

RESOLUTION R-5282

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND
ADOPTING RIGHT-OF-WAY ACQUISITION AND RELOCATION POLICIES
AND PROCEDURES.

1 WHEREAS, on January 17, 2012 the City Council passed
2 Resolution No. 4908 which adopted City Right-of-Way Acquisition and
3 Relocation Policies and Procedures; and

4
5 WHEREAS, those policies and procedures need to be updated to
6 accurately reflect and comply with Chapter 8.26 RCW, Chapter 468-100
7 WAC, and other current applicable regulations; and

8
9 WHEREAS, for City projects to be eligible for federal funding on
10 any part of the project, the project's right-of-way must be acquired in
11 accordance with the WSDOT Local Agency Guidelines (M 36-63) and the
12 WSDOT Right-of-Way Manual (M26-01); and

13
14 WHEREAS, it appears desirable and in the best interest of the
15 City that the new policies and procedures be adopted.

16
17 NOW, THEREFORE, be it resolved by the City Council of the City
18 of Kirkland as follows:

19
20 SECTION 1. The Right-of-Way and Procedures adopted under
21 Resolution 4908 are replaced by new Right-of-Way Policies and
22 Procedures that are adopted by the City of Kirkland and set forth in
23 Exhibit A which by this reference is incorporated herein.

24
25 SECTION 2. The City agrees to conform to the WSDOT Right-
26 of-Way Procedures as required for those projects that contain any
27 portion of federal funding.

28
29 SECTION 3. The City may administratively update the list of
30 persons identified as qualified personnel for program administration and
31 acquisition in Attachment B to Exhibit A.

32
33 Passed by majority vote of the Kirkland City Council in open
34 meeting this 21st day of November, 2017.

35
36 Signed in authentication thereof this 21st day of November,
37 2017.


Amy Walen, Mayor

Attest:


Kathi Anderson, City Clerk



**Washington State
Department of Transportation**

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

October 26, 2017

Ms. Kathy Brown
Public Works Director
City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033-6189

**City of Kirkland
Updated Right of Way Procedures**

Dear Ms. Brown:

On October 23, 2017, the Local Programs Right of Way Section received the City's updated Right of Way (ROW) Procedures. These updated ROW procedures are approved, and supersede and replace the previous procedures subject to the following requirements:

1. Kathy Brown, Public Works Director is approved to perform the Program Administration function, which includes oversight of hired ROW consultants, review and approval of recommended actions and payments, review and preliminary approval of administrative settlements, and authorization of just compensation including approval of Administrative Offer Summaries (AOS).
2. Appraisals and appraisal reviews must be contracted for with the Washington State Department of Transportation (WSDOT) or consultant on WSDOT's approved qualified appraiser/reviewer list. The City must work closely with the Northwest Region LAC prior to initiating the valuation process.
3. All acquisition work must be contracted for with qualified consultants, other agencies with qualified staff or WSDOT. Since the City has no experienced staff to oversee the acquisition process, the City must have direct supervision from the LAC. At a minimum, the LAC must be provided the opportunity to review all parcel files prior to first offers being made to the property owners. To avoid a conflict of interest, acquisition agents are only approved to acquire property valued at \$10,000 or less if they also prepare the Administrative Offer Summary (AOS).
4. All relocations must be contracted for with qualified consultants, other agencies with qualified staff or WSDOT. Any relocation consultant must be monitored by the LAC. For any projects involving relocation, the City must provide confirmation they have an approved relocation appeal procedure in place prior to starting relocation activities.

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October 26, 2017
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5. Kathy Brown, Public Works Director; Dave Snider, P.E., Capital Projects Manager; Rod Steitzer, P.E., Capital Projects Manager; Aaron McDonald, P.E., Senior Project Manager; Scott Gonsar, P.E., Project Engineer; Marius Eugenio, P.E., Project Engineer; Patrick Herbig, P.E., Project Engineer; Anneke Davis, P.E., Senior Project Engineer; Laura Drake, P.E., Project Engineer; George Minassian, PHD P.E., Senior Project Engineer; and Aparna Khanal, P.E., Senior Project Engineer are approved to perform Property Management functions.

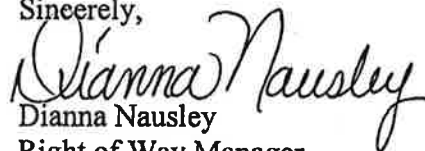
The City is approved to use the Federal Highway Administration approved waiver process of \$25,000 or less, including cost to cure items in which it is not required to offer appraisals for values at \$10,000 or less.

It is requested that the City work closely with the region LAC early and throughout the right of way process to ensure that all necessary procedures are followed on any federal-aid projects. In particular, the City must notify the Region LAC prior to contracting with consultants to initiate the process.

When staffing changes occur, an updated list must be submitted for approval prior to commencement of any right of way work.

If you have any questions regarding the requirements, please contact David Narvaez, Northwest Region LAC at (206) 440-4205, or Mehrdad Moini, Northwest Region Local Programs Engineer at (206) 440-4734.

Sincerely,



Dianna Nausley
Right of Way Manager
Local Programs

DN:ac

Enclosures

cc: Mehrdad Moini, Northwest Region Local Programs Engineer, MS NB82-121
David Narvaez, Northwest Region, MS NB82-121

Right of Way Procedures – Exhibit A

The **City of Kirkland**, hereinafter referred to as "AGENCY", desiring to acquire real property (obtain an interest in, and possession of, real property) in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and applicable federal regulations (49 CFR Part 24) and state law (Ch. 8.26 RCW), and state regulations (Ch. 468-100 WAC) hereby adopts the following procedures to implement the above statutes and Washington Administrative Code. The AGENCY is responsible for the real property acquisition and relocation activities on projects administered by the AGENCY as detailed in **Attachment A**. To fulfill the above requirements the AGENCY will acquire right-of-way (ROW) in accordance with the policies set forth in the Right of Way Manual M 26-01 and Local Agency Guidelines. The AGENCY has the following expertise and personnel capabilities to accomplish these functions:

1. The following relate to the AGENCY's request.
 - a. Below is a list of responsible AGENCY individual names and positions, for which the AGENCY has qualified staff to perform the specific right-of-way function(s). Attached are resumes for each individual AGENCY staff listed to perform those functions below (**Attachment B**), and a brief summary of their qualifications pertaining to the specific ROW function(s) for which they are listed (**Attachment C**). The procedures shall be updated whenever staffing changes occur. The AGENCY will be approved to acquire real property based upon staff qualifications.

- i. **PROGRAM ADMINISTRATION :**

Oversee delivery of the ROW Procedures on federal aid projects for the AGENCY. Ensures ROW functions are carried out in compliance with federal and state laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Ensures agency's approved ROW Procedures are current, including staff qualifications, and provides copies to consultants and agency staff;
- Oversight of ROW consultants;
 - use of consultant contract approved by WSDOT (under construction)
 - management of ROW contracts
 - management of ROW files
 - reviews and approves actions and decisions recommended by consultants
 - Overall responsibility for decisions that are outside the purview of consultant functions
- Sets Just Compensation prior to offers being made;
- Approves administrative offer summaries per policy;
- Ensure agency has a relocation appeal process in place prior to starting relocation activities;
- Oversight of Administrative Settlements;
- Obligation authority for their agency;
- Obtain permits (Non-Uniform Relocation Act (URA));
- Ensures there is a separation of functions to avoid conflicts of interest.
- Verifies whether or not ROW is needed, and that the property rights and/or interests needed are sufficient to construct, operate and maintain the proposed projects (see Appendix 25.176).

PUBLIC WORKS DIRECTOR

(Insert Name and Title of AGENCY Position above & attach resume of qualifications)

ii. APPRAISAL

Prepare and deliver appraisals on federal aid projects for the AGENCY. Ensures that appraisals are consistent and in compliance with state and federal laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Use only qualified agency staff approved by WSDOT to perform appraisal work;
- Use appraiser from WSDOT's Approved Appraiser List if agency does not have qualified staff;
- Prepare Project Funding Estimates (PFE) or, when applicable, True Cost Estimates (TCE);
- Prepare Administrative Offer Summaries (AOS or Appraisal Waiver);
- Obtain specialist reports;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

WSDOT ROW OFFICE or APPROVED CONSULTANT

(Insert Name and Title of AGENCY Position above & attach resume of qualifications)

iii. APPRAISAL REVIEW:

Review appraisals on federal aid projects for the AGENCY to make sure they are adequate, reliable, and have reasonable supporting data, and approve appraisal reports. Ensures appraisals are adequately supported and represent fair market value and applicable costs to cure and are completed in compliance with state and federal laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Use only qualified agency staff approved by WSDOT to perform appraisal review work;
- Use review appraiser from WSDOT's Approved Appraiser List if agency does not have qualified staff;
- Ensures project wide consistency in approaches to value, use of market data and costs to cure;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

WSDOT ROW OFFICE or APPROVED CONSULTANT

(Insert Name and Title of AGENCY Position above & attach resume of qualifications)

iv. ACQUISITION:

Acquire, through negotiation with property owners, real property or real property interests (rights) on federal aid projects for the AGENCY. Ensures acquisitions are completed in compliance with federal and state laws, regulations, and policies and procedures.

Responsibilities/Expectations:

- Use only qualified staff to perform acquisition activities for real property or real property interests, including donations;
- To avoid a conflict of interest, when the acquisition function prepares an AOS, only acquires property valued at \$10,000 or less;

- Provide and maintain a comprehensive written account of acquisition activities for each parcel;
- Prepare administrative settlement justification and obtain approval;
- Prepare Project Funding Estimates (PFE) or, when applicable, True Cost Estimates (TCE);
- Prepare Administrative Offer Summaries (AOS or Appraisal Waiver);
- Review title, and recommend and obtain approval for acceptance of encumbrances;
- Ensure acquisition documents are consistent with ROW plans, valuation, and title reports;
- Provide a negotiator disclaimer;
- Coordinate with engineering, program administration, appraisal, relocation, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each acquisition.

WSDOT ROW OFFICE or APPROVED CONSULTANT

(Insert Name and Title of AGENCY Position above & attach resume of qualifications)

v. **RELOCATION:**

Provide relocation assistance to occupants of property considered displaced by a federally funded projects for the AGENCY. Ensures relocations are completed in compliance with federal and state laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Prepare and obtain approval of relocation plan prior to starting relocation activities;
- Confirm relocation appeal procedure is in place;
- Provide required notices and advisory services;
- Make calculations and provide recommendations for agency approving authority prior to making payment;
- Provide and maintain a comprehensive written account of relocation activities for each parcel;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each displacement;
- Ensure occupants and personal property is removed from the ROW.

WSDOT ROW OFFICE or APPROVED CONSULTANT

(Insert Name and Title of AGENCY Position above & attach resume of qualifications)

vi. **PROPERTY MANAGEMENT:**

Establish property management policies and procedures that will assure control and administration of ROW, excess lands, and improvements acquired on federal aid projects for the AGENCY. Ensures property management activities are completed in compliance with federal and state laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Account for use of proceeds from the sale/lease of property acquired with federal funds on other Title 23, CFR eligible activities;
- Keep ROW free of encroachments;
- Obtain WSDOT/FHWA approval for change in access control along interstate;
- Maintain property records;

- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each displacement;
- Ensure occupants and personal property is removed from the ROW.

PUBLIC WORKS DIRECTOR or DESIGNATED EMPLOYEES

(Insert Name and Title of AGENCY Position above & attach resume of qualifications)

- b. Any functions for which the AGENCY does not have qualified staff, the AGENCY will contract with another local agency with approved procedures, an outside contractor, or the Washington State Department of Transportation (WSDOT). An agency that proposes to use outside contractors for any of the above functions will need to work closely with the WSDOT Local Agency Coordinator (LAC) and Local Programs to ensure all requirements are met. When the AGENCY proposes to have a staff person approved to negotiate who is not experienced in negotiation for FHWA funded projects, the LAC must be given a reasonable opportunity to review all offers and supporting data before they are presented to the property owners.
 - c. An AGENCY wishing to take advantage of an Appraisal Waiver (aka Administrative Offer Summary or AOS) procedure on properties valued up to \$25,000 or less should make their proposed waiver procedure a part of these procedures. The procedure outlined in LAG manual has already been approved using form LPA-003 (Exhibit B). The AGENCY may submit a procedure different than that shown and it will be reviewed and approved if it provides sufficient information to determine value.
 - d. Attached is a copy of the AGENCY's administrative settlement procedure showing the approving authority(s) and the procedure involved in making administrative settlements (Attachment A).
2. All projects shall be available for review by the FHWA and WSDOT at any time and all project documents shall be retained and available for inspection during the plan development, right-of-way and construction stages, and for a three year period following acceptance of the projects by WSDOT.
 3. Approval of the AGENCY's procedures by WSDOT may be rescinded at any time the AGENCY is found to no longer have qualified staff or is found to be in non-compliance with the regulations. The rescission may be applied to all or part of the functions approved.

Maulynne Beard
Assistant City Manager

10/11/17
Date

Washington State Department of Transportation

Approved By:

Dianna Nausley
Local Programs Right of Way Manager

10/25/17
Date

Exhibit B

WAIVER OF APPRAISAL PROCEDURE

The City of Kirkland, hereinafter
(Enter name of the agency only)

referred to as "AGENCY", desiring to acquire Real Property according to Title 23 CFR, Part 635, Subpart C and State directives, and desiring to take advantage of the \$25,000.00 appraisal waiver process approved by the Federal Highway Administration (FHWA) for Washington State, hereby agrees to follow the procedure approved for the Washington State Department of Transportation (WSDOT) as follows:

Rules

- A. The AGENCY may elect to waive the requirement for an appraisal if the acquisition is simple and the compensation estimate indicated on the Project Funding Estimate (PFE) is \$25,000.00 or less including cost-to-cure items. A True Cost Estimate shall not be used with this procedure.
- B. The AGENCY must make the property owner(s) aware that an appraisal has not been completed on the property for offers \$10,000 or less.
- C. The AGENCY must make the property owner(s) aware that an appraisal has not been completed on the property for offers over \$10,000 and up to \$25,000, and that an appraisal will be prepared if requested by the property owner(s).
- D. Special care should be taken in the preparation of the waiver. As no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.

Procedures

- A. An Administrative Offer Summary (AOS) is prepared using data from the PFE.
- B. The AOS is submitted to the Public Works Director for approval.
(Enter name of position title only)
- C. The City Manager signs the AOS authorizing a first offer to the property owner(s).
(Enter name of position title only)

AGENCY:

By:

Marilyn Beard
Assistant City Manager

APPROVED:

Dianma Pusley 10/25/17
Local Programs Right of Way
Manager

Right-of-Way Procedures – Attachment A

CITY OF KIRKLAND RIGHT-OF-WAY ACQUISITION AND RELOCATION ASSISTANCE PROCEDURES

I. CERTIFICATION AND SCOPE

The City of Kirkland certifies that it will comply with Chapter 8.26 RCW and WAC 468-100 in connection with the acquisition or real property, and relocation of persons displaced by its program or project.

For a project to be eligible for federal funding on any part of the project, the project's right-of-way must be acquired in accordance with the Washington State Department of Transportation (WSDOT) Local Agency Guidelines (LAG) Manual. For those projects the City of Kirkland will acquire right-of-way in accordance with the policies set forth in the WSDOT Right-of-Way Manual (M 26-01) and Local Agency Guidelines manual (M 36-63).

II. PERSONNEL

The City of Kirkland Public Works Department is responsible for real property acquisitions and relocation activities on Public Works projects administered by the City. The Public Works Director (or designee) shall administer all aspects of right-of-way acquisition and relocation assistance on Public Works projects. This includes administration of appraisals, appraisal review, acquisition, relocation, and administrative settlements.

III. ADMINISTRATIVE SETTLEMENTS

The fair market value of any real property and relocation of persons resulting from right-of-way acquisitions shall be determined by the required appraisal and appraisal review process and shall be the basis for the Just Compensation Offer made on behalf of the City.

If during acquisition an agreement to purchase cannot be reached based on the original Just Compensation Offer, the following parameters will serve as a guideline for an administrator settlement.

- a. The Public Works Director is authorized to offer and approve for each individual parcel an administrative settlement up to \$25,000 in excess of the amount of the Just Compensation Offer.
- b. The Public Works Director must submit administrative settlements in excess of the approval authority amount to the City Manager for review and approval.
- c. The Public Works Director may submit proposed administrative settlements to the City Council for concurrence, even if such proposed settlement is within the Public Works Director's approval authority.

If a settlement cannot be reached within these guidelines, alternatives including condemnation will be discussed and considered by the City Council.

Right-of-Way Procedures – Attachment A

IV. APPRAISAL WAIVER PROCESS

In certain cases where the acquisition is uncomplicated the City of Kirkland may desire to take advantage of the \$25,000 appraisal waiver process as outlined in the WSDOT LAG Manual and form LPA-003. In such cases the City will comply with the procedures approved by the Federal Highway Administration for Washington State.

Right-of-Way Procedures Qualified Personnel - Attachment C

AGENCY: CITY OF KIRKLAND

The following personnel are qualified for the AGENCY's Right-of-Way Program Administration and Property Management in accordance with their identified job title responsibilities and as required by the WSDOT LAG manual.

Title	Personnel	Qualifications
PUBLIC WORKS DIRECTOR	KATHY BROWN	Over 30 years of experience that includes managing and directing all aspects of Public Works capital improvements construction and administration.
CAPITAL PROJECTS MANAGER	DAVE SNIDER, P.E.	25 years of experience that includes administration, supervision and management of municipal construction and other capital improvement projects from the conceptual planning phase to contract closeout.
CAPITAL PROJECTS SUPERVISOR	ROD STEITZER, P.E.	16 years of experience that includes administration, supervision and management of municipal construction and other capital improvement projects from the conceptual planning phase to contract closeout.
SENIOR PROJECT ENGINEER	AARON MCDONALD, P.E.	16 years of experience in state and municipal public works engineering including: contract and plans preparation, construction management, and project management. Experienced with federal grant and LAG Manual compliance, including ROW acquisition procedures.
PROJECT ENGINEER	SCOTT GONSAR, P.E.	12 years of experience in managing municipal construction and other capital improvement projects from the conceptual planning phase to contract closeout. JOC Coordinator for City of Kirkland.