

X. Right-of-Way (ROW)

Overview. “Right-of-way” means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility. A Tribal Transportation Program (TTP) project must have a public right-of-way established before construction of the project can begin. The public right-of-way must be wide enough and in the proper location for the proposed transportation project. Oftentimes for a TTP project, acquiring property rights may be necessary to provide the right-of-way needed for the proposed road, trail, or transportation facility.

Right-of-way research, mapping and acquisition needs to occur during the proper project design phases, to enable the project to be developed and constructed. See [Chapter XI. Plans, Specifications, and Estimates \(PS&E\) Development, Part B, Section 4](#) for a description of right-of-way work that should occur during each design phase.

Acquisition of right-of-way or easements may be needed for a proposed project. The need for acquiring permanent right-of-way, as well as temporary or specialized easements for driveway approaches, runoff ditches, utility relocations, etc., will depend on:

- The width and location of the existing public right-of-way.
- The width and location of the proposed right-of-way needed for the project.
- The types of land ownership that will be affected by acquisition of the proposed project right-of-way.
- Temporary or specialized encroachments that will be needed onto land outside the proposed right-of way.

If right-of-way or easements need to be acquired for the project, then it will be necessary to: plat (map) onto plan sheets the existing and proposed right-of-way and easement limits, cost appraise the land or rights to be acquired, negotiate the acquisition cost and conditions of use with the landowners, and finally acquire the new right-of-way and easements from the landowners.

Right-of-way acquisition can occur only after the project’s NEPA document is completed and approved. Project construction cannot begin until the right-of-way is acquired and formally certified. All of the right-of-way needed for a project should be acquired and formally certified before the project construction is advertised for bids.

A. Statutory/Regulatory Requirements.

42 U.S.C. 4601 – Uniform Relocation and Real Property Acquisitions Policy Act (the “Uniform Act”)

B. Guidelines / Procedures. When acquiring right-of-way, the Uniform Act requires the coordination of any relocation of businesses and families required to build the project. In addition, the management and disposition of residue parcels and surplus right of way should be tracked and coordinated.

Any right-of-way work involving land acquisition and/or relocation of businesses or people for development of transportation projects must conform to the Uniform Act. Requirements of the Uniform Act provide for fair market value to be paid for real estate, and reimbursements paid for relocating homeowners/tenants and business owners.

Right-of-way work needed to develop a TTP project may also include Federal land transfers, control of outdoor advertising, acquisition of encroachment permits and temporary construction easements, and junkyard control.

- 1. Roles and Responsibilities.** The following outline provides examples of potential agency or governmental roles and responsibilities when establishing a project agreement for TTP projects advanced by a Tribe under a Program Agreement.

Land	Roles and Responsibilities
Trust Land	<p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>BIA Regional Office: Processing right-of-way: reviewing right-of-way applications and certifications; approving right-of-way documents; processing grants and acquisitions of rights-of-way requests for allocated lands; responding to information requests; filing Affidavit of Completion Forms; Performing custodial functions related to storing rights-of-way documents; ROW appraisal and negotiation; providing Title Status Reports (TSRs), Grants of Easement, and filing ROW documents; reviews and approval.</p> <p>FHWA: Ensure ROW process is complete.</p>
Restricted Fee Land	<p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>BIA Regional Office: Processing right-of-way: reviewing right-of-way applications and certifications; approving right-of-way documents; processing grants and acquisitions of rights-of-way requests for allocated lands; responding to information requests; filing Affidavit of Completion Forms; Performing custodial functions related to storing rights-of-way documents; ROW appraisal and negotiation; providing Title Status Reports (TSRs), Grants of Easement, and filing ROW documents; reviews and approval.</p> <p>FHWA: Ensure ROW process is complete.</p>
Fee Land	<p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>FHWA: Ensure ROW process is complete.</p>
State Owned	<p>State DOT: Obtains necessary ROW and ensures utility relocation (both at State's expense).</p> <p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>FHWA: Ensure ROW process is complete.</p>

Land	Roles and Responsibilities
County or local agency owned roads	<p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>County/Local Agency: Obtains necessary ROW and ensures utility relocation (both at County's expense).</p> <p>FHWA: Ensure ROW process is complete.</p>

C. Resources.

- FHWA Right-Of-Way Acquisition Guidelines located at http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/acquisition/real_property.cfm
- WFL Right-Of-Way and Utilities web site <http://www.wfl.fhwa.dot.gov/design/row>
- Chapter 12, Right of Way and Utilities, of the FLH "*Project Development and Design Manual*" (PDDM), at (<http://flh.fhwa.dot.gov/resources/manuals/pddm/archives/2008.htm>)