

INSTRUCTIONAL MEMORANDUMS

To Local Public Agencies



To: Counties and Cities	Date: February 29, 2016
From: Office of Local Systems	I.M. No. 3.605
Subject: Right-of-Way Acquisition	

Contents: This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to acquire right-of-way for State or Federally funded transportation projects. Topics addressed include right-of-way resources, acquisition procedures, and Federal-aid participation in right-of-way costs. This I.M. also includes the following attachments:

- [Attachment A](#) – Compensation Estimate Procedures
- [Attachment B](#) – FHWA Authorization of Right-of-Way Costs Flowchart
- [Attachment C](#) – Early Right-of-Way Acquisition Process Flowchart

Resources

There are numerous Federal and State laws and regulations concerning the acquisition of real property for transportation projects. The primary Federal law is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended. The Federal regulations that implement the Uniform Act are found in Part 24 of Title 49 of the Code of Federal Regulations ([49 CFR 24](#)). There are also a number of State laws that pertain to transportation projects. The rules that implement the requirements of these laws are found in 761 Iowa Administrative Code, Chapter 111, Real Property Acquisition and Relocation Assistance ([761 IAC 111](#)).

Because of the number and complexity of the Federal and State laws and regulations pertaining to right-of-way acquisition, the Iowa DOT Office of Right of Way has provided the Local Public Agency Manual ([LPA Manual](#)) to assist local agencies. The LPA Manual provides detailed guidance, forms, documents, and other information for nearly all aspects of the right-of-way process.

Please Note: This I.M. only supplements the information contained in the LPA Manual. LPA staff responsible for right-of-way acquisition should become thoroughly familiar with both this I.M. and the LPA Manual. In addition to the LPA Manual, several other publications and brochures for use by LPAs are available on the [Iowa DOT Office of Right of Way web page](#).

Besides these publications, the Office of Right of Way, Property Management Section has several Local Public Agency Coordinators (LPAC) that are available to assist LPAs with their right-of-way acquisitions. Before beginning any right-of-way activities, the Iowa DOT strongly recommends contacting the appropriate LPAC for assistance. To contact the appropriate LPAC, call the Property Management Section at 515-239-1300 or refer to the [Local Public Agency Coordinators web page](#).

Acquisition Procedures

General

For projects that receive either Federal or State funding assistance in any part of the project, the LPA shall follow the procedures outlined in the [LPA Manual](#). The procedures in the LPA Manual are designed to ensure compliance with both the Federal and State laws. In addition, because the State laws always apply and are very similar to the Federal laws, the Iowa DOT recommends that locally funded projects also follow the procedures in the LPA Manual.

Unless specified otherwise in the project agreement between the LPA and the Iowa DOT, the LPA is responsible to ensure that all right-of-way acquisition activities for the project comply with the applicable Federal and State requirements. To comply with these requirements, it is essential for the LPA to have staff qualified in these procedures, or hire a qualified consultant to provide these services. For more information concerning these qualifications, refer to the “Qualifications of Right of Way Personnel” section in Chapter 1 of the LPA Manual or the appropriate LPAC.

Valuation of Right-of-Way

In general, acquiring right-of-way will require appraisals that are prepared and reviewed by qualified appraisers. However, for minor, uncomplicated acquisitions that do not exceed \$10,000, an alternative valuation method referred to as the Appraisal Waiver or Compensation Estimate may be used. This method is described in Chapter 3 of the [LPA Manual](#). Additional information and instructions are provided in [Attachment A](#), Compensation Estimate Procedures.

Special Considerations for Federal-aid Projects

Before beginning any right-of-way activities on a Federal-aid project, there are several important points to consider:

1. All State and Federal laws pertaining to right-of-way acquisition still apply, even if no Federal funds are used for the costs of acquiring right-of-way.
2. If Federal participation is desired in the costs of any right-of-way activities, those activities may not begin until after written notification of FHWA Authorization is received from the Iowa DOT. The cost of any work that occurs prior to FHWA Authorization is not eligible for Federal participation. For more information, refer to the “Federal Participation in Right-of-Way Costs” section below.
3. If Federal participation is desired in the costs of any right-of-way activities, most right-of-way activities may not begin until after written notification of Environmental Concurrence is received from the Iowa DOT. However, a limited number of activities may begin prior to Environmental Concurrence. Refer to the subsections below for an explanation of both types of activities. If Federal-aid will not be used in the cost of acquiring right-of-way, acquisition activities may begin prior to FHWA Environmental Concurrence. However, such acquisitions cannot affect the National Environmental Policy Act (NEPA) decision making process. For more information regarding the Environmental Concurrence process, refer to [I.M. 3.110](#), Environmental Concurrence Process.
4. Negotiations may not begin with a property owner until after the LPA has established and approved the amount of just compensation that will be offered. This amount shall not be less than the fair market value of the property, as determined by either an appraisal, or if appropriate, the Compensation Estimate method.

Federal-aid Participating Right-of-Way Activities Allowed Prior to Environmental Concurrence:

1. Title search and property mapping necessary for completion of the Environmental Concurrence process.

In order to assess the potential environmental impacts of a project, it may be necessary to obtain some of this information. Such work may be conducted as part of the other preliminary engineering work associated with the environmental reviews or studies.

2. Preparation of cost estimates, property descriptions, and appraisals.

While this is allowed, the LPA should exercise caution in performing this work. Since the outcome of the Environmental Concurrence process may affect the project’s right-of-way needs, such work should only be completed on those parcels that are common to all of the project alternatives currently being considered. In addition, preparing appraisals too far in advance of Environmental Concurrence may require the LPA to update or reappraise by the time negotiations may begin, thereby adding unnecessary time and expense. In all cases, such work completed shall not be given any consideration in selecting the preferred project alternative.

3. Early Acquisition.

Under certain circumstances, negotiation and acquisition of right-of-way for Federal-aid projects may begin prior to receipt of Environmental Concurrence. These circumstances are limited to two specific situations: 1) hardship acquisitions, and 2) protective buying. For additional information concerning these situations, refer to the “Advanced Acquisitions” section in Chapter 2 of the [LPA Manual](#).

To request approval to proceed with early acquisitions, follow the process shown in [Attachment C](#), Early Right-of-Way Acquisition Process Flowchart. The early acquisition request shall also include the following:

- A cover letter or e-mail that includes the Iowa DOT project number and a general description of the project.
- If available, right-of-way plan sheets showing the parcels to be acquired, identified by property owner name or parcel number.
- For each parcel requested, include a description that includes the property owner's name, address, and parcel number (if right-of-way plans have been developed).
- If Federal-aid reimbursement will be requested for the costs of early acquisitions, a cost estimate that includes the acquisition and any related incidental costs for each parcel.
- For each parcel requested, include a copy of page 2 of the Concept Statement ([Form 517001](#)) with questions 9.a-9.e completed, as they pertain to that parcel. To complete these questions, refer to [I.M. 3.007](#), Concept Statement Instructions. For more information regarding potential historic properties, refer to [I.M. 3.110](#), Environmental Concurrence Process and [I.M. 3.114](#), Cultural Resource Regulations.
- For each parcel that is requested on the basis of hardship to a property owner, include a written request, signed and dated by the property owner, that a) demonstrates a hardship on the basis of health, safety, or financial reasons; and b) documents an inability to sell the property because of the proposed project, at a fair market value, and within a time frame that is typical for other properties that will not be impacted by the project.
- For each parcel that is requested on the basis of protective buying, include sufficient documentation to demonstrate that development of the property is imminent and such development would limit future development of the proposed project (e.g., development would result in significantly higher costs to acquire the property).

Right-of-Way Activities Not Allowed Prior to Environmental Concurrence:

1. Negotiations with affected property owners (except as part of an approved early acquisition).

As part of the public involvement process, affected property owners should be made aware of possible impacts to their property. However, such contacts may not include any discussions concerning the details of a possible acquisition, such as the amount of compensation or other terms of a potential offer.

2. Acquisition of any property rights (except as part of an approved early acquisition).
3. Relocation of persons or businesses (except as part of an approved early acquisition).

Federal Participation in Right-of-Way Costs

To request Federal participation in right-of-way costs, follow the process illustrated in [Attachment B](#), FHWA Authorization of Right-of-Way Costs Flowchart. Additional details and guidance concerning this process is provided below.

Eligible Activities and Costs

In general, Federal funds may participate in the costs incurred by the LPA in acquiring right-of-way necessary for the project, provided FHWA Authorization has been obtained, Environmental Concurrence has been received, and the appropriate acquisition procedures have been followed. In most cases, eligible costs are limited to the direct costs of right-of-way acquisition. Several types of eligible costs are further described below:

1. Right-of-way services.

Right-of-way services include the cost of all activities necessary to acquire the project right-of-way. Examples of such services include conducting negotiations and / or acquisitions, preparing preliminary surveys or plats, appraisals, title searches, property descriptions, or purchase contracts. These services may be provided by either LPA staff or by a consultant, provided they possess the necessary experience and qualifications.

To request Federal-aid participation in the cost of right-of-way services provided by an LPA, follow the process outlined in [I.M. 3.310](#), Federal-aid Participation in In-House Services. If the LPA desires to receive Federal reimbursement for its indirect costs, the indirect costs must be developed in accordance

with the requirements of [2 CFR Part 200](#). This requires submittal of a cost allocation plan for review and approval by the Iowa DOT and the FHWA. If Federal participation in indirect costs will be requested, contact the Administering Office for assistance.

If the Federal-aid participation in the cost of right-of-way services provided by a consultant is desired, and those services will be provided as part of a contract that includes architectural or engineering services, the contract must be obtained using a qualifications-based selection process. In this case, follow the process outlined in [I.M. 3.305](#), Federal-aid Participation in Consultant Costs.

If the right-of-way services are not part of a contract that includes architectural or engineering services, then the procedures outlined in I.M. 3.305 are recommended, but not required. Contracts that involve only right-of-way services may be obtained without using a qualifications-based selection process.

2. Real property acquisition.

These include the actual costs paid by the LPA to secure the title or necessary rights to the property. In general, only property that is actually incorporated into the project is eligible for Federal participation. However, there are a few exceptions, as listed below:

- Permanent or temporary easements outside the project right-of-way
- Property acquired for storage of construction materials
- Acquisitions of property to a logical boundary
- Property acquired for disposal of hazardous materials
- Property acquired for environmental mitigation or banking
- Property acquired for last resort housing

In addition to the actual costs of property acquisition, costs incidental to such acquisitions are also eligible. These include:

- Preliminary surveys and plats
- Appraisals and review appraisals
- Right-of-way cost estimates
- Relocation planning
- Right-of-way plans
- Title work
- Administrative settlements made in accordance with [49 CFR 24.102\(i\)](#), legal settlements, court awards, and costs incidental to the condemnation process
- Other costs directly related to real property acquisition

3. Relocation assistance.

These include the relocation assistance payments required by [49 CFR 24](#). If State laws require payments in excess of those required by the Federal regulations, those payments are also eligible. For more information about relocation assistance payments, refer to Chapter 5 of the [LPA Manual](#).

4. Damages.

These include the reduction in value to remaining real property resulting from a partial acquisition.

5. Property management.

These include the LPA's net costs to manage real property prior to and during construction to provide for maintenance, protection, and the removal and disposal of improvements upon the property, until final project acceptance. For more information, refer to Chapter 7 of the [LPA Manual](#).

6. Uneconomic remnants.

These include the costs of acquiring the remainder of a partial property acquisition for the project, when required by the Uniform Act. Note: Disposal of uneconomic remnants acquired by the LPA may require a credit to the Federal funds used. For more information, see the discussion under the "Excess Right-of-Way" subsection below.

7. Access rights.

These include the costs of obtaining full or partial control of access to an existing highway, as allowed by applicable State laws.

8. Utility and railroad property.

These include the costs of providing replacement right-of-way for railroads or utilities when their operations or facilities are impacted by the project's right-of-way needs. Non-operating utility or railroad property required for the projects is also eligible, and shall be acquired in the same manner as privately owned property.

FHWA Authorization Request

The LPA's request for FHWA Authorization shall include the following:

1. A cover letter or e-mail that includes the Iowa DOT project number and a general description of the project.
2. A description of the parcels to be acquired that includes the property owner's name, address, and parcel number for each parcel.
3. Plan sheets showing the parcels to be acquired, identified by property owner name or parcel numbers.
4. A cost estimate that includes both a total cost and a breakdown of the acquisition and any related incidental costs for each parcel.

Ordinarily, the request should include all parcels that will be acquired for the project. If for any reason the request does not include all parcels, the LPA must recognize that authorization for any remaining parcels will have to be submitted separately, and the costs associated with those remaining parcels may not be incurred until a subsequent FHWA Authorization request is submitted and approved. If the LPA proceeds with any activities associated with parcels not already authorized, the cost of those parcels will not be eligible for Federal participation. *Therefore, the Iowa DOT strongly recommends that requests for FHWA Authorization of right-of-way costs include all parcels to be acquired.*

Reimbursements

After authorized and eligible costs have been paid by the LPA, a request for Federal-aid reimbursement may be filed with the Iowa DOT Administering Office. The LPA's request for reimbursement of right-of-way costs shall include the following:

1. An original, signed cover letter that includes the Iowa DOT project number and a general description of the project. The cover letter should also include a statement that all costs submitted for reimbursement have been incurred in accordance with the applicable Federal and State requirements and have not been previously requested for reimbursement.
2. An itemized statement of costs requested for reimbursement, include a description for each.
3. Documentation to support the costs requested for reimbursement, as described below:
 - For acquisitions of property, include copies of the executed purchase agreements that show the amount paid by the LPA.
 - For right-of-way services provided by the LPA, include copies of timesheets that show the hours worked on the project by LPA staff members, their cost rates, and if previously approved, the associated indirect costs.
 - For right-of-way services provided by a consultant, and other direct incidental right-of-way costs, include copies of the invoices received and copies of the check register showing the payments made for each.

Federal Approvals

For certain actions, review and approval by both the Iowa DOT and FHWA is required. These are briefly described below:

Excess Right-of-Way

If Federal funds participate in the acquisition of right-of-way, and that right-of-way is later disposed of because it is no longer needed for the project, FHWA approval must be obtained. In such cases, a corresponding

credit to the Federal share of the costs of such right-of-way may be required. In addition, if the property is disposed of at less than fair market value, this must also be approved by FHWA. Therefore, before acquiring any excess right-of-way, the LPA shall consult with the Administering Office. For additional information, refer to the "Other Useful information" section in Chapter 7 of the [LPA Manual](#).

Federal Land Transfers

For projects on the National Highway System, if the LPA will be acquiring any property interests owned by the United States, the process prescribed under [23 CFR 710 Subpart F](#) must be followed.

Function Replacement

If a project on a Federal-aid highway requires the use of publicly owned real property, including land and/or facilities, the LPA may receive Federal participation in the costs of a functional replacement of the property or facilities. To receive Federal-aid reimbursement for these costs, the process prescribed [under 23 CFR 710.509](#) must be followed.