

# 2020 Pandemic Webinar Training Presents:

## Right of Way Certification

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## Right of Way Certification Training

# Course Objectives

- Identify the Federal requirements for clearing right of way on a project prior to advertising for bids
- Identify WSDOT specific requirements for ROW certifications
- Define the three types of right-of-way certification
- Identify concerns with the use of ROW Certification # 3

# What is Certification?

## A statement **CERTIFYING** that:

- Right of Way is clear (including encroachments)
- Relocation has been completed
- Right to remove, salvage, or demolish improvements has been obtained
- Informs the contractor that right of way is ready for construction
- Certifies that Uniform Relocation Act (URA) requirements have been met

## Right of Way Certification Training

# What is being Certified?

### **That you have...**

- Sufficient property right (construct, operate, & maintain)
- Right of Way is clear (including encroachments)
- URA requirements met
- Relocation is complete
- Properties acquired under early acquisition (prior to NEPA) or by donation have been identified
- NEPA Analysis has been completed & approved
- Agency has physical possession-remove, salvage, or demolish improvements (occupy land)

# Applicable Federal Regulations

- **23 CFR 635 Subpart C**  
Discusses the ROW clearance statement
- **23 CFR 635.309**  
Discusses the right-of-way clearance requirements; includes utility and railroad work
- **23 CFR 710.307**  
Discusses construction advertising, noting that under the FHWA/State Stewardship Agreement, the State generally has full responsibility for determining that right-of-way is available on non-NHS projects.

# Applicable State Laws & Procedures

- **Right of Way Manual & Chapter 25 of the LAG have been followed**
- **WAC 458-100**  
Uniform Relocation Assistance and Real Property Acquisition, Subpart G, Certification
- **Statutory Authority: Chapter 8.26 RCW**
- **State Certifications follow the same requirements as the Federal Certifications**

# When is Certification Required?

- **Prior to bid authorization for physical construction of the project** (or proceeding with force account construction)
- **Accompanies the Plans, Specifications, and Estimates (PS&E) package**
- **Statutory Authority: Chapter 8.26 RCW**
- **State Certifications follow the same requirements as the Federal Certifications**

[23 CFR 635.309]

# When is Certification Required?

- **Federal Funds are in the**
  - Right of Way Phase
  - Construction Phase
  - Or both the Right of Way and Construction Phases
- **Certification through WSDOT Local Programs is NOT required when there are ONLY Federal Funds in the PE Phase of a project**
  - Agency project files MUST have “certification” that the URA requirements have been met



# What is in a Right of Way Certification?

## Statements that...

- ✓ All necessary ROW work has been completed OR that arrangements have been made for ROW Completion
- ✓ ROW has been acquired in accordance with Federal Regulations
- ✓ Relocation assistance has been provided if there are displaced persons

[23 CFR 635.309(c), (g), & (h)]

# Types of Right of Way Certification

## Certificate #1

- **All necessary ROW has been acquired**
  - Including legal and physical possession
  - Control of access when pertinent
  - Trial or appeal of cases may be pending but legal possession has been obtained
- **All displacees have vacated**
- **Agency has right to enter on all land**
- **Agency has legal right to remove, demolish, or salvage any remaining improvements**

[23 CFR 635.309(c)(1)]

# Types of Right of Way Certification

## Certificate #2

- **All necessary ROW has NOT been acquired**
  - Full legal possession hasn't been obtained
  - Trial or appeal of cases of some parcels may be pending
- **All displacees have vacated**
- **Agency has right to occupy all ROW (Right of Entry)**
- **Agency has legal right to remove, demolish, or salvage any remaining improvements**

[23 CFR 635.309(c)(2)]

# Types of Right of Way Certification

## Certificate #3- Conditional Certification

- All acquisitions (or right of occupancy) have NOT been completed
- Some occupants may remain on property
- Remaining residential occupants MUST have had replacement housing made available to them
- Remaining property owners & displacees MUST be protected from unnecessary inconvenience and disproportionate injury
- May be granted until Bid Opening or Notice to Proceed to construction

[23 CFR 635.309(c)(3)]

# Types of Right of Way Certification

## Certificate #3- Conditional Certification

**In Washington State, there are two types of Certificate #3's.**

- **Time Based-** Outstanding acquisitions and/or relocation issues will be cleared prior to the start of construction.
- **Excepted Parcel-** Some outstanding acquisitions and/or relocations will NOT be cleared prior to the start of construction.

# Types of Right of Way Certification

## **Certificate #3- Conditional Certification**

### **Time Based Approval-**

- Delegated to WSDOT Local Programs to go to Ad
- No further approval required from FHWA
- Explanation must be provided outlining the outstanding acquisitions and/or relocations, current status, and anticipated completion date
- Project required to be re-certified to Cert. #1 or #2 prior to Bid Opening or Notice to Proceed

# Types of Right of Way Certification

## Certificate #3- Conditional Certification

### Excepted Parcel Approval-

- WSDOT Local Programs and FHWA approval required
- FHWA will NOT approve Excepted Parcel requests unless there are exceptional circumstances that make it in the public interest to proceed to construction
- Needing to meet an Ad or Construction Date is NOT an “exceptional circumstance”.
- Contractor must be made aware of the Excepted Parcels and ensure that parcels are not impacted

# Certification Reviews

## Spot Check Reviews

- Proactive measure intended to lessen risk to agency
- LPA-019 Form used to determine number of files Spot Checked
- Corrections are approved at the Local Agency Coordinator (LAC) level

## Certification Reviews

- Agency certifies that ROW was acquired in accordance with the URA
- LPA-019 Form used to determine number of files reviewed for Certification
- Correction approval falls to LAC, ROW Manager, or FHWA



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# Oversight Reports

## Oversight Reports

- Issues discovered during the Certification Review are documented on an Oversight Report
- Resolutions to the items on this report must occur prior to Certification

## GOAL

- Identify issues prior to certification so that an Oversight Report is not necessary.
- Engage with your LAC early and often

# Right of Way Certification Training

**Thank you for joining us today!**

**Any questions?**

