

Basics of Land Acquisition

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Program development of any road bridge project includes the acquisition of right-of-way (R/W). It is the necessary evil which most of you would prefer to avoid, I believe. However, the acquisition of R/W can determine when your project may go to construction letting. It is not something to be brushed aside because ignoring it will not make it go away.

To further add to the R/W evil, the acquisition is governed by federal and state regulations and laws. You have no doubt heard a lot about these regulations in the past three to four years both in our Road School presentations, and the sessions we presented in the fall of 1985. The R/W acquisition manual that was distributed at that time has been revised and will soon be sent to every local agency and consultant on the Division of Local Assistance mailing list as well as the individuals on our lists of approved appraisers, buyers, and relocation agents.

Consider how the R/W phase fits into the development of a given project. Figure 1 shows just when the acquisition of R/W takes place. Project planning and preliminary engineering must be complete before each project is ready for R/W acquisition. Design approval by FHWA is essential before a project may progress from the preliminary engineering stage to the acquisition of R/W. The Federal Highway Administration will not approve the acquisition of R/W before design approval on most projects. There are many reasons for this, but basically, it is their contention that the early acquisition of R/W may tend to influence the final design which may or may not be the most desirable location. So after design approval is given by FHWA, the R/W acquisition phase may begin. My observation indicates that once design approval is achieved most officials expect R/W to be acquired and the project readied for contract letting in a comparatively short amount of time. Giving the R/W phase the attention it deserves and allowing sufficient time for the acquisition is strongly emphasized.

Now, R/W consists of two phases. Namely, R/W engineering and the actual acquisition phase which we refer to as R/W services. Since the majority of you are engineers, I assume that you are most familiar with the engineering phase. You no doubt know that this phase consists of:

1. Abstracting or title search
2. Preparation of final right of way plans
3. Individual plats for each parcel
4. Description of each acquisition
5. R/W stake-out

In addition, our appraisal problem analysis is added to this phase when federal-aid is to be used for the R/W acquisition. I will not go into the details of that particular item but one can read about it in our manual if interested.

PROJECT PLANNING	(2 Years)
PRELIMINARY ENGINEERING	(2 Years)
ACQUISITION OF RIGHT OF WAY	(2 Years)
Right of Way Engineering	
Right of Way Services	
PROJECT CONSTRUCTION	(2 Years)

Figure 1. Timing of R/W Acquisition

Phase II is the actual acquisition of R/W which begins with obtaining appraisals by a competent appraiser, who is familiar with property values in the area or has the expertise to determine the fair market value of the required R/W. A second appraiser must review the appraisal and actually determine the amount of just compensation for the acquisition.

After the appraisers have completed their work and the head of the local agency has approved the amount to be offered each property owner, the property owners are called upon by the buyer for the project and given a written offer for the R/W needed. The property owner then has 25 days to consider the offer and make a decision whether to accept or reject the compensation as determined by the appraisal process.

At this point, condemnation proceedings may be necessary if differences regarding the offer are not resolved. Condemnation consists of the filing with the court by an attorney. The judge then appoints three appraisers who again appraise the property and prepare a report establishing the property value. After the amount of money so designated is deposited with the court, the agency has the right to the property.

Relocation of individuals or businesses is not often necessary on local projects but if total properties are acquired or if the acquisition involves structures, then naturally, the occupants of those structures must be relocated before the R/W way can be considered clear for construction letting.

On a large state highway project, eight years is the average time schedule from the inception of the project to the completion of construction. Two years of this time is allotted to R/W engineering and the actual acquisition of R/W. Now, most local projects are not as large as a state

highway project, so two years may be scaled down according to the amount of R/W to be acquired and the availability of local personnel or a qualified consultant. However, an average local project R/W schedule may look something like the one shown in Figure 2.

PARCELS TO BE ACQUIRED

R/W ENGINEERING	60 DAYS
REVIEW BY IDOH	30 DAYS
R/W SERVICES:	
APPRAISING	30 DAYS
REVIEW APPRAISING	10 DAYS
BUYING	10 DAYS
OWNERS DECISION TIME	25 DAYS
REVIEW OF R/W BY IDOH	7 DAYS
CERTIFICATION TO FHWA, ETC.	7 DAYS
TOTAL	179 DAYS (Six Months)

Figure 2. Average Local Project R/W

Consider a typical local project with ten parcels of land to be acquired. Note that 50 days has been allotted for R/W engineering and 30 days for review of the engineering by IDOH. Now, if there is no federal-aid in the cost of the R/W, a review by IDOH is not required. This 30 days includes transmittal time and a possible resubmittal and second review which more often than not is necessary.

This is an extremely optimistic schedule but adequate time *must* be allowed for the R/W phase of a project. Six months is an absolute minimum. Add to this even the relocation of one residence or one condemnation and you have automatically added approximately 90 days to the project development schedule. The reason being that each relocatee by federal law must be given at least a 90-day written notice to vacate and most courts are over scheduled so 90 days is estimated here.

If a consultant is used for R/W engineering, or the actual acquisition of R/W, and federal-aid is desired in the fees, an agreement between the Local Agency and the consultant must be submitted to IDOH for review and subsequent authorization by FHWA. Allow time for the processing of these agreements and the authorization of the fees by FHWA. This alone may take 2 to 3 months depending on the project size and last but not least, the availability of funds. Now over six months has become 13 months! (Figure 3).

Consider now how federal funds are used. When the programming of funds includes funds for R/W, those dollars may be used in any part

RELOCATION	90 DAYS
OR	
CONDEMNATION	
CONSULTANT AGREEMENT	
PROCESSING	90 DAYS
FHWA AUTHORIZATION	30 DAYS
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TOTAL	210 DAYS
TOTAL TIME	179 DAYS
	210 DAYS
	<hr/>
	389 DAYS (Thirteen Months)

Figure 3. Modified R/W Schedule

or all of the R/W phase. However, authorization must be obtained from FHWA for the specific items to be funded.

There will be no reimbursement of federal funds to the local agency when any acquisition is performed prior to authorization to proceed from FHWA.

The local agency must request approval for the specific R/W expenditure which could look something like the example shown in Figure 4—a typical project with \$100,000.00 programmed for R/W. The request for authorization of the federal funds could look like this example. Or, it might all be used for the actual cost of the R/W which we call land improvements and damages. It is important that this determination be made early in the project and proper authorization obtained. Many projects

FEDERAL-AID	
PROGRAMMED FOR R/W	\$100,000.00
R/W BY LOCAL FORCES	\$ 5,000.00
APPRAISING	\$ 9,000.00
(PER CONSULTANT	
AGREEMENT)	
REVIEW APPRAISING	\$ 4,500.00
PER CONSULTANT	
AGREEMENT)	
LAND, IMPROVEMENTS & DAMAGES	\$ 75,000.00
INCIDENTAL EXPENSES	\$ 500.00
MTG. RELEASES, RECORDING FEES, ETC.	
LEGAL SERVICES	\$ 6,000.00
(PER AGREEMENT)	
	\$100,000.00

Figure 4. An Example—R/W Expenditure List

have been delayed simply because no one decided on the funding and submitted the necessary request early enough.

The construction of a project depends upon the necessary evil of land acquisition. Remember that R/W acquisition takes time and include it in the project schedule. Also, obtain the necessary authorization to avoid trouble due to funding. Communication with our office is absolutely essential so that we are aware of your intentions. If we know where you are in the planning process, we can and will see that all bases are covered.

Again, watch for our revised R/W Acquisition manuals within the next two to three months. There are some revisions which may save time and money so it will be to your benefit to familiarize yourself with them. Remember that our office is at your service five days each week and we welcome your questions concerning R/W any time.