

Process Elements:

This subsection emphasizes the key elements, which comprise the process as well as references to applicable Federal law and regulations. It is important to note, however, that all of the information that may comprise a specific acquisition process may not be included. Please refer to the **ADOT Right of Way Manual**.

Timing of Acquisition:

Right-of-way appraisal and acquisition can commence only after environmental and public hearing requirements have been satisfied, ADOT/FHWA approvals (Authority to Proceed) (ADOT form AZPR2X) received, and a design decision made by the LPA. (23 USC 128; Federal Aid Policy Guide, Parts 710-777; ADOT Action Plan)

However, if field investigations are required to be conducted on private property in order to obtain the data necessary for completion of the environmental document, the LPA may obtain temporary Rights-of-Entry (RE) to carry out the required field investigations (LPA **MUST** run the RE by ADOT).

Public Information Brochure:

The LPA is required to give the property owner an explanation of the acquisition procedure(s). The explanation can be accomplished through the presentation of a brochure that adequately describes the acquisition policy under Federal and State law (ADOT has examples).

The brochure must also define the property owner's rights, privileges, and obligations under these same laws. (49 CFR 24.102(b); 23 CFR 712.203(c)).

Right-of-Way Plans:

Plans need to indicate existing and new right-of-way lines, easements, and major structures within 50 feet of the new right-of-way line, slope limits, significant land features, and property lines. A parcel inventory, listing ownership and the area of the acquisition take, is also to be included. (23 CFR)

Title Report:

A Title Report shall be issued by a Title Insurance Company as the basis for a title policy. The title report must show the condition of title as of a specific date. A title report must include a chain of title of not less than five (5) years. It must state all adverse matters that affect the property, who the vested owner (s) are and their status, any separately held ownership and the legal description of the property.

Appraisal:

Each parcel to be acquired shall be appraised unless the valuation is **uncomplicated and the market value is less than \$2500.00**. (49 CFR 24.102 C (2)). The Appraiser **must** be an Arizona Certified General Appraiser and have a working knowledge of the Uniform Act, and all applicable State and Federal rules and regulations.

The property owner **must** be given the opportunity to accompany the appraiser on an inspection of the property. The notice of this opportunity is to be provided by the appraiser who would sign the “Appraiser’s Certificate” and is to be documented in the appraisal. (49 CFR 24.102 (c)).

The LPA may contact the Right of Way Liaison of ADOT’s Right of Way Group to obtain information on selecting Appraisers and Review Appraisers, as well as appraisal formats and specifications.

The appraisal process should include information on floodplain, floodways, erosion hazard, and/or development restrictions that may impact the property. All appraisals shall be dated, signed, and certified by the individual conducting the appraisal. The appraisal report **shall** indicate the date of valuation and the date of the report. The appraiser **shall** clearly define the rights being acquired.

Review Appraisal:

The Review Appraiser **is required** to sign a certificate that specifically sets the recommended or approved valuation, identifies the property reviewed and states the reviewer has no interest in the property reviewed. The Review Appraiser thoroughly reviews the appraisal (s) and makes a written statement of their findings. They also recommend or approve the value (“opinion of value”). (49 CFR 24.104)

Following the appraisal review, the Review Appraiser **must** place a copy of the appraisal report/review into the parcel maintained at the LPA and **must** be maintained for a minimum amount of time as specified in the Uniform Act. (23 CFR 710.201 (f) (1))

Compensation:

A supervisory Official of the LPA responsible for property acquisitions, or their “in house designated Review Appraiser, **shall** approve “Just Compensation” amount for the appraised property. This is a formal action which **must** be done in writing and placed in the parcel file. This establishment of “Just Compensation” **cannot** be passed on to an outside contractor/consultant. (49 CFR 24.102 (d))

Offer:

Once the property is identified as necessary for a public works project, Property is appraised, the appraisal is then reviewed and a determination of “just compensation” has been made. The Right of Way Agent then puts an offer letter together along with a summary statement of that offer (specific language content is in 49 CFR 24 102 (d) and (e)).

The initial offer may not be less than the reviewed appraisal amount; however, it can be more if the LPA determines that a greater amount reflects “Just Compensation” for that property. A summary statement **must** be incorporated in the offer letter or made part of the letter as an attachment. That summary **shall** include; a statement of the amount offered as “Just Compensation. It will include a description and location of said property. It must identify all buildings, structures, and other improvements (which include removable building equipment and trade fixtures) which are included as part of the “Just Compensation”. The offer **must** be presented promptly. (49 CFR 24.102(d)).

The LPA **must** allow the property owner time to consider the offer (minimum thirty (30) days). (49 CFR 24.102 (f))

Counter Offer:

Counter offers must be reviewed by the LPA’s Real Estate manager and a recommendation be prepared for consideration/action by the LPA’s board/council, if applicable. The recommendation **must** include justification (s) of any proposed counter offer. The property owner **shall** be advised that any action taken by the LPA’s board/council regarding the counter offer is advisory only, and only the board/council can approve, accept, or amend the counter offer. (49 CFR 24.102 (f))

Administrative Settlements:

The purchase price for the property may exceed the amount offered as Just Compensation when reasonable efforts to negotiate an agreement have failed. **Only** a LPA official **must** approve such administrative settlement; the settlement **must** be reasonable, prudent and in the public interest. The LPA **must** justify the settlement with written documentation which includes but not limited to, the new amount, any additional information brought forth by the property owner, appraisals, recent court awards, estimated trial costs or valuation problems. A copy of the settlement and all documentation **must** be placed in the affecting parcel file. (49 CFR 24.102 (i))

Payment Prior to Possession:

Prior to the LPA requiring the property owner to vacate the premises, the LPA **must** pay the agreed purchase price. However, in the case of condemnation, the LPA **shall** deposit with the court an amount that is not less than the LPA’s approved appraisal market value of the property, or the court award of “Just Compensation”. The LPA may, in certain cases, get a “Right of Entry” for construction purposes prior to making the payment. (49 CFR 24.102. (j)), however, the “Right of entry **must** be approved by ADOT R/W.

Negotiator's Log/Diary or Agents Contact Report:

The agent/negotiator **shall maintain** a written account of each and every contact relating to the parcel in such detail that if another agent/negotiator had to take the file over, they could just pick it up and continue as he had worked on the parcel file all along. The log/diary shall show the date of contact, person contacted and the matters discussed and any and all outcomes. It must also provide an accurate record of communications and the log/diary must show that the acquisition was done in an appropriate manner. The log/diary must be signed/initialed at the bottom of each page by the agent and if more than one agent all must sign and designate who made the entry. (49 CFR 24.9 (a))

Relocation Assistance:

Relocation assistance is required if acquisition necessitates the removal of persons or personal property. When a LPA plans for relocation, everyone occupying the property is presumed to be eligible for relocation services and benefits. The LPA must pay to move personal property located within the newly acquired right of way (or improvements). Relocation advisory assistance must be offered to displaced individuals, families, businesses, farms, and non-profit organizations. (49 CFR 24. 201-209) and (Public Law (P.L.) 91-646, Title II)

Notices for Relocation:

The LPA shall give all lawful occupants a "Notice of Relocation Eligibility" promptly in writing, at the initiation of the acquisition. This notice informs the occupants of their right to relocation assistance. The LPA shall not require any lawful occupant to move unless they have received at least a ninety (90) day written notice of the earliest date they may be required to move. The LPA must have comparable replacement housing available at the 90 day notice. If comparable housing is not available at the time of the 90 day notice, the notice must clearly state that the occupant will not have to move any earlier than 90 days from which a comparable replacement is available. (49 CFR 24.203(c))

Rental of Acquired Property:

Rentals charged by the acquiring LPA shall not exceed the fair rental value for a short-term occupier. (49 CFR 24.102(m))

Inverse Action:

A property owner shall not be forced to institute a legal proceeding to prove the taking of his/her property. (49 CFR 24.102 (1))

Uneconomic Remnant:

The LPA shall offer to acquire uneconomic remnant(s) created by a partial property acquisition. (49 CFR 24.102 (k))

Buildings, Structures, Improvements:

The LPA must acquire (or offer to acquire) the same interest in an existing improvement as is acquired in the property if the improvement is to be removed or is adversely affected by the acquisition.

For the purpose of acquisition, the improvement shall be considered a part of the property and payment for the improvement shall be its contributory value as part of the whole property or its salvage value, whichever is greater. (49 CFR24.105 (a))

Tenant-Owned Improvements:

Tenant rights shall be recognized in the appraisal. This may require a separate offer to the tenant based on a review of the tenant's lease agreement. Refer to regulations found in 49 CFR24.105 (a). LPA projects will base compensation on a unified fee valuation. The property owner shall be responsible for determining any leasehold.

Incidental Costs of Title Transfer:

The LPA shall reimburse the property owner for all reasonable expenses incurred for: Recording fees, escrow fees, prepayment penalties, pro-rata portion of property taxes, and similar expenses in conveying the property to the acquiring LPA.
(49 CFR24.106)

Litigation Expense:

The LPA shall pay certain owner's costs in a condemnation proceeding if: The final judgment is that the LPA cannot acquire the real property by condemnation; or the proceeding is abandoned by the acquiring LPA. The LPA shall be required to pay similar costs if an inverse action is decided in favor of the plaintiff owner.
(49 CFR 24.107)

Civil Rights:

All acquisition activities in connection with a Federal-aid highway project must be accomplished in accordance with Title VI of the Civil Rights Act of 1964 and 23 U.S.C. 324 and (23 CFR 710.401 et seq.)

Right-of-Way Certification:

A Right-of-Way Certification is prepared upon completion of the acquisition of all of the parcels required for the project. The completed certification is transmitted to the ADOT R/W Liaison. The ADOT R/W Liaison then writes a Right of Way Clearance memo and sends it to the LPA who return places it in the general right of way project file. When a project does not have any new right of way needed, the Right of Way verification and Clearance memo may be generated at the ninety to ninety-five percent (90-95%) design stages.
(23 CFR 635.309 (c))

Negotiated Items Affecting Construction:

The Project Manager shall be provided a copy of all agreements that may require the inclusion of work into the construction plans and/or specifications.