

How To Obtain A Right of Way Clearance

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What Is a Right of Way Clearance?

Simple put, it is a statement that says:

- 1) That all real property interest have been acquired.
- 2) That you have the legal right to possess, occupy, use the property, maintain facilities constructed and protect the traveling public.

And when necessary (Relocation):

- That all individual, families, and business are being provided assistance in accordance with 49 CFR Part 24.
- That the state or Local Public Agency has made available adequate replacement housing.
- That all individuals and family have been relocated to decent, safe and sanitary housing.

Why Is ROW Clearance It Important?

The **Right of Way Clearance** is one of the requirements that needs to be met under 23 CFR Part 635.309 to proceed to advertise for physical bids for construction or with forced account construction.

What Are We Certifying Too?

One of three conditions:

- 1) That **all** necessary ROW (Fee or Easements) including legal, physical possession, and access control when necessary, have been obtained. When trials or legal cases are pending, that legal possession has been granted by the court.
- 2) Although all necessary ROW **has not been** fully acquired, the right to occupy and use all ROW for the proper execution of the project has been acquired. *(There may be cases pending in court but the agency has obtain the right to possess (not legal possession), and occupy, and that all occupants have vacated, and you have the ability to demolish and or salvage improvements.)*

So What Are We Certifying Too?

One of three conditions:

- 3) The acquisition or right of occupancy and use of a few remaining parcels has not been completed...

Under the condition above:

- 1) *if there are residences that are occupied, the residents must of had replacement housing made available to them.*
- 2) *the agency may request a conditional certification / clearance. **A conditional ROW Clearance requires approval of the LPA Coordinator and the concurrence of FHWA.***

Who Issues The ROW Clearance?

On a *Local Public Agency* project, the **ADOT ROW Coordinator** assigned to the project issues the ROW clearance after the local agency has certifies that the ROW within the project limits has been acquired in accordance with federal rules and regulations.

If the ROW is **NEW**, the LPA must include a list the parcels acquired with: Parcel Number, Name of Owner, Real Property Interest Acquired and date acquired

If the ROW is **EXISTING and Acquired** after 1971, the LPA has to document how they obtained the real property interest. You do this by attaching a statement listing each parcel and the date and how it was acquired; e.g., fee, donation, dedication, annexation, easement.

This is part of ADOT's oversight responsibility with FHWA.

So How is ROW Clearance Requested and When Can It Be Requested?

When: Just prior to 95% plans submittal, once all necessary real property Interests have been acquired or possession has been granted by a court.

Why not sooner? No. 1 reason, ROW hasn't been determined by 60% design thus causing delays in the start of appraisal process and negotiations with property owners. No. 2, failure to account in schedule by designers the time need to start an complete ROW.

How: The process starts by completing and submitting to the ADOT PM the Real Property Interest Certification found here: *azdot.gov - business - right of way / properties - project management - documents - real property interest certification*

Real Property Interest Certification

azdot.gov - business - right of way / properties - project management

REAL PROPERTY INTEREST - RIGHT OF WAY CERTIFICATION

ADOT PROJECT NAME: _____

ADOT PROJECT DESCRIPTION: _____

PROJECT NUMBERS (Federal & State): _____

The County/City/Town of _____ hereby certifies the following:

1. STATUS OF NEW REAL PROPERTY INTEREST - RIGHT OF WAY:

A. **Total number of parcel(s) required for project** _____

[The parcel number count should relate to ownership and not the number of different property interest(s)]

1. Number of parcel interests acquired with Federal Aid monies _____
(Number of below parcel interests may total more than "1-A")

Parcel interest(s) acquired by Fee _____
Parcel interest(s) acquired by Donation _____
Parcel interest(s) acquired by Dedication _____
Parcel interest(s) acquired by Easements* _____
Parcel interest(s) acquired by TCE _____
Parcel interest(s) using access by Right of Entry for Construction _____
Parcel interest(s) using access by Order of Immediate Possession _____

What May the ROW Coordinator Require for Review to Issue a ROW Clearance?

1. Real Property Interest Certification completed and **signed by LPA Agency** not a ROW consultant or design firm.
2. ROW plans or Maps showing existing and new ROW with parcel numbers. This maybe on the design plans or separate ROW plans.
3. The parcel acquisition and relocation file or a part thereof for new ROW acquired. We are looking to make sure the acquisition and relocations were completed in accordance with the Uniform ACT (49 CFR part 24)
4. If existing ROW, a list of when, how it was acquired and type of interest acquired (this should be included with the certification form).

Conditional ROW Clearance

This is the expectation and not the norm.

“The acquisition or right of occupancy and use of **a few remaining parcels has not been completed...** “

A conditional ROW Clearance requires approval of the LPA Coordinator and the concurrence of FHWA.

A conditional ROW clearance **if** granted **will** contain conditions on the advertising and opening of bids. Normally will allow project to advertise but prohibit bids from being opened until possession of all parcels has been obtained.

What is Needed for Conditional Clearance to be Considered?

1. The Real Property Interest Certification Completed and signed by the LPA.
2. Order to Show Cause date **must** be scheduled with the court or escrow opened with a Close of Escrow date established.
3. A letter explaining the project and why the conditional clearance is needed.
4. A list of all parcels with the following information in table format: parcel number, owner name, type of interest, date of first written offer, date condemnation filed, close of escrow date or order of possession date, possession date, is relocation required, relocation completed date, date available for construction.
5. If any parcel is not available for construction or possession hasn't been obtained, a summary explaining why possession hasn't been obtained and when possession will be available.

Tips to Make the ROW Clearance Process Run Smooth.

1. Finalize and start the ROW process at 60% design. Do everything up to the point of starting negotiations with a property owner.
2. If using Federal money for Right-of-Way activities have your PM work with the ADOT PM to request AZPR2X as soon as ROW has been determined and Environmental clearance has been received.
3. Start negotiations right after Environmental Clearance is received and AZPR2X is received if using federal money for acquisitions.
4. COMMUNICATE with the ADOT LPA Coordinator assigned to the project. Don't make us come to you for updates on ROW.
5. Fill out completely the Real Property Interest Certification and include all documents the form calls for.

6. If asked to provide additional details or negotiator/contact logs do so promptly. This should not take a week or longer. Every parcel acquired, is required to have **detailed** negotiator/contact log that is up to date and can be delivered upon request. With today's computers these should not be handwritten.
7. Do not submit request for ROW clearance at last minute just before a deadline such as the end of quarter or fiscal year. ADOT LPA Coordinator also have their own ADOT projects that they are responsible for coordinating ROW activities on and issuing clearances on.

