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80.10 RIGHT-OF-WAY REQUIREMENTS

Right-of-Way (ROW) is a general term denoting land or property acquired for or devoted to a public use. If ROW is not already owned, it must be acquired by purchase, donation or eminent domain, in order to build or maintain a public project. Fee simple, permanent easements and temporary easements are all means of conveying ROW.

If acquisition is necessary, all ROW will be acquired by the rules under Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). *NDOR has overall responsibility to the FHWA for the acquisition of ROW on all FHWA funded transportation projects in the state.*



Before beginning any ROW acquisition activities (including appraisal), the LPA must submit a set of ROW plans to NDOR for review and approval. Upon NDOR approval, the Urban Off-System Coordinator will offer the City a written Notice to Proceed to begin these activities. ***Property cannot be appraised until NDOR issues an authorization to proceed with ROW Acquisition.***

You must understand that if ROW is not acquired according to the Uniform Act, you will jeopardize **all** federal funding in your project; even if there may be no federal funding in the ROW acquisition itself.

LPA's must review property issues to determine whether any property owned by a railroad, private or public property owner is impacted. This includes both permanent impacts (e.g. purchase, easements, drainage ways) and temporary impacts (e.g. easements for staging areas, site access).

General procedures for securing necessary easements and agreements are outlined in this section. Detailed procedures are contained in the "Real Estate Acquisition Guide for Local Public Agencies" published separately from this manual. Copies are available by contacting the NDOR LPA ROW Coordinator at (402) 479-4490.



80.20 RIGHT-OF-WAY TERMS

Fee Simple

An absolute estate or ownership in property including unlimited power of alienation. Fee Simple interests involve the conveyance by deed of the real estate required for the project.

Permanent Easement

A permanent right acquired by public authority to use or control property for a designated purpose. Permanent easements convey only the interest in the real estate as specified in the permanent easement document without conveying ownership. The owner retains the use of the real estate for any purpose that is not contrary to the uses granted. The permanent easement document is recorded in the Register of Deeds' Office and "runs with the land".

Temporary Easement

A temporary right acquired by public authority to use or control property for a designated time and purpose. The term of the temporary easement is until the work on that section is complete.

80.30 INSTRUCTIONS FOR ISSUING RIGHT-OF-WAY CERTIFICATES

Following are the instructions for issuing ROW Certificates. For assistance, please contact the NDOR LPA ROW Coordinator at (402) 479-4490.

A ROW Certificate must be filed with the Department and ***approved before a project can be let***. This certificate is issued by the LPA to NDOR, and certifies that all ROW has been acquired and paid for in accordance with the appropriate federal and state laws and regulations and that the project is clear and ready for construction.

When a Local Public Agency (LPA) determines the Right-of-Way (ROW) for their federal-aid project cannot be acquired in a timely manner, the LPA may submit a Public Interest Letter (PIL) in lieu of a ROW Certificate to the NDOR for approval. The LPA must justify in the letter why it is in the public's interest to proceed with advertising the project for bids before the necessary ROW is acquired.

The LPA in their PIL must address the following five points to the satisfaction of the State and the Federal Highway Administration (FHWA).

1. **The proposed starting date of the contract.**
2. **The feasibility of moving the project to another letting.**
3. **The number and significance of the remaining non-acquired tracts.**

4. **The exact status in the acquisition process of the non-acquired tracts.**
5. **The overall justification of exactly why it is in the public interest to have the project in a particular letting.**

The PIL Procedure is described in the following A. through G. as follows:

- A. The mayor or designated city official must sign the PIL and send it to the Urban Engineer or the Urban Off-System Coordinator.
- B. The Urban Engineer/Urban Off-System Coordinator will review it for acceptability according to the five items listed in this outline and if acceptable will forward it to the NDOR LPA ROW Coordinator for review.
- C. If the ROW Coordinator believes the PIL ROW descriptions to be correct and acceptable, the ROW Coordinator will complete a Department ROW Certificate, noting the PIL is attached to the ROW Certificate and forward it to the ROW Manager to be approved.
- D. The ROW Coordinator will return the PIL to the Urban Engineer or Urban Off-Systems Coordinator for further approval by the Deputy Director or the FHWA.
- E. *If there are not any residential or business properties still in occupancy being displaced, the Urban Engineer or the Urban Off-System Coordinator will prepare a memo to the Deputy Director asking for approval of the PIL. A copy of the approved PIL must be sent to the FHWA.*
- F. *If there is a residential or business property being displaced, the PIL must go to the FHWA for approval. The Urban Engineer or the Urban Off-System Coordinator will prepare a letter (Design Office Supervisor to type actual letter) for the Roadway Design Engineer's signature and submit the letter and the attached PIL to the FHWA for approval.*
- G. Upon approval of the PIL, the Urban Engineer or Urban Off-System Coordinator will send a letter to the LPA notifying them that their PIL has been approved. The letter will include any stipulations or conditions that the LPA will be required to adhere to in the ongoing project contract award and construction process.

As soon as the ROW in contention has been acquired and/or settled, the LPA shall submit a clear ROW Certificate to the Urban Engineer or the Urban Off-System Coordinator. The ROW Certificate will be forwarded to the NDOR LPA ROW Coordinator for review and he will take it to the ROW Manager for approval. The Urban Off-System Coordinator will send a copy of the approved ROW Certificate to the FHWA. This will be the final step in the ROW process involved with the PIL.

LPA's are required to submit full documentation with ROW Certificates. To do this, please keep the original documents and submit copies to NDOR (originals should be kept on file for a period of three years after project completion). Documentation to be submitted to the NDOR Urban Off-System Coordinator assigned to your city prior to project advertisement is outlined below relative to four basic acquisition conditions:

WHEN NO ADDITIONAL ROW IS REQUIRED FOR THE PROJECT

(i.e., overlay, signing, traffic signals, or any project that can and will be built on existing ROW)

Submittal Requirements:

- ROW Certificate
- A short letter explaining the project

WHEN NEW ROW IS ACQUIRED BY DONATION

Submittal Requirements:

- Donation form
- Contract(s) – ROW, Temporary Easement, Permanent Easement (signed by both the owner and county or LPA official)
- Call Reports, including the fact that the informational booklet was delivered and that the owner was shown the plans and informed of his/her right to have the property appraised and an offer to purchase in writing.
- Negotiator Certificate (each tract)
- Warranty or Quitclaim Deed, Permanent Easement Document – recorded
- Mortgage Release (if appropriate)
- Leasehold Contract (if appropriate)
- ROW Certificate (One per project)

WHEN IT IS NECESSARY TO ACQUIRE ROW BY PURCHASE

Submittal Requirements:

- Appraisal
- Appraisal Review
- Information Letter (copy)
- Contract(s) – ROW, Temporary Easement; Permanent Easement (signed by both the owner and county or LPA official)
- Call Reports, including the fact that the informational booklet was delivered and that the owner was shown the plans and informed of his/her right to have the property appraised and an offer to purchase in writing
- Negotiator Certificate (each tract)

- Proof of Payment (Voucher)
- Warranty of Quitclaim Deed, Permanent Easement Document – recorded
- Mortgage Release (if appropriate)
- Leasehold Contract (if appropriate)
- Administrative Settlement Report (if appropriate)
- ROW Certificate (One per project)

WHEN IT IS NECESSARY TO ACQUIRE THROUGH EMINENT DOMAIN (CONDEMNATION)

Submittal Requirements:

- A copy of the petition filed by your County or LPA Attorney
- A copy of the findings of the Board of Appraisers
- A condemnation report from your attorney
- Proof of payment into the court

All forms referred to above can be found in the “Instructions for Acquiring Right-of-Way on Federal-Aid Projects” and are available on request from the NDOR LPA ROW Coordinator at (402) 479-4490. The ROW Certificates are included at the end of this section.

In order to assure compliance with federal regulations, a written authorization to proceed with ROW acquisition from the NDOR Urban Off-System Coordinator must be received before the LPA can take formal action to acquire property.

80.40 RAILROAD AGREEMENTS

If a railroad exists within the project limits (either parallel to or crossing the roadway), and the project identifies the need for use of railroad ROW, railroad companies will require LPA's to obtain easements and enter into a construction agreement for the work. The LPA must notify the railroad company involved in the event that an easement and/or construction agreement will be necessary. In either case, early coordination with the respective railroad company is a must. These negotiations require an extensive amount of time and early contact with the railroad company will minimize delays to the project.



Agreements or easements are required if a project is within railroad property (either temporarily or permanently) or if a railroad property is impacted by the project (e.g. drainage impact). Railroad insurance is required if the project construction area is within 50 feet of active railroad ROW.

LPA's should not presume that all requests for railroad agreements would be granted by the railroads. For a railroad easement to be granted, the railroad company must deem that the project and the rail line are compatible.

If construction agreements are required, they must be completed by the LPA before the project can be let to contract. Easements must be on file before the LPA is allowed on the property by the railroad. Charges, if any, from construction agreements with a railroad company must be included with the project construction estimate to be considered for reimbursement. Quantities of construction pay items within 50 feet (15.24 m) of an active line must be identified separately for railroad insurance. Contact the NDOR Urban Off-System Coordinator for assistance.

80.50 OCCUPYING STATE RIGHT-OF-WAY

If the project will be built on state-owned ROW, the LPA must secure the necessary permits from the appropriate state authorities. For assistance in applying for a Permit to Occupy State ROW, the LPA should contact their NDOR District Engineer.

80.60 UTILITY REQUIREMENTS

A review of utilities must also be conducted to determine if the project appears to impact any existing public utilities. Agreements may be required if your project impacts a utility. It is the LPA's responsibility to initiate and coordinate meetings to resolve any conflicts and arrive at a mutual satisfactory agreement.

Detailed information on accommodation of utilities can be found in the NDOR "Policy for Accommodating Utilities on State Highway Right-of-Way" published separately from this manual. Copies are available by contacting the NDOR Urban Off-System Coordinator assigned to your city.



80.70 LPA UTILITY RESPONSIBILITIES

The following is a list of responsibilities that LPA's must perform with regard to utilities. Throughout design development, the LPA must coordinate all utility relocations.

- The LPA must notify the NDOR in writing if federal funds are to be used for utility costs as part of the project cost. An estimate must be supplied so funds can be obligated for the project.
- The LPA must review preliminary plans for existing utilities, do a field utility inspection, and note any utilities not shown on the plans.
- The LPA must send design plans and ROW plans to all utilities and request from the utility a detailed cost estimate and rehabilitation plan.
- The LPA must review and approve estimate and rehabilitation plans from affected utilities including LPA-owned utilities.
- The LPA must send a detailed cost estimate to the NDOR if the utility cost is to be a participating project cost.
- The LPA will give each utility written authorization to proceed in relocating or beginning any utility work.

The LPA must prepare a Status of Utility Report and submit it with final plans and specifications (see the sample at the end of Section 90). The Status of Utility Report will become part of the project bid proposal.

80.80 REIMBURSEMENT OF UTILITY COSTS

ONLY NON-BETTERMENT COSTS ARE ELIGIBLE FOR REIMBURSEMENT

Reimbursable Utilities

- Private utilities on private utility easement
- Public-owned utilities on/off ROW inside corporate limits
- Public utilities on private utility easement, outside corporate limits

Non-Reimbursable Utilities

- Public-owned utilities on public ROW outside corporate limits
- Private utilities on existing public ROW

The LPA must make all payments and reimbursements to utilities and then, if federal-aid has been authorized, bill the state for the federal share, usually 80 percent, of the billing as follows:

- The LPA must send a letter verifying work is complete and include a copy of the paid invoice identified by state project and control numbers.
- When utility rehabilitation cost estimate is less than \$100,000, a lump sum payment can be made to the LPA without conducting an audit. The LPA will be reimbursed the full 80 percent, not to exceed the approved estimate.
- When utility reimbursable rehabilitation cost is greater than \$100,000, the NDOR will pay 95 percent of the 80 percent of the estimated cost.
- Upon receipt of final billing from a utility, the LPA will submit a final invoice detailing progress payments, final payment request and total rehabilitation cost.
- Upon receipt of final cost, a cost audit may be conducted by the NDOR. If the audit contains citations, a copy will be sent to the LPA for additional information to justify the citation costs.
- After resolving citations, the NDOR will pay final retention of eligible federal share to the LPA.

Some utility rehabilitation is best handled separately by the utility owner that then bills the LPA. Reimbursement for these expenses is the same; the LPA pays the cost, and then bills NDOR for reimbursement of the federal share.

Right of Way Certificate for County or City Federal-Aid Highway Project

*(This certificate must be furnished to the Department of Roads
before a project can be advertised for letting.)*

To: The Nebraska Department of Roads

Federal-Aid Project No.:

Name of Project:

Description of Project:

This is to certify that the necessary right of way for said project has all been acquired in compliance with the provisions of Title III of the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**.

All encroachments, including improvements and signs,
(No Encroachments / have / have not)
been removed from the right of way or provisions been made for
(have / have not)
their removal by
(Date)

All necessary moving, lowering, or rearranging of pipelines, pole lines, and other utility lines have been completed or provisions made for such work to be completed by
(Date)

Relocation assistance required for this project.
(was / was not)

If relocation assistance was required, the necessary action to comply with Title II of the **Uniform Relocation Assistance and Real Property Acquisition Policies Act** of 1970 has been performed by the State of Nebraska, Department of Roads, Relocation Assistance personnel and certified accordingly.

The right of way is now available for immediate construction, and it is recommended that said project be advanced to letting stage.

Dated this day of, 20 ..

CITY OF

ATTEST:

CERTIFIED BY:

(City Clerk)

(Title)

If there are any exceptions, list and explain fully on the reverse side.

If there are encroachments, list on the reverse side, also.

Right of Way Certificate For County or City Federal Aid Highway Project

*(This certificate must be furnished to the Department of Roads
before a project can be advertised for letting.)*

TO: THE NEBRASKA DEPARTMENT OF ROADS

FEDERAL AID PROJECT NO.:

NAME OF PROJECT:

DESCRIPTION OF PROJECT:

.....

.....

This is to certify that **NO new right-of-way** was required on the above captioned project.

All encroachments, including improvements and signs,
(No Encroachments/have/have not)

been removed from the right-of-way or provisions
(have/have not)

been made for their removal by.....
(date)

CITY OF COUNTY OF.....

CERTIFIED BY:

.....

Title.....

ATTEST:

.....
(City or County Clerk)

If there are encroachments, list on additional page.

**THIS CERTIFICATE TO BE USED ONLY WHEN NO ADDITIONAL RIGHT OF WAY
IS NEEDED TO COMPLETE THE PROJECT.**