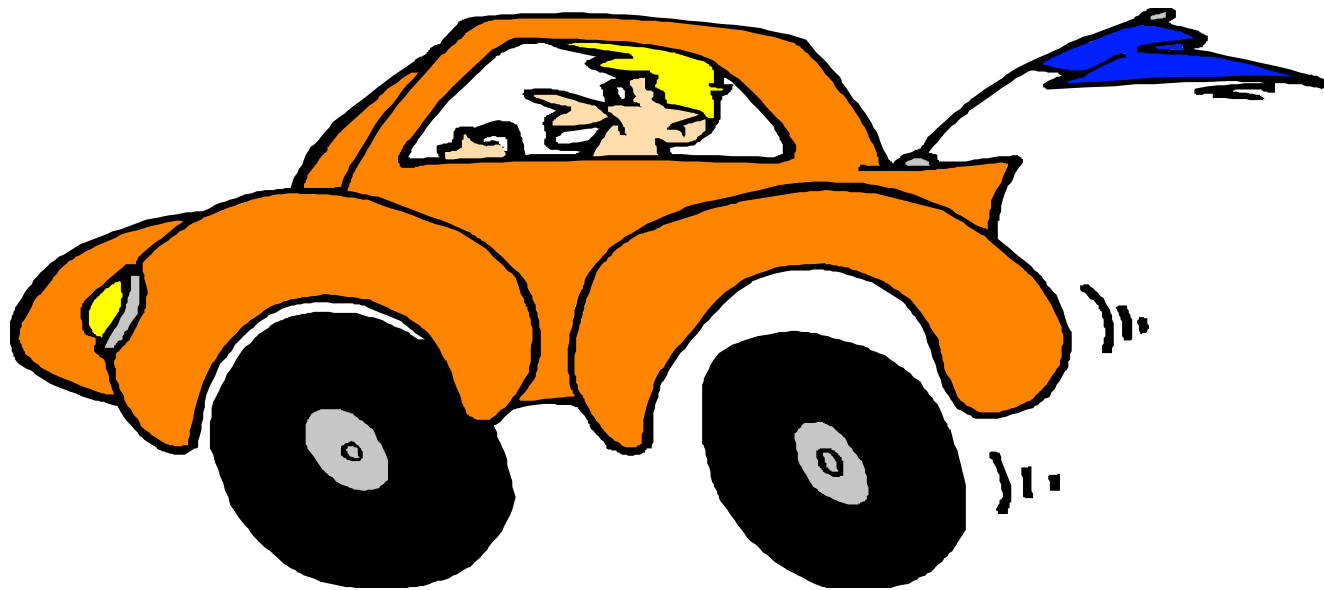




Arizona Department of Transportation Right of Way Workshop

**ADOT = The Standard of Excellence for
Transportation Systems and Services.**



By Louis Malloque,
ADOT Liaison to the Local Public
Agents

ADOT Right of Way Workshop

The Local Public Agents, Acquisition, and The Uniform Act

Right of Way

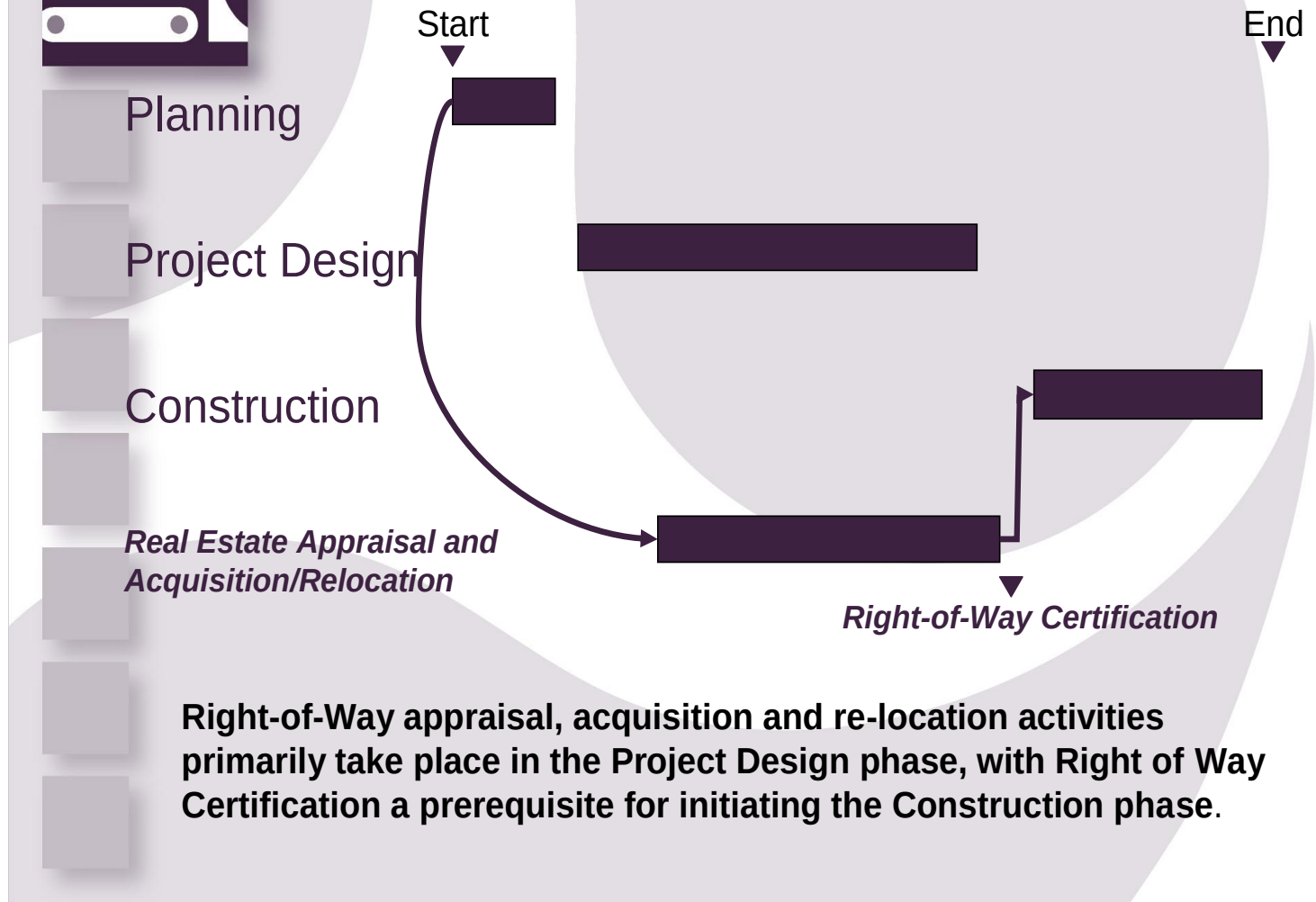
ADOT Contact:

**Louis J. Malloque, Arizona Department of Transportation
Right of Way Agent III,
ADOT Liaison to the Local Public Agents
(602) 712-8755
lmalloque@azdot.gov**





Project Development Timeline



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There are Five Basic Phases to a Project

1. Planning Phase:

Surveying and initial property descriptions.

General right-of-way cost estimates.

Analysis of impacts and solutions for Relocation issues, if any for landowners or tenants. (Socio-economic data will be used in environmental assessment process and for cost estimates).

Pre-coordination with utilities – planning, right-of-way/easement acquisition, and relocation.

2. Environmental Phase:

Conduct environmental studies

Obtain approval of the NEPA document (National Environmental Policy Act of 1969).

Public involvement

Obtain “Authorization to Proceed” from FHWA for Preliminary Engineering (PE)



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3. Design Phase:

Survey and complete property descriptions.

Finalize right-of-way requirements.

Finalize right-of-way cost estimates.

Address whether project construction features will be considered in lieu of payment of appraised damages to remaining property.

Suggested DCR (section coordination meeting to value R/W requirements and their possible conflicts)

If context sensitive design is an objective on the project, ensure that it is communicated to those doing the valuation and acquisition on the project so that the benefits thereof can be communicated to the property owners.

Perform advance acquisition of hardship cases and protective purchases of properties that could potentially be developed and compromise the project location. (This could be done during the Planning Phase also if necessary).

4. Right-of-way Acquisition Phase:

LPA obtains an "Authorization to Proceed" (AZPR2X) from FHWA through ADOT.

Appraise, negotiate, and acquire all needed properties when design is sufficiently complete.

Relocate all landowners and/or tenants.

Manage acquired properties to achieve the greatest net return to the project until construction begins.

▪



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4. Right-of-way Acquisition Phase Continued

Complete administrative settlements or file eminent domain proceedings to settle through condemnation

Certification of right-of-way acquisition for project addresses two issues as follows:

LPA owns or controls all right-of-way necessary to build the project.

Exceptions require ADOT/FHWA approval and are explained in detail along with the discussion of availability dates of when it will be owned or controlled and (23 CFR 635.309(c))

All right-of-way acquisition and relocation assistance has been carried out in compliance with the Uniform Act and the State's Uniform Act assurances. (23 CFR 635.309(c))

LPA submits a "Certification of Right of Way" to ADOT for review and ADOT issues a Right of Way Clearance if proper.

5. Construction Phase:

Coordinate completion of acquisition and/or control of any exceptions that were listed in the earlier Right-of-way Certification. Address any construction related issues with landowners adjoining the project.



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5. Construction Phase Continued:

Manage any excess land owned, including remnants acquired, that is not being used temporarily by the contractor.

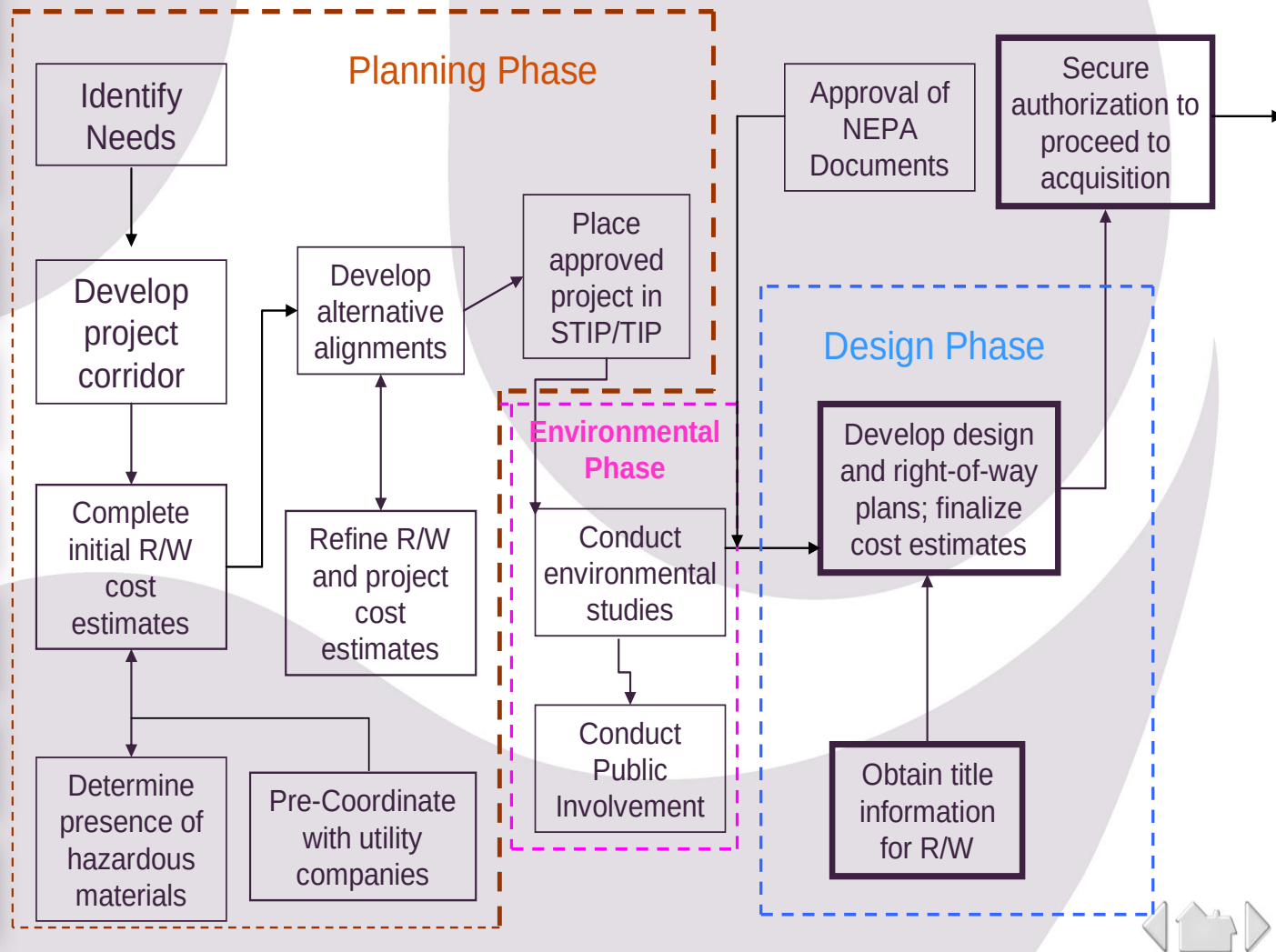
Ensure that any construction features that were agreed to in any right-of-way settlement or environmental commitment are accomplished.



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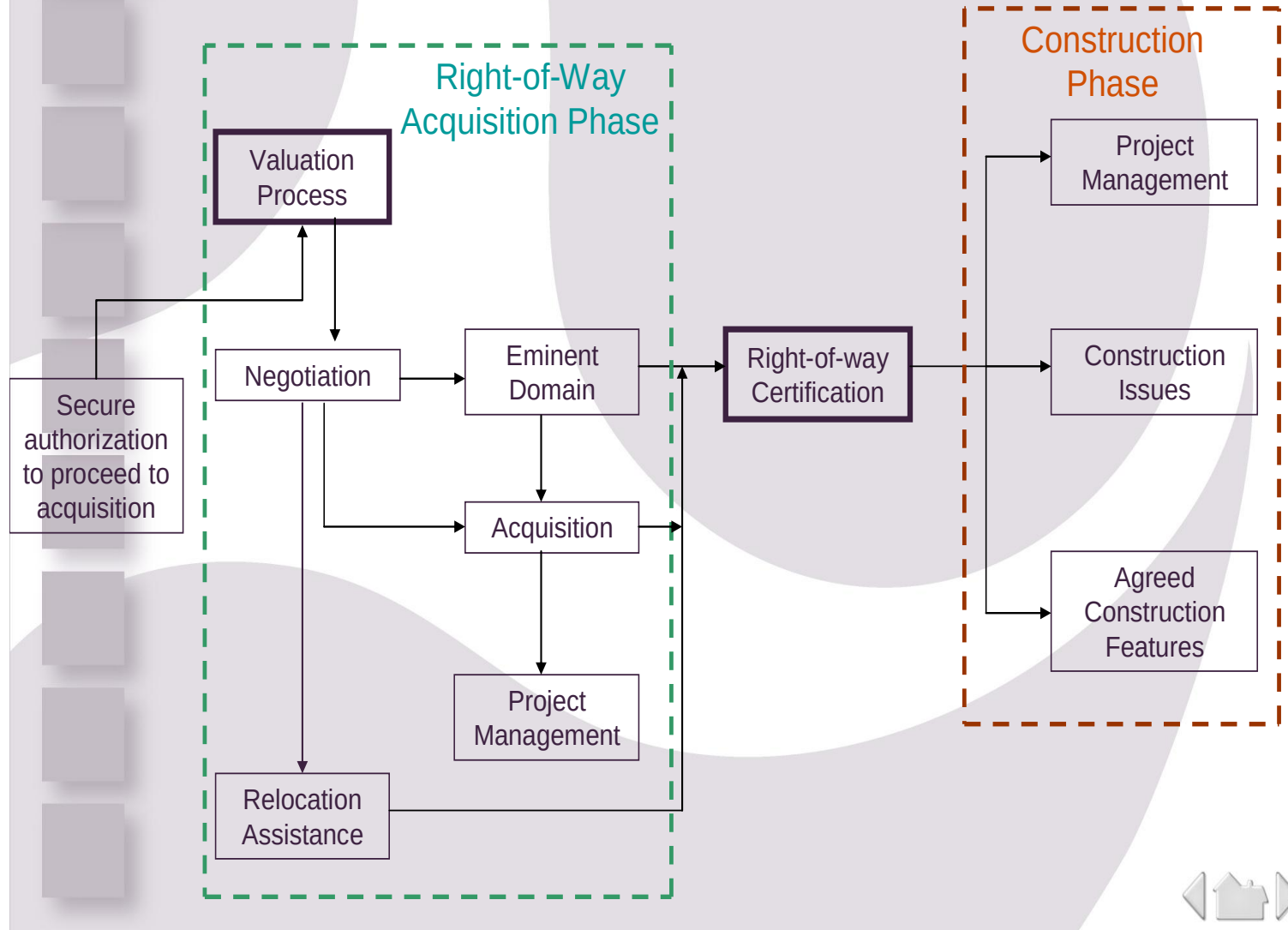
Project Development Activities



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Project Development Activities (Cont'd)



The Appraisal Process



Definition of an Appraisal

“A written statement, independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.” [Title 49 CFR 24.2(a)(3)]



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Why do we need an appraisal? It goes back all the way to the 5th Amendment to the U.S. Constitution: “No person shall...be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.”

The U.S. Congress passed the “Uniform....Act of 1970” to provide for Just Compensation, fair and equal treatment for all citizens having private property that was needed for public purposes. Then 49CFR was the regulation written to implement the Uniform Act.

The regulations in 49CFR discuss Just Compensation, and one of the requirements to determine Just Compensation is an appraisal of the property involved.

So, if any of the Cities, Counties or ADOT or even any of the Indian Nations wants ***federal money*** for a project that involves taking private property for public use, *federal laws* and regulations must be followed. So let’s look at the appraisal/Just Compensation issues.



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Appraisal/Just Compensation Issues:

_____ Before ordering an appraisal the agency must have the Environmental Clearance

and the FHWA's "Authorization to Proceed" documents.

_____ Be sure the appraiser is State Certified in the state the project is located. Also does

the appraiser has Eminent Domain experience?

_____ The appraiser gives an opinion of (Fair) Market Value, but **not** Just Compensation

The acquiring agency must develop a "**Scope of Work**" (Statement of Work) as a contract document with the appraiser. The Scope of Work is a written set of expectations that form an agreement or understanding between the appraiser and the agency as to the specific requirements of the appraisal, resulting in a report to be delivered to the agency by the appraiser. It includes identification of the intended use of the appraisal and the intended user; the appraisal problem; the definition of (fair) market value; statement of assumptions and limiting conditions; and certifications. It should specify performance requirements, or it should reference them from another source, such as the agency's performance requirements of the appraisal.



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Either the appraiser or the agency may recommend modifications to the initial Scope of Work, but both parties must approve changes.

The following items are minimum Scope requirements for the appraiser by FHWA.

The appraiser must, at a minimum:

_____ Provide an appraisal meeting the agencies definition of an appraisal as in the ADOT manual or for fed work in 49 CFR 24.2(a) (3)

_____ The owner of the property (or representative) must be afforded the opportunity to accompany the appraiser on the inspection of the property. (See ADOT manual)

_____ Describe the extent of inspection of the subject property, including: inspection of the neighborhood and proposed project area; inspection of subject property, including interior and exterior areas; the level of detail of description of the physical characteristics of the property being appraised (and in the case of a partial acquisition, the remaining property), per Manual.

_____ Include a sketch of the property and provide the location and dimensions of any improvements. Also include adequate photographs of the subject property and comparable sales and a location map showing the subject and sales, per Manual.

Scope requirements continued.....



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_____ Below are items usually required by the acquiring agency;
these items are required by ADOT's Manual and Yellow Book (Uniform
Appraisal Standards for Federal Land Acquisitions) as well:
Property rights to be acquired, e.g., fee simple, easement, etc.
Value being appraised (usually market value) and its definition
Appraised as if free and clear of contamination (or as specified)
The date of the appraisal report and the date of valuation
A realty/personalty report is required per **CFR 24.103(a)(2)(i)**
The known and observed encumbrances, if any Title information,
Location, Zoning, Present use, and At least a 5-year sales history of the
property (10-year for Yellow Book)

_____ In the appraisal report, identify the **Highest and Best Use**. If
Highest and Best Use is in question or different from the existing use,
provide an appropriate analysis identifying the market-based Highest
and Best Use.

_____ Present and analyze relevant market information, this would
include, but not be limited to: research and analysis of, inspection of and
verification of comparable sales used. See ADOT Manual or Yellow
Book.



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_____ Address **Project Influence** and disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project.* This will be a Jurisdictional Exception in regard to USPAP, as it is requirement of the FHWA and the Yellow Book.

_____ The appraiser will report his or her analysis, opinions and conclusions in the appraisal report.

•not in “Statement of Work”.

_____ The appraiser will report his or her analysis, opinions and conclusions in the appraisal report.

•not in “Statement of Work”.

_____ Appraiser must state the **intended use** of the appraisal report. This is usually market value of the property, as of the specified date of valuation, for the proposed acquisition of the property rights specified (i.e., fee simple, easement, etc.) for a Federally assisted project.

_____ Appraiser must state the **intended user** of the appraisal report. This is primarily the acquiring agency, but its funding partners may review the appraisal as part of their program oversight activities.

_____ Cite the applicable definition of (fair) market value. For federal condemnation cases, the Yellow Book definition applies. For cases that would go to state court in Arizona, ARS #28-7091 applies. While they are very similar, definitions for financial institutions such as: FIRREA, Freddie Mac, etc are not acceptable.



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The appraiser shall include a certification; per Yellow Book for appraisals that could go to federal court, or per the ADOT manual for cases that could go to state court. In addition, appraisers may also include a USPAP certification.

_____ The appraiser shall state all *relevant* assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment. All appraisals require a review appraisal process – either by LPA staff, a contract review appraiser, or the Arizona Department of Transportation. The appraisal review is to assure that the appraisal meets the applicable appraisal requirements, then if so, recommend a value for acquisition. The reviewer does **not** set Just Compensation.

A review appraiser is a thoroughly qualified appraiser who is completely familiar with the type of appraisal problem being reviewed and the techniques required to address that problem. The review appraiser will be completely familiar with the agency's appraisal and other relevant requirements. It is very difficult for an individual who does not meet both of these qualifications to provide an appropriately thorough appraisal review for an acquiring agency. After the appraisal and the appraisal review, **the agency official internally approves an amount it believes to be “just compensation”**. This process should be documented in the file. The approval of a **“just compensation”** amount is an agency responsibility and **cannot be delegated** to a private sector contractor. The amount for Just Compensation cannot be less than the appraised value.



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Then the Agency must deliver an offer letter with the amount of Just Compensation, a summary statement of that amount, how they arrived at the amount (appraisal) the letter must be non-coercive and should be hand-delivered, in person from the LPA's agent.

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Take Aways:

Don't order appraisals prior to having Environmental Clearance and FHWA's Authorization to Proceed.

Scope of Work (Statement of Work”) for fee appraiser and fee reviewer.
(Pizza)

Every parcel on the project that needs new right of way to be acquired **must** have 49CFR compliant appraisal and review. (get all the pizza toppings)

The property owner or their designated representative **must** be afforded the opportunity to accompany the appraiser on the property inspection.

Only the Local Public Agency can set what is believed to be “Just Compensation” and must be in a memo and filed

The agency **must** deliver an offer letter with the amount of Just Compensation, a summary statement of that amount, how they arrived at the amount (appraisal) the letter must be non-coercive and should be hand-delivered, in person from the LPA's agent.



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The agency **must** allow the property owner enough time to consider the offer.

Every parcel file must have a signed agent's log/diary in it.

Questions?



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Right of Way Process

All projects that have \$1 or more of Federal funds in any phase of the project are considered to be federalized and all federal rules and regulations must be followed, especially the Uniform Act.

Here are the steps that a federalized project will follow through the right of way process.

- 1. Submittal of project at the DCR stage to Right of Way (this is done by the Local Governments section).**
- 2. Determination of new right of way needed or not.**
 - A. No new right of way = to LPA, right of way will be cleared at 95% Plans stage.**
 - B. New right of way = to LPA, full package and pamphlets are sent explaining the process.**
 - a. Cover letter with the process outlined**
 - b. Pamphlet labeled “Pamphlet for Federal Funding.” This is the full “how to do” source that includes examples, forms, instructions, citations of law, and glossary of terms used.**
 - c. Right of Way Certification form**
 - d. Booklets; (3) “Your Property-Your Highways”, Acquisition, and Relocation (upon request from the LPA).**



Right of Way Process

3. **Request Right of Way Clearance; For “no new R/W” at 95% plans the Right of Way Certification form is filled out by local agency, signed and submitted to ADOT R/W for clearance; ADOT sends R/W clearance letter to project managers and to ADOT Contracts and Specifications section.**
4. **Request Right of Way Clearance; For “new R/W Needed” the following items are necessary in order to clear the R/W:**
 1. Certification of Right of Way form filed out and signed
 2. Copy of appraisal and review of appraisal slip
 3. Copy of offer letters
 4. Copy of summary statements
 5. Copy of 100% plans with new R/W highlighted
 6. Copy of agent's contact log/diary (must be signed)
 7. Copy of all correspondence from property owners
 8. Copy of memo on who set “JUST COMPENSATION” and the \$\$\$ amount
 9. Copy of any administration settlements and their justification in a written memo to file
 10. Copy of any condemnation proceedings and all letters to property owner in conjunction with condemnation
 11. If relocation is involved: need all letters to property owner and any correspondence. Copy of moving estimate and /or self move paperwork; Copy of all final paperwork concerning move



ACQUISITION PROCESS

The private property acquisition process can be divided into five categories or work activities. The following outline shows, in general, the process that takes place during a right-of-way project for the acquisition of private properties for public purposes.

Planning:

- Environmental, including flora and fauna, and archaeological impacts and public involvement

- Right-of-way plan requirements

- Ownership and title data

- Lead time

- Certification Requirements

Appraisals:

- Appraisal requirements

- Appraisal report formats

- Owner accompaniment

- Appraiser qualifications

- Appraiser certification

- Review appraiser responsibilities

- Review appraiser considerations

- Review appraiser qualifications

- Agency approval of appraisal

- Agency official sets “Just Compensation”

Acquisition:

- Written offer and summary statement of “Just Compensation”

- Negotiations



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Acquisition Continued:

Payment before possession (when negotiated or required)

Administrative settlements

Legal settlements

Condemnation

Relocation Process:

Planning

Advisory assistance

Notices, including 90-day notice to vacate (residential, comparable housing must be available at time of notice)

Payments

Residential:

- Owner occupied
- Tenant occupied
- Housing of last resort

Business

- Reconnect fees for utilities
- Professional services
- Impact fees
- Reestablishment fees
- Moving costs (actual or fixed)

Property Management:

Pre-construction

Post-construction



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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**
It can be found at:

www.azdot.gov/highways/row/project.asp



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ADOT Liaison to the Local Public
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RIGHT OF WAY CHECKLIST

This right of way checklist is a guide for use by cities and counties in the acquisition of right of way for federal-aid highway projects. References are made to applicable laws and regulations. The checklist is not intended to be all the information necessary for the acquisition process, but it does emphasize the major steps.

Acquisition of right of way for a federal-aid project is not difficult, but it requires observance of specific rules and procedures. An effort is made in this checklist to reduce these rules to the most concise terms possible. Failure to observe regulations in acquisition of right of way may result in denial of federal funds for the entire project.

Any questions concerning the acquisition of right of way, requests for reference material or requests for preparation of appraisals or appraisal review should be directed to:

**Louis J. Malloque, Right of Way Agent, R/W Project Management Section
at (602) 712-8755 / lmalloque@azdot.gov**



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)

Donations:

The LPA shall inform the property owner of the right to receive just compensation and/or receive an appraisal for the property acquisition/donation. If the property owner desires to donate the property, a written waiver of these rights must be obtained and signed.

(49 CFR 24.108)



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Coercion:

The LPA shall not advance the time of condemnation, defer negotiation condemnation, delay the deposit of funds with the court, or take any other action that could be deemed coercive in an attempt to induce an agreement on the price to be paid for the property.

(49 CFR 24.102(h))

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.



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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. (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))

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.

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))



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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))



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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))

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 can 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. A copy of all documentation and the memo of Administration Settlement must be sent to the ADOT R/W Liaison.

(49 CFR 24.102 (i))



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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 Project Manager. The Project Manager then sends it to ADOT R/W Liaison. The ADOT R/W Liaison then writes a Right of Way Clearance letter and sends it to the ADOT PM, in return he sends it to all who should receive a copy. When a project does not have any new right of way needed, the Right of Way Certification and Clearance letter 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. (i.e. construction features in return for R/W). This must be approved by the ADOT Liaison.

Property Management:

All LPA's must have a good plan for property management. It shall have provisions for maintenance, protection and illegal occupancy. The plan shall incorporate rental and leasing of acquired property if it is not needed immediately. All income produced must be applied to Title 23 Eligible Projects. The plan shall contain strategies for disposal of property that is no longer needed; excess parcels, old right of way, and structures for salvage. Revenue generated must be applied to Title 23 Eligible Projects.

Post Acquisition Property Management:

Record keeping and inventory of the lands, buildings, fixtures, and any other conveyed assets. Sale or lease of excess land. Real property maintenance, including but not limited to, landscaping, clearing, demolition, security, and pest control.



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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. All Right of Entry MUST be approved by ADOT.

(49 CFR 24.102. (j))

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)

Possession:

The LPA is prohibited from requiring a property owner to give up possession until the purchase price has been paid or the estimated compensation has been deposited with the court for the sole benefit of the owner.

(49 CFR 24.102 (j))

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.



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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 CFR24.102 (1))

Uneconomic Remnant:

The LPA shall offer to acquire uneconomic remnants) created by a partial property acquisition. (49 CFR24.102 (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.



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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. LPA projects will base compensation on a unified fee valuation. The property owner shall be responsible for determining any leasehold. Refer to regulations found in (49 CFR24.105 (a)).

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.)



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General Procedures:

The above sections have been designed as a guide for the LPAs to follow in acquiring property while using Federal Aid, not all laws, rules and regulations have been covered in this section. ADOT recommends that all LPAs familiarize themselves with the Uniform Act and all applicable State and Federal rules and regulations. The LPAs can always refer any questions, problems and/or matters to the ADOT Liaison for help and/or clarification.

ADOT has an FHWA approved “Right of Way Manual”, the LPAs by following it, can be assured of conducting the right of way process properly; “any exceptions are noted in the body of this amendment.” The LPAs must set up a general right of way file for each Federal Aid project. They must have an individual parcel file for each separate property owner, unless the same owner owns property that is not contiguous to each other; in that case each property must have its own parcel number and file. Each parcel file must have a completed, signed detailed negotiator’s log/diary. It must be set up in chronological order from oldest to the newest. The parcel file documents must be set up in the same order. If e-mail notes are to be used as documentation, they are also to be in the same chronological order; however, they should be an attachment to the negotiator’s log/diary.

For further information:

<http://www.fhwa.dot.gov/realestate>



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ADOT Liaison to the Local Public
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Relocation:



A Good Relocation Program Has A Logical Balance of Payments and Services

The Current Balance Between Payments and Services



Both Payments and Services are Required by Law and Regulation.



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Overview of the Process

- LPAs must provide relocation advisory assistance and services.
- Residential occupants cannot be forced to vacate until comparable housing is made available.
- Relocation programs consist of four key steps:
 - ◆ Planning relocations.
 - ◆ Issuing notices.
 - ◆ Providing advisory services.
 - ◆ Making benefit payments.



Relocation Planning:

During the early stages of development, an Agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.



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(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Agency should consider housing of last resort actions.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.



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Relocation advisory assistance is offered to displaced individuals, families, businesses, farms and non-profit organizations.

The legislative reasoning behind this requirement is that persons who are displaced should not bear a disproportionate burden for the benefit of the public. Relocation payments and services mitigate this burden.

Residential occupants cannot be required to move until adequate replacement housing has been made available at least 90 days prior to the vacate date.

Notices provide information to assist displaced entities in understanding their benefits and comprehending the impact of the project on them.

General Information Notice – a brochure that provides a general description of the agency's relocation program, including benefits, responsibilities, and protections.

Notice of Relocation Eligibility – a letter sent to an individual when it is determined that person will be displaced. The letter informs the occupant that he or she will be displaced and therefore, will be eligible for relocation benefits.



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90-Day notice to vacate – a letter that informs a person to be displaced, at least 90 days in advance, of the earliest date by which he or she may be required to move. The residential occupant will not be required to move earlier than 90 days prior to having at least one comparable dwelling made available.

30-Day notice to vacate – This applies to situations where an available comparable dwelling was made available at the initial 90-day notice; however, the 90-day notice did not specify a date of displacement. The follow-up 30-day notice gives the displacee 30 days notice of a specific date of displacement, with the displacement date being no earlier than 90 days from a comparable dwelling being made available.



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What is Comparable Replacement Housing

Housing made available to displaced residential occupants that is:

- At least Decent, Safe and Sanitary (DSS).
[49 CFR 24.24.2(a)(8)]
- Functionally equivalent to the displacement dwelling.[49 CFR 24.2(a)(6)]
- Currently available on the market.
- Within the financial means of displaced.





Input

Relocation Process- Businesses, Farms and Non-Profit Organizations

- Interviews with Displacees.

- Offer to Acquire Property.
- Identify Alternative Sites to Buy/rent.
- Plan Move and Dev. Specifications.

- Schedule Move.
- LPA Monitors Move.

Process

Identify
Relocation
Issues

Provide
Advisory
Services

Relocate
Business

Who

LPA Relocation
Specialist

LPA Relocation
Specialist

LPA Relocation
Specialist

Output

- Notice of Relocation Eligibility.

- Assist in Finding Replacement Site.
- Fixed/In Lieu" Payment.
- Searching Costs.
- Reestablishment Costs.
- Moving Estimates.
- Vacate notices.

- Operation Relocated or Discontinued.
- Documentation of Expenses and All Other Aspects of the Move.
- Reimbursement Made of all Eligible Move Expenses.



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Relocation Planning:

Relocation planning identifies what relocation problems may exist, for example:

Business, Farm and NPO displacements.

Will business displacements impact the neighborhood/community adversely?

Are replacement business sites available in the neighborhood, community or immediate area?

Other socio-economic impacts caused by the relocation of businesses.

Some businesses are very difficult to relocate and require special zoning, i.e., salvage yards, adult entertainment, etc. and this needs to be recognized and planned for.

Relocation Agents should:

Conduct personal interviews with potential business displaces.

Develop a working data base of available business relocation sites.

Photograph and document the business inventory

All businesses displaced are entitled to advisory services to assist in finding a replacement business site.

There is, however, not a requirement that the LPA provide or ensure availability of a replacement site for the business, as in the case of a residence.



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Notices:

The notices are the same as for residential displacees except for the availability of an acceptable location; however, every effort must be taken to assist the non-residential occupant to find a suitable location.

Advisory Services

Advisory services are often the most under utilized aspect of relocation assistance.

Advisory services provide displaced businesses with information, counseling, advice, and encouragement and often require repeated and intense personal contact.

The scope of advisory services for businesses include:

Identifying alternative replacement sites for the displaced business.

However, a business can be displaced even though there is no alternative site available.

Information about relocation services and payments:

Assistance with planning complex moves, including such activities as engaging a move planner/coordinator, industrial engineer, etc. to plan and prepare plans and specifications for such a move. Such costs are reimbursable to the business being re-located.

Information about the eligibility requirements for each relevant type of relocation payment.



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Determination of the special needs and preferences of the business to be displaced, i.e., geographic proximity to market/customers, transportation modes, suppliers, etc.

Relocate Business

Agent monitors business move

Complete claim reimbursements

Relocation planning identifies what relocation problems may exist, for example:

Low income occupants.

Shortage of housing.

Disabled residents.

Relocation Agents should:

Conduct personal interviews with potential displacees, both residential and business

Develop a working inventory of available housing for rent or sale.

All persons displaced from residential housing are entitled to another Decent, Safe and Sanitary (DSS) dwelling unit “functionally equivalent” to their present housing



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Notices:

Notices provide information to assist displaced entities in understanding their benefits and comprehending the impact of the project on them.

Advisory services are often the most under utilized aspect of relocation assistance.

Advisory services provide displaced persons with information, counseling, advice, and encouragement and often require repeated and intense personal contact.

The scope of advisory services includes:

Notifications and explanations that no one displaced from a residence can be required to move until a comparable replacement housing is made available at least 90 days prior to the vacate date. This is not the case for the relocation of businesses. In the case of a business, the LPA is only obligated to advise a displaced business about alternative replacement sites in the 90 day notice.

Information about relocation services and payments:

Information about the eligibility requirements for each relevant type of relocation payment.

Determination of the needs and preferences of the person to be displaced.



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Business Relocation

A range of payments and services intended to move the personal property of a business and assist it with reestablishment.

Advisory Assistance

Actual Moving Cost 49 CFR 24.301

- Hauling.
- Packing.
- Disconnect/reconnect.
- Storage.
- Insurance.
- License, permit, certification.
- Payment for damaged or lost/stolen property.
- Professional services.
- Relettering signs.
- Direct loss/substitute property.
- Cost of sale.
- Searching.
- Exterior signs.
- Licenses, fees and permits.
- Studies, testing.
- Impact fees.
- Other.

Reestablishment Payments 49 CFR 24.304

- Code required improvements.
- Modifications.
- Exterior signage.
- Utility Charges.
- Repair/replacement of worn surfaces.
- Advertisement.
- Certain increased costs.
- Other Items..

OR

Fixed Payments 49 CFR 24.302

- Lump sum in lieu of actual cost and reestablishment payments.



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Payments to displaced **residential** occupants include:

Moving costs.

Rental assistance.

Replacement housing benefits:

Price differentials.

Closing costs.

Increased mortgage interest cost payments.

Payments to displaced nonresidential occupants (business, farm, and nonprofit organizations) include:

Moving costs.

Reestablishment costs.

Search expenses.

In-lieu payment.



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Summary of Relocation:

A “Relocation Plan” is required by the Uniform Act.

Relocation costs are not negotiable. They cannot be used in computing the acquisition amount.

There are three different notices received by displaced persons or entities (General Information Notice; Notice of Eligibility; 90 Day Notice).

Know the differences between the residential and non-residential relocation processes.

Know how to differentiate between the business and residential relocation advisory services that LPAs provide to property owners.

You must pay to move personal property located within the newly acquired right-of-way (or improvements) as part of a Federal-Aid Project. Personal property located within improvements acquired as part of a Transportation Enhancement Activity project is typically eligible for move expenses.

Replacement housing must be available at least 90 days prior to requiring a residential occupant to vacate and it must be D S & S.

Everyone (even adjacent occupants) is entitled to relocation advisory assistance.

Pay the relocation costs.



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When in doubt, always (please) contact:

**Louis J. Malloque,
ADOT Right of Way Liaison
Right of Way Group
R/W Project Management Section**

**Arizona Department of Transportation
205 South 17th Avenue,
MD 612E Room 349
Phoenix, Arizona 85007**

**(602) 712-8755
lmalloque@azdot.gov**



**By Louis Malloque,
ADOT Liaison to the Local Public
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Right of Way Process

For “new R/W” needed, the local agency submits the completed Right of Way Certification form along with the following items:

The date the Environmental was completed

The date of the “Authorization to Proceed”

Copy of offer letter.

Copy of the summary statement

Copy of the authorization of who can set “Just Compensation” and what that amount was.

Copy of appraisals and the review appraiser’s sheet.

Copy of acquisition agent’s diary/notes/log.

Copy of recorded documents or paperwork showing any conveyances (Easements, TCEs, Entry Agreements, and or etc.)



Right of Way Process

Copy of any administrative settlements (if any).

Copy (if any) of condemnation proceedings and all letters to property owners in conjunction with legal process.

Copy (if there is relocation) moving estimate and/or self move paperwork, and all final related move paperwork.

Upon review and concurrence of acquisition/relocation submittals, ADOT sends R/W clearance letter to project managers and to ADOT Contracts and Specifications section.

Please ask your ADOT Right of Way Liaison if you need more information:

Louis Malloque (602) 712-8755 / Lmalloque@azdot.gov



SUMMARY

Steps in the acquisition Process for all Local Public Agents

This is the process for all Local Public Agencies (LPAs) to follow when there is a need for “new right of way”. This is a general overview and not an exact account of what takes place and the timing. If you need an exact account of what transpires, please ask your ADOT Right of Way Liaison.

- 1. First and most important step is to have an Environmental Clearance and the “Authorization to Proceed” (AP) for the right of way process that is received from FHWA. The ADOT PM provides this.
 - a) During the Preliminary Engineering stage some approved right of way procedures may begin. Title reports may be ordered and appraisal bids may be requested from State Certified General appraisers. They may not be hired until “Authorization to Proceed” (AP) has been issued by FHWA.****
- 2. When the AP is completed, the LPA may develop the right of way action plan and start putting together an acquisition timeline.**
- 3. LPA may now hire a State Certified General appraiser. LPA should give a copy of title reports to the appraiser along with a scope of work (definition of the appraisal problem).**



Right of Way Process

4. Once the appraisal is completed it is given back to the LPA, they need to have it reviewed by a State Certified General Appraiser (cannot be the same as the appraiser). The reviewer is the one who recommends the value of the “Just Compensation” for the property.
5. The LPA (must be an agency official, not a consultant) concurs by issuing a memo stating the just compensation amount, the name and title of person writing the memo and he places it in the general project file. This is a good time to update the timeline.
6. The LPA can now develop the offer letter and summary statement. In addition to the offer letter and, they may fill out the conveyance documents Deeds, Easements and Temporary Construction Easements if necessary. They will need approved set of R/W plans and then they can package all of this together and make the offer. This should be done in person unless out of town, then send by Certified Mail with return receipt
7. Once the property owner receives and reviews the offer (Federal Regulations say 30 days minimum). If the offer is accepted, the LPA opens escrow. If the owner declines the offer, the LPA may negotiate or initiate Eminent Domain.



Right of Way Process

- If the offer is denied, the LPA may negotiate and they can do an administrative settlement. All settlements must well documented, justified done in memo form, listing who made the decision, the amount of the settlement, signed by person that made the decision and placed into the individual project parcel file. If the property owner accepts the settlement, the LPA opens escrow on this parcel.
- If the owner declines the offer and negotiations, the LPA can start the Eminent Domain process.
8. when all parcels are acquired, the LPA needs to send the filled out Right of Way Certification form along with copies of all supporting documents to the Right of Way Liaison of ADOT. the appraisal, review appraisal, memo of “Just Compensation”, offer letter with summary statement administrative settlement statement, escrow settlement documents and, if there was one. Upon satisfactory review, the Right of way Liaison will issue a Right of Way Clearance letter.



Right of Way Process

Quick Wrap-up

Basic Requirements of the Acquisition Process:

1. Property to be acquired needs an appraisal and the appraisal must be reviewed by a separate appraiser not affiliated with the appraiser.
2. Personal contact must be made with property owner.
3. Provide the owner with a written offer of what is believed to be “Just Compensation” must include a Summary Statement of the offer along with a copy of appraisal.
4. Must give owner time to consider offer (Federal Regulations state minimum 30 days).
5. Conduct all activities in a non-coercive manner.
6. An agent’s contact log/diary must be maintained though out the process.
7. Provide at least a 90 days notice to vacate property and must have comparable housing available.
8. Pay the agreed upon price.



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For More Information

Contact:

Louis J. Malloque

ADOT Right of Way Liaison

Right of Way Group

R/W Project Management Section

Arizona Department of Transportation

205 South 17th Avenue – MD 612E Room 349

Phoenix, Arizona 85007

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[www.azdot.gov/
highways/row/
project.asp](http://www.azdot.gov/highways/row/project.asp)



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