MARYLAND DEPARTMENT OF TRANSPORTATION

STATE HIGHWAY ADMINISTRATION

LOCAL PUBLIC AGENCY (LPA) RIGHT-OF-WAY (ROW) INTRODUCTION & GUIDANCE

Right-of-Way Certification is ALWAYS required for all federal funded projects regardless of project needs.

Right-of-Way (ROW) can be more than just acquiring property to construct the project. Property rights are frequently acquired for land used for water drainage, land entered upon to adjust the terrain slopes, land used during the construction period to store equipment, even restrictions placed on nearby properties due to a project's requirements and limitations can all be part of the ROW needed for the project. Right-of-Way is acquired through property ownership such as Fee Simple Deeds or can be secured through obtaining the right to access the property for short term use such as with entry agreements, and temporary easements. Perpetual easements tend to be for the public benefit such as for utility lines and conservation purposes.

All LPA Federal Grant Programs' ROW property rights being acquired with any **Federal or Non-Federal funding** are REQUIRED to follow the appropriate Maryland Department of Transportation (MDOT) procedures and Federal regulations as authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (The Uniform Act). LPA Projects are reviewed for compliance focused on CFR Title 23 part 710 regulations that govern acquisition, management and disposal of real property interests acquired on transportation projects as related to part 635, which covers construction and maintenance of highways; and includes provisions for financial support from the Federal Highway Administration (FHWA). The purpose of the federal regulations, as found in the Code of Federal Regulations, 49 section 24.1 (a) reads "…to ensure that owners of real property to be acquired for Federal and Federally assisted projects are treated fairly and consistently…"

The first step in the ROW process is for the LPA sponsors and/or sub-recipients to adequately identify if there are any properties and property rights to be acquired and if there is any possibility of needing eminent domain. Construction projects are to provide State Highway Administration (SHA) information such as the number of parcels, what types of properties, if residential, railroad or commercial, and the types of acquisitions, such as if there are Fee, Entry Agreements, what type of easements, and if there will be a need for permits or relocations. All this information, including the project's negotiating agent's contact information, should be provided to SHA when submitting the Kickoff Report; but no later than NEPA approval. The completion of the National Environmental Policy Act (NEPA) approval will confirm the project's ROW and is required to be completed before any offers or negotiations can be made for any acquisitions. **Uniform Notification Letters** (Notification of Uniform Act Provisions) are required to be sent to the affected property owner(s) explaining their acquisition rights under The Uniform Act and stating if the

project is voluntary or involuntary (see page 6 and template upon request). The federal regulations support early communications illustrating the requirements of the upcoming project and the acquisition process, however, **the NEPA approval is required before any offers and negotiations REGARDLESS OF WHERE THE AQUSITION'S FUNDING IS COMING FROM or risk losing federal funding.**

Appraisal and "Just Compensation":

An appraisal of the land and/or property rights must be completed by a qualified State licensed appraiser on the SHA approved appraiser list. The appraiser must provide the opportunity for the property owner(s) to accompany appraiser when inspecting the property and note this invitation in the appraisal. Additionally, a second independent appraiser must provide an appraisal review and approve the appraised value to establish **"Just Compensation"** for the Right-of-Way (ROW) property or property rights needed for the project. Alternative appraisal policies and procedures are available upon request for, donated properties, wavier of appraisal and possibly entry agreements as long as it's documented the property owner has been advised they are entitled to an appraisal and compensation. A written estimate of fair value **"Just Compensation"** is always required when an appraisal is not necessary. The completion of the National Environmental Policy Act (NEPA) approval is required before the appraisal and/or any other acquisition costs if targeted for Federal Funding Reimbursement.

Offers and Record of Negotiations:

Only after the appraisal, appraisal review, and NEPA are successfully completed may an offer to acquire the property or property rights be made to the property owner. The owner must receive a **formal written offer** (on letterhead) which includes a copy of plans and/or plat clearly showing the owner's property and/or property rights to be acquired and a breakdown of all monetary components of the offer known as a Summary of "Just Compensation" provided. This is required to make the initial offer in the amount of the "Just Compensation" as established by the appraisal review and to document contacts, dates, and all negotiations and offers with a summary of communications on the **Record of Negotiations**. Important relocation policies and procedures are available upon request. If the LPA should settle with the property owner for an amount other than the "Just Compensation" appraised value, an in-house document explaining the Administrative Settlement, detailing the monetary justification. This document should be signed by the negotiating agent and approved by the LPA Sponsor. Once negotiations reach a conclusion a Negotiator's Certificate must be completed, signed, and dated by the negotiating agent as well as the LPA Sponsor along with the Record of Negotiations.

The statements required in the Negotiator's Certificate are:

I hereby certify that:

1. The written agreement embodies all the considerations agreed upon between the negotiator, acting on behalf of the **(name of LPA Sponsor)**, and the property owner(s).
2. The agreement was reached without coercion, promises other than those shown in the agreement, or threats of any kind by or to either party.
3. The findings, notations, and recommendations represent my best judgment.

4. The parcel(s) agreed to be conveyed is (are) being secured for use in connection with a Federal-Aid-Project.
5. I have no direct or indirect present or contemplated future personal interest in the parcel(s) or benefit from the acquisition of such property.
6. I did not make an appraisal of the property, and I was not a Reviewing Appraiser of same.

Include LPA Agent/Negotiator's title.

FOR SPONSOR ACKNOWLEDGEMENT: I concur with the negotiator's recommendations and certify that this acquisition is in compliance with existing rules, policies and procedures including necessary documentation and approvals:

Include LPA Manager/Sponsor's title.

The Local Public Agency (LPA) is required, at a minimum, to submit the NEPA, plans, and/or maps or plats verifying existing ROW, MOU if available, and the ROW Certification Request Letter from the sponsor describing the project will only be using existing Right-of-Way and no need for any acquisitions, along with stating what agency will be responsible for the ongoing maintenance. Please **see LPA Documents Needed for RIGHT-OF-WAY (ROW) Certification c**hecklist (page 4) for the additional document requirements when there are acquisitions. All LPA ROW Certification requests packages are to be submitted to the State Highway Administration (SHA), Office of Real Estate (ORE), LPA ROW Coordinator for review. Once the submission is reviewed, the LPA ROW Certification will be provided to the sponsor and Federal Highway. **ROW Certification is required before advertising for bids and/or start of construction or the project risk losing federal funding.** The LPA ROW Coordinator is focused on being a resource providing oversight and direction, providing tools upon request such as the SHA Approved Appraiser list, a property tracker spreadsheet, as well as templates and examples for offer letters, entry agreements, the ROW Certification Request Letter and most any other document required.

LPA Documents Needed for RIGHT-OF-WAY (ROW) Certification

Minium Requirements when all ROW is owned by Sponsor:

- **NEPA** (original and any Re-Evals with all associated documentation)
- **Right of Way Plats/Plans/Maps** (ROW verified and highlighted along with LOD)
- **Historical/Preceding Agreements/Leases**
- **Memorandum of Understanding** (MOU if applicable/available)
- **Letter from Township/County/Sponsor Requesting ROW Certification –** (stating all ROW for this project is within the Right of Way of the Township/County, and the maintenance of project is the responsibility of the Township, County or Sponsor. MUST be on letterhead. Suggested language on page seven and template provided on request)

Additional Requirements when any ROW was obtained by Sponsor during the project:

- **Uniform Notification Letters** (suggested language on page six template on request)
- **Appraisal** (on SHA Approved Appraiser List & must include statement property owner was invited to attend the appraiser's property walk through to discuss features such as septic, etc.)
- **Appraisal Review** (it cannot be the same person or company that did the appraisal)
- **Title Search**
- **Written Offer Letter** (based on appraisal & appraisal review & on letterhead) ****
- **Certified Record of Negotiations** (signed by Negotiator & Supervisor)
- **Signed & Approved Option Contract** **
- **Waivers** (if donation or dedication)
- **Relocation Documentation**
- **Administrative Settlement Letter** (statement of approval and justification explanation)
- **Recorded Acquisition Deed** **
- **Permits, Right of Entry/Access Agreements, Shared-Use Agreements** **
- **Letter from Township/County/Sponsor Requesting ROW Certification -** (listing the ROW acquired and the maintenance of project is the responsibility of the Township, County or Sponsor. Suggested language on page seven and template provided on request for letterhead)

** Document showing signing authority if a Business Entity/Estate.

**** Property Owners DO NOT have to accept the first offer – they can counteroffer.

Lee Fox, LPA ROW Coordinator, 410-545-0352, Lfox2@mdot.maryland.gov Property Review & Compliance Division, Office of Real Estate (ORE), State Highway Administration (SHA), Maryland department of Transportation (MDOT) 211 E. Madison Street, HQ/M-30, Baltimore, MD 21202

FAQs

1. Does SHA Office of Real Estate (ORE) ROW coordination assist with Appraisal reviews?

The SHA ORE Appraisal Review Division can complete the reviews, but it's recommended the project sponsor obtains their own appraisal reviewer as the turnaround time fluctuates depending on many factors such as the division's workflow and how many parcels are involved in the project.

2. Can the appraisal review be done in-house?

Yes, as long as it is not completed by the ROW acquisition agent or the appraiser, and is done by a qualified/experienced estimator

3. What is important to know about an Appraisal Wavier?

The wavier can only be used for acquisition values under $15,000 and should be clearly noted in the record of negotiations. It is suggested to use an Entry Agreement which lists the fair market value estimate based on tax assessment and/or market comparables.

4. What is included in a Record of Negotiations?

Document the date of contact, contact names, offer, discussion highlights and Negotiators Certification.

5. Can a Donation request letter or offer letter act as an agreement?

Yes, as long as the property owner accepts through signing the document, and it is suggested to preliminarily use an entry agreement with language indicating the fair market value estimate pending donation agreement and/or recordation of the deed.

6. Do all Federally Funded Local Public Agency projects need to coordinate with the State Highway Administration (SHA), Office of Real Estate (ORE), LPA ROW Coordinator for Right-of-Way (ROW) Certifications if there are not any acquisitions?

Yes, **all** Federally Funded Local Public Agency projects must submit documents to the LPA ROW Coordinator to obtain ROW Certification regardless of if there are any ROW acquisitions.

7. Can a project continue Right-of-Way activates after a NEPA Re-evaluation is submitted.

Negotiations and offers are required to stop until the NEPA Re-evaluation is complete due to a possible change in scope or change in the limit of disturbance (LOD).

8. Can a private party lease be redacted?

Yes, but it is still required to clearly show the parties involved, property description details, term, and is fully executed as well as supplying the deed showing ownership.

9. What is the best way to submit the required documents for ROW Certification.

Depending on the number of acquisitions, one large PDF, a few emails with attachments or provide a link to a folder such as with TEAMS or Google when there are many acquisitions.

(Sponsor's Letterhead)

Date:
Name:
Address:

RE: Notification of Uniform Act Provisions

Dear Mr., Mrs. And/or Ms.:

As part of the documentation process in preparation for the (bridge, sidewalk, etc.) project on your property, this letter is to inform you of provisions in the Federal Highway Administration's Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, referred to as the Uniform Act (the Act).

The Act was developed to provide for uniform equitable treatment of persons displaced from their homes, businesses, non-profit associations or farms by federal and federally-assisted programs and establishes uniform and equitable land acquisition policies. The Act assures that such persons are treated fairly, consistently and equitably and so that they will not suffer disproportionate injuries.

The Act applies to any project which utilizes federal funds for the purchase of any interest in real property, including conservation easements. A portion of this funding for this project may ultimately be provided the U.S. Department of Transportation, through the Maryland Department of Transportation's State Highway Administration (MDOT-SHA).

Under the Act, you have the right to receive just compensation for the property, the right to an appraisal or waiver valuation of the real property, and of all other applicable financial and non-financial assistance provided under 49 CFR, Part 24 and applicable State Law.

Further, the provisions of the Act require that we inform you, in writing, that participation in this project (entry agreements, fee and/or easements; temporary, revertible, and perpetual) is **voluntary**. The project is being developed by (County or Sponsor), and in the event negotiations fail to reach an amicable agreement to do the work we **will not** exercise the authority to acquire the property by eminent domain.

This letter is for your information and no response is necessary. Please feel free to contact me at (phone #) or via email at (jsmith@county.etc) should you have any questions or require any further information.

Sincerely,

Name

Title

SPONSOR LETTERHEAD

DATE:

Mr. Lee Fox and Jean Jipson
Real Estate Specialist LPA ROW Coordinator
Property Review and Compliance Division
Office of Real Estate,
State Highway Administration
Maryland State Highway Administration
211 East Madison St., 3rd Fl, Baltimore, MD 21202

Subject: Right-of-Way Certification Request – PROJECT NAME

Dear Mr. Fox and Ms. Jipson,

SPONSOR, as the Project Sponsor, formally requests Right-of-Way Certification for the PROJECT NAME. All required documentation has been provided in accordance with the LPA Right-of-Way Intro & Guidance requirements and the Uniform Act as amended. Specifically, we confirm the following:

1. **Legal possession and/or Right to Enter on all land as follows:**
   - **(List the ROW acquisitions OR statement of** "No acquisitions are necessary with all construction occurring within the existing Right-of-Way"). There are no additional Right-of-Way acquisitions required for this project.
   - The project area is fully owned by Sponsor /Co-sponsor, which has (executed or drafted, if available) a **Memorandum of Understanding (MOU)** dated **DATE**, granting SPONSOR the authority to proceed with project improvements.
2. **Environmental Compliance:**
   - The **NEPA Certification** has been completed and submitted under PROJECT NAME AND DATE (list original and re-eval if applicable)
3. **Scope of Work & Maintenance Responsibility:**
   - The scope includes paving the existing gravel path to improve accessibility and installing bicycle racks.
   - Entity/Agency will be responsible for the on-going maintenance of the improvements after project completion.

We appreciate your review and approval of this ROW Certification request. Please let us know if any additional information is needed.

Sincerely,

Name
Title

Attachments: (ROW LPA Tracker Spreadsheet if applicable)

cc: