency needs to share a copy of the appraisal but not a copy of the DV. If the DV differs from the appraised amount, the agent will deliver the Reviewer's deviation memo to the property owner as justification for the difference.

Temporary Easement Purpose

- Q: Are the waiver valuation/appraisal and the Temporary Easement conveyance both required to have the purpose of the easement in the valuation and the conveyance?
- A: Yes, both documents should clearly describe the purpose of the Temporary Easement.

ROUNDTABLE

Electronic Offers

- Q: Please explain what documentation must be in the file for sending electronic offer packages to the owners when they request it.
- A: All documents typically presented in person should also be included in the electronically delivered offer package, should the property owner prefer to receive it in this manner. This includes, but is not limited to, the offer letter, property valuation, conveyance documents, brochures, right-of-way plans, and a completed W-9 form in accordance with IRS requirements. Please follow the requirements outlined in the ROW Manual or Chapter 25 of the LAG. **Note: This doesn't relieve the agency from providing the offer in person & by certified return receipt mail.**

Statutory Evaluation Allowance (SEA)

- Q: I discussed the Statutory Evaluation Allowance (SEA) at the time of the offer presentation, and the property owner never submitted a claim. An attorney was hired. I don't see anywhere in the LAG manual or WSDOT Manual that requires pushing owners to file a claim, just adequately explaining in writing and verbally that the SEA is available to them and how to request it.
- A: Yes, that is correct. Property owners are not required to claim the SEA. However, as part of the goodwill in negotiations, it is important to remind them of their eligibility to claim up to \$750. This should be documented in the agent's diary as part of the ongoing efforts to inform the property owners when they become eligible. This information must be communicated consistently and not just mentioned once during the offer presentation.

ROUNDTABLE

Signing Authority

- Q: What needs to be provided to show signing authority?
- A: Please provide documentation that verifies the individual's authorization to convey the real property on behalf of the Grantor. Acceptable forms of documentation include, but are not limited to, a copy of the Trust, Articles of Incorporation, Operating Agreement, Bylaws (including any amendments), or a corporate resolution. These documents must clearly indicate the identity, individual's position, and the capacity in which they are authorized to act on behalf of the Grantor. If the title company has verified signature authority or issued a title policy in the agency's name that would be acceptable.

Electronic signing

- Q: Is using DocuSign approved by FHWA?
- A: Yes, as long as the process for use is outlined in the ROW Manual or Chapter 25 of the LAG. The acceptable forms of electronic signature will be part of the upcoming approved updates to the ROW Manual and Chapter 25 of the LAG.



ROUNDTABLE

Translation and Counseling: Appropriate translation and counseling must be provided for people who cannot read and understand the notice.

- Q: When I presented the offer, I asked the property owners if they would like translation services, and they said “No,” they would have their daughter translate. I then sent a text message reminding him and his wife that translation services are available. The property owner said, “Thank you, but we just need time to review the offer.” When I presented the offer again and the owners were ready to sign, they still let me know that their daughter would be providing translation services for them. Is this sufficient?
- A: While it was appropriate to respect the property owner's preference to rely on their daughter for translation due to their comfort level since they did need assistance with translation, an offer should have been made to have all documents translated into their primary language as well. This would ensure full understanding and transparency throughout the process.

Note: Please ensure the diary outlines the translation services offered, the discussion that occurred, and the property owner's decisions.

ROUNDTABLE

Personal Property Only (PPO) relocation

- Q: I am working on preparing and presenting the Notice of Eligibilities for two businesses, but the agency isn't planning to acquire the personal property to be relocated for about two years. The exact date is to be determined, but it's roughly 2 years out. Do I need to get move costs now and establish a maximum entitlement for personal property only when we know that those bids are going to be outdated by the time they need to move the personal property? Or can I present a notice of eligibility and have some language in the notice that states that move costs will be determined at a future date or an appropriate time?
- A: Bids must be collected at this stage to determine the displacee's entitlements accurately. Although the agency has indicated that the displacee is not required to move items immediately and has up to two years to do so, they may choose to proceed with the move sooner. They could either select a commercial moving service or move their items themselves. In either case, the relocation agent must obtain the lowest acceptable bid amount to account for both commercial moving and self-move options when calculating compensation.
 - There are risks associated with this approach. A project cannot be certified if the right-of-way (ROW) is not cleared. If the Agency permits the displacee to delay the move for up to two years, certification cannot occur until the move has been fully completed.

ROUNDTABLE

Relocation: Inspection prior to comparable being used in the write-up(s)

- Q: Do I need to complete an in-person inspection on a comparable replacement before using it in my Housing Comparison Worksheet or can I just view the comparable online and use it?
- A: An in-person inspection of the comparable property is required before it can be used in the Housing Comparison Worksheet and prior to presenting the Notice of Eligibility and 90-Day Assurance.

Temporary relocations

- Q: An agency is completing a bridge rehabilitation project. The bridge is the only ingress/egress for a community, **and there is no detour available**. The agency will need to close the bridge for a length of time (up to 48 hours), and the property owners on the other side of the bridge will not be able to enter or leave during this time, which will require temporary relocations. What is the minimum threshold for a temporary relocation?
- A: Even a brief interruption of access to the bridge can significantly impact the community it serves. The WSDOT Construction and Traffic Manual specifies that WSDOT will maintain access during construction. Therefore, any bridge closure, if the duration is less than 12 months, will necessitate temporary relocations for the affected residents. While the property owners may choose whether to remain or temporarily relocate, they must be provided with the required notices before the bridge closure.

ROUNDTABLE

Encumbrance Report

- Q: When should the Encumbrance Report be signed and approved by the agency?
- A: The Encumbrance Report must be signed and approved by the agency (ROW Procedures Program Administrator) after the risk analysis has been completed, and prior to closing, property owner payment, and recording of the conveyance. For encumbrances that have not been cleared, the risk decision and approval documentation should be placed in the parcel file.

Possession and Use Agreement

- Q: Please explain the process for getting a Negotiated Possession & Use Agreement signed by the owner. Should all encumbrances be cleared prior to submitting the file for review?
- A: If, at the conclusion of negotiations, the only remaining issue is the amount of just compensation, the agent will, upon instruction from the agency, attempt to obtain a Negotiated Possession and Use Agreement from the property owners. However, possession of the property cannot occur prior to payment to the property owner. For any questions, please consult with your LAC. For additional guidance, refer to the ROW Manual.
- Encumbrances, yes, after risk analysis has been completed, and it is determined what encumbrances will be cleared, this will take place prior to closing and submitting the file for certification review.

ROUNDTABLE

Removal of acquisitions from the project

- Q: How should an agency handle the ROW Plan when project acquisitions change?
- A: The ROW Plan must be updated to reflect the changes. If the ROW Phase has been authorized, fee parcels and permanent easements cannot be removed from the ROW Plan without prior consultation with the LPE and LAC. Additionally, when temporary rights are removed, the local agency must confirm with the LAC that its existing ROW is adequate for the project.

Certification Review

- Q: What do I need to send to the LAC for a certification review?
- A: Please refer to LPA-002 and submit the documents using a file share application and use the new file structure.
- Q: What is the timeframe for the certification review?
- A: The timeline for certification review is dependent on the current workload of the LAC at the time of submission, as well as the completeness and accuracy of the submitted parcel files. To ensure timely processing, certification reviews should be requested approximately two months prior to the anticipated project advertisement date. The files need to have been QA/QC reviewed by the agency prior to submittal. Please refer to LPA-021.

ROUNDTABLE

Re-certification

- Q: Does the ROW need to be re-certified when a temporary easement expires, and the agency extends the temporary easements.
- A: It depends on the scenario such as:
 - If a temporary easement has expired, it's no longer an extension since the agency's right has expired and the agency will need to re-acquire (valuation, offer letter, etc.) the TE and re-certify the project.
 - If a temporary easement has not expired and the agency did not include the extension language in the conveyance, the agency will need to re-acquire (valuation, offer letter, etc.) the TE and re-certify the project.
 - If the TE has not expired and the agency has used the extension language in the TE conveyance and they exercise that extension, they do not have to re-certify the project.

Managing Consultants

- Q: What does the agency need to do prior to their ROW consultant submitting files for review? Who is responsible for doing the QA/QC?
- A: The agency is responsible for managing their consultant and should be completing a QA/QC prior to submitting to their LAC for certification. Please refer to LPA-021.

ROUNDTABLE

Waiver Valuation Limits-Final Rule

- Q: Has state law been updated to reflect the higher waiver valuation limits established by the Final Rule?
- A: The use of Waiver Valuations is part of WAC 468-100, but the federal valuation limits are not currently included. However, the limit for Conflict of Interest for the same individual appraising and negotiating an acquisition is included. It will be updated to reflect the Final Rule increase to \$15,000.

Note: WSDOT Real Estate Services is working with the Attorney General's Office to remove language from the WAC covered in 49 CFR Part 24. The WAC will include 49 CFR Part 24 by reference. The WAC will be more of the reasoning behind laws (RCWs) unique to Washington State.

Waiver Valuation-Requirements

Q: What level of detail should be included in a Waiver Valuation? Do the comparable sales need to be confirmed?

- A: Please see template LPA-216 for the necessary information to include in a Waiver Valuation. Comparable sales used within the Waiver Valuation need to be confirmed.

ROUNDTABLE

Administrative Settlements-Attorney Fees

- Q: Is including attorney fees in an Administrative Settlement acceptable? Doesn't the Administrative Settlement eLearning state that it is acceptable? Doesn't WSDOT RES allow for attorney fees within their Administrative Settlements?
- A: Including attorney fees in an Administrative Settlement is **NOT** acceptable. However, 49 CFR 24.107 and RCW 8.25.070 allow certain litigation expenses, including reasonable attorney fees, incurred as part of **condemnation proceedings** to be reimbursed if:
 - The final judgment of the court is that the agency cannot acquire the real property by condemnation;
 - The condemnation proceeding is abandoned by the agency other than under an agreed-upon settlement; or
 - The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the agency effects a settlement of such proceeding.
- The Administrative Settlement eLearning does **NOT** state that attorney fees are allowed. However, it mentions reimbursement of attorney fees as part of a condemnation.
- WSDOT RES does **NOT** allow for attorney fees in their Administrative Settlements.

ROUNDTABLE

Administrative Settlements-Attorney Fees (Continued)

- Q: May an agency make the business decision to pay attorney fees to settle a negotiation using only local funds?
- A: Payment for attorney fees is only allowed under state law or federal regulation during condemnation. An agency should consult with its legal counsel before paying attorney fees outside of condemnation, using local funds only.

Notes:

An evaluation of an offer, which an attorney may complete, can be covered under the Statutory Evaluation Allowance (SEA), which is limited to \$750. This would be documented and paid for outside of the Administrative Settlement process. An agency wishing to pay over \$750 for evaluations, using local funds only, can do so once policy and procedures have been established and added to its Approved ROW Procedures.

Also, an agency can hire and pay an attorney to assist with clearing title or other unique situations encountered during the acquisition. These expenses would be covered outside of the Administrative Settlement, which is paid to the property owner for the acquisition of the property or property rights needed for the project.

49 CFR 24.107 & RCW 8.25.070



REMINDERS



- When sending email requests for reviews to the LAC, the agency/consultants must put the name of their agency and name of their project in the subject line of all emails.
- When sending requests to review & approve of Administrative Settlements, the agency must send any supporting documents, estimates, etc. with their submission.
- A plan revision requires a revised ROW plan w/ revisions date and signature by PLS or PE.
- NEPA approval is required prior to certification of a project.
- When submitting files for review, please place all documents within the appropriate folders. Additional attachments should not be sent outside of the folders.
- If an LPA template has been modified, please remove the form number and revision date.
- If during the LAC Certification Review, it becomes necessary for a Diary to be corrected, amended, or for additional information to be added this must be accomplished through a Supplemental Diary. The **original Diary shall NOT be altered** to correct erroneous or add missing information.



REMINDERS



- If agencies are working with a consultant, please ensure that consultants are including the agency on all emails/correspondence with the LACs.
- When sending ROW Plans over for LAC review and approval, please ensure it has a seal & signature of PE or PLS.
- Prior written authorization from the Local Agency's Program Administrator must be in the file if Required Notices will NOT be delivered in person, along with justification of why the notices are not being provided in person (out of state, property owners request, etc.)
- Local Programs ROW updates and training notices are provided through government delivery emails. If you are not receiving these emails, you can add yourself to the Local Programs ROW email notification list by going to:
 1. www.wsdot.wa.gov
 2. In the green band at the bottom of the page, Click On "Sign up for email updates."
 3. Enter your email and create a password
 4. Once logged in, you can select the type of notifications you receive.
 5. Local Programs ROW is located under the section header of "Guidelines".

Roundtable Discussion

