

# 1. Introduction

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## 1.1. Introduction

Whether for highways (including Federal-aid highways), airports, public facilities, transportation alternatives, or environmental mitigation, these functions are collectively referred to as “right of way” (ROW). This chapter provides an overview and summary of the various ROW processes, including the statutory and regulatory background for those processes.

This manual is geared toward Right-of-Way (ROW) professionals, including DOT&PF staff and authorized contractors, but may also be of use to local agencies and other entities performing acquisition, valuation, relocation, disposal, and property management functions, especially those subject to Federal regulations for Federal and federally-assisted projects and programs.

Electronic copies of the manual incorporate hyperlinks for ease of use. While great care has been taken to ensure all the relevant citations have been provided, the onus is on the user to know and keep current on the laws and regulations affecting these practices. If a hyperlink does not work, please notify the Statewide Real Estate/ROW Chief at (907) 465-6954.

### 1.1.1. Vocabulary and Terms of Art

Personnel must take care when using certain verbiages in their interactions with fellow professionals in other disciplines, parties affected by the agency’s public projects, and the public. Some terms may carry negative connotations and this is especially prevalent in the ROW industry. For example, the terms “eminent domain”, “condemnation”, and “acquisition” (formerly “take”) are often misused or misunderstood, often due to a general lack of knowledge of the rights and benefits

to which a qualifying, affected party is entitled; the required protections of these rights; and the overall project processes and timelines. See Ch. 12 Definitions. Note that several definitions were amended or added by regulatory updates. See [49 CFR Part 24](#) effective June 3, 2024.

## 1.2. Mission Statement and Responsibility

DOT&PF’s mission is “Keep Alaska Moving through Service and Infrastructure.”

In managing the State’s public transportation properties, DOT&PF has a legal obligation to serve the traveling public by protecting the safety and integrity of a highway’s design, and to facilitate the design, construction, maintenance, and operation of highways. DOT&PF is committed to furnishing cost-effective, sound, and reliable transportation systems and public facilities for all Alaskans.

The ROW Group meets this obligation by providing engineering, appraisal, acquisition, relocation assistance, and property management services. ROW professionals are tasked with safeguarding the public’s rights protected by various founding documents, laws, statutes, and policies. ROW agents have both the duty and the responsibility to serve the people of Alaska through exemplary conduct, patient explanation, and courteous treatment of all with whom they come in contact. Agents must have thorough knowledge of basic engineering practices; theories and techniques of real property appraisal, acquisition, and management; and real property law and regulations. Agents must be able to communicate effectively and must be honest, forthright, tactful, thorough, meticulous, determined, and innovative.

## 1.3. History and Organization

This section describes DOT&PF’s ROW history and organization, as required by [23 CFR 710.201\(b\)](#).

### 1.3.1. History

The Alaska Road Commission was created in 1905 and remained until 1959. The Alaska Department of Public Works was then created to oversee highways, airports, waters and harbors, buildings, and other related functions. In 1962, the Governor of Alaska established the Department of Highways and Public

Works by executive order. The Department remained as the parent organization of Aviation, Water and Harbors, Buildings, and the newly created Division of Marine Transportation. Finally, in 1977, the Department of Highways was eliminated and replaced with the Department of Transportation & Public Facilities to combine the work of the two previous business units.

### 1.3.2. Organization

DOT&PF is generally geographically decentralized, with a statewide (HQ) office and Southcoast (Juneau), Central (Anchorage), and Northern (Fairbanks) regional offices. There are also highway maintenance offices, design offices, marine facilities, airports, and public buildings scattered

across the state. DOT&PF's Web site is located at: <http://dot.alaska.gov>.

ROW employees are located in the headquarters and regional offices. Organization charts and position descriptions for ROW are available in the regional offices or from the Division of Statewide Design & Engineering Services at 3132 Channel Drive, Juneau, AK 99801 whose mailing address is PO Box 112500, Juneau, AK 99811-2500. Position descriptions and qualifications for job series are also available online at <https://workplace.alaska.gov>.

The following chart gives an overview of the functions of each ROW Group, however regions may organize duties differently. Responsibilities are further detailed in succeeding chapters of this manual.

Position Title or Unit Name	Functions and Duties
Regional ROW Chiefs (Central, Northern, Southcoast)	<ul style="list-style-type: none"> <li>• Act as lead ROW personnel to represent and manage their assigned region's ROW Groups to deliver capital projects and support and develop other State and public interests;</li> <li>• Supervise and delegate work and authorities to Regional ROW Groups and approved contractors (excluding appraisers and review appraisers);</li> <li>• Coordinate early with environmental and project design staff by advising on acquisition considerations and challenges;</li> <li>• Make the Determination of Just Compensation, for each parcel acquired;</li> <li>• Approve justified administrative settlements for payments above value;</li> <li>• Approve relocations benefits payments;</li> <li>• Approve payments (as delegated) to contractors, property owners (sellers/lessors), lessees/tenants, attorneys, contract negotiators, contract appraisers, and others involved in ROW and property management activities;</li> <li>• Certify ROW acquisitions compliance for projects as ready for construction; and</li> <li>• Oversee permitting, alternative ROW uses, and property management.</li> </ul>
ROW Engineering Groups (Regional)	<ul style="list-style-type: none"> <li>• Coordinate design and ROW functions in support of project development and delivery;</li> <li>• Prepares or orders title reports, ROW plans, parcel plats; subdivision surveys; Records of Survey; and obtains platting approval where necessary; and</li> <li>• Provides reviews and commentary on local platting authority actions by others affecting DOT&amp;PF properties and interests, including easement vacations.</li> </ul>
ROW Acquisition Groups (Regional)	<ul style="list-style-type: none"> <li>• Prepare conveyance and related documents, including waiver valuations;</li> </ul>

Position Title or Unit Name	Functions and Duties
	<ul style="list-style-type: none"> <li>• Coordinate with Statewide Appraisal and Review Group for appraisal and appraisal reviews and related Professional Services Agreements (contracts);</li> <li>• Negotiate and acquire parcel(s);</li> <li>• Coordinate acquisitions from Federal and State agencies;</li> <li>• Handle acquisitions involving archaeological or paleontological significance according to Federal regulations; and</li> <li>• Recommend condemnations, when appropriate, and support the Department of Law (LAW) in litigation and other ROW-related matters.</li> </ul>
ROW Pre-Audit Groups (Regional)	<ul style="list-style-type: none"> <li>• Perform all ROW administrative functions, including tracking all funding and expenses for ROW Group and coding all expenses to the proper ledger accounts according to State and Federal regulations;</li> <li>• Prepare parcel review reports;</li> <li>• Monitor projects to ensure proper completion of conveyance documents, recording of ROW plans, and proper documentation of condemnation proceedings (where appropriate);</li> <li>• Coordinate with Finance Groups to encumber funds and process payments to contractors, landowners, and others involved in the ROW portion of a project;</li> <li>• Prepare project close-out files and memo; and</li> <li>• Submit appropriate tax forms to landowners and IRS.</li> </ul>
ROW Relocation Groups (Regional)	<ul style="list-style-type: none"> <li>• Work with approved relocation contractors and Environmental staff to prepare relocation studies for use in environmental documents;</li> <li>• Determine eligibility of displaced persons and assist relocations to suitable replacement properties (residential and nonresidential) in accordance with FHWA guidance, industry-approved training, and applicable Federal and State laws and regulations;</li> <li>• Inventory and monitor non-residential moves;</li> <li>• Inspect and approve comparable replacement housing for decent, safe, and sanitary (DSS) requirements;</li> <li>• Determine amounts for eligible relocation payments; and</li> <li>• Review relocation payment claims.</li> </ul>
ROW Property Management Groups (Regional)	<ul style="list-style-type: none"> <li>• Represent DOT&amp;PF to the public for site-specific property-related inquiries, manage property, records, and make periodic reports;</li> <li>• Perform agency reviews and provide advisories to other Department groups and agencies on various adjacent or concurrent uses;</li> <li>• Permit various authorized and alternative ROW uses, clear encroachments, and conduct disposals; and</li> <li>• Make final inspections and takes possession of acquired properties, manage rental of properties after acquisition, and arranging for clearing of improvements from property before construction.</li> </ul>

Position Title or Unit Name	Functions and Duties
Statewide Real Estate/ROW Group (Statewide)	<ul style="list-style-type: none"> <li>• Promotes, supports, and defends the agency’s public transportation and real estate management authorities, obligations, activities, and interests in service to the regions, other business units, and leadership;</li> <li>• Acts as a liaison with funding partners, regulatory agencies, LAW, lawmakers, various other agencies, and the public, including serving as the agency’s voting member for the American Association of State Highway and Transportation Officials (AASHTO) Committee on ROW, Utilities, and Outdoor Advertising Control;</li> <li>• Serves as the Statewide Relocation Officer, when delegated by the Chief Engineer, to conduct formal, second-level relocations appeal hearings with assistance from LAW;</li> <li>• Facilitates ROW training for staff and contractors statewide;</li> <li>• Maintains and periodically publishes updates to the this manual, as required; and</li> <li>• Manages the Statewide Appraisal and Review Group (including contractors).</li> </ul>
Statewide Appraisal and Review Group (Statewide)	<ul style="list-style-type: none"> <li>• Ensures unbiased checks and balances, quality control, and risk management to promote public trust and preserve the program’s integrity by preventing influence (including the mere appearance thereof);</li> <li>• Either by qualified, in-house staff or through administration of Professional Services Agreements (contracts), serves as the designated subject-matter experts on valuation matters and provides guidance on Federally-required and industry-standard appraisal qualifications, contract scopes, and standards and makes the Recommendation of Just Compensation to set the minimum acquisition costs for parcels;</li> <li>• Exists behind the HQ firewall, separating negotiators and acquisition agents from appraisers and review appraisers in accordance with the State and Federal laws and regulations; and</li> <li>• Supports LAW on condemnation, litigation, and other ROW-related matters, including providing expert testimony on DOT&amp;PF valuations and valuation reviews.</li> </ul>

## 1.4. Project Funding

For the purposes of this manual, all real estate acquisitions, including those for public facilities, are referred to as ROW.

Funding for DOT&PF projects comes from the following sources:

- Alaska General Fund, through the Alaska Legislature;
- Federal Highway Trust Fund, through FHWA;

- Airports and Airways Improvement Act of 1982 and the Airport and Airway Development Act of 1970, through the Federal Aviation Administration (FAA); and
- Federal Transit funding through the Federal Transit Administration (FTA).

## 1.5. Statutory and Regulatory Background

The United States (U.S.) Constitution and the Alaska Constitution require that just compensation be paid to the owners of private property acquired for public

use. The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended applies to all real property acquisitions where Federal funds are involved in any phase of a project that involves these properties. The law has been amended several times, most significantly in 1987 as part of the Surface Transportation and Uniform Relocation Assistance Act ([Pub. L. 100-17](#)) and in 2012 as part of the [Moving Ahead for Progress in the 21<sup>st</sup> Century Act](#) ([Pub. L. 112-141](#)). Together, they are referred to as the “Uniform Act”.

The acquisition and relocation procedures described in this manual are based upon the Uniform Act. DOT&PF's statutory authority to hold title and manage land is contained in [AS 02](#), [AS 19](#), [AS 28.01](#), [AS 28.05](#), [AS 30](#), [AS 34.60](#), [AS 35](#), [AS 41.21](#), and [AS 36.30](#). DOT&PF's authority to acquire real property and to control outdoor advertising are contained in part under [AS 19](#). [AS 34.60](#) deals with relocation assistance and real property acquisition practices.

FHWA was the lead agency in writing regulations involving real property acquisition and relocation. The regulations are based upon the Uniform Act and are contained in [49 CFR 24](#). These regulations apply to all Federal agencies or to any project with any type of Federal funding. DOT&PF has adopted certain portions of [49 CFR 24](#) by reference in [17 AAC 81](#) (Relocation Assistance Services).

In addition to complying with State and Federal statutes and regulations dealing directly with acquisition and relocation requirements, as a condition to receiving funding from FHWA, The agency must ensure compliance with the provisions of the laws listed in [49 CFR 24.8](#), including but not limited to:

- Civil Rights Act of 1964 ([Pub. L. 88-352](#) as amended, 78 Stat. 241, enacted July 2, 1964 and codified as [42 USC 2000e](#));
- [23 USC 324](#) (Prohibition of Discrimination on the Basis of Sex);
- [23 CFR 200](#) (Title VI Program and Related Statutes—Implementation and Review Procedures);
- [49 CFR 21](#) (Nondiscrimination in Federally-Assisted Programs of the U.S. Department of

Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

- [49 CFR 27](#) (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance); and
- Rehabilitation Act of 1973 ([Pub. L. 93-112](#)).

No person in the U.S. or alien who is lawfully present in the U.S. may, because of race, color, national origin, gender, age, income, or disability, be excluded from participation in, or be denied the benefits of, or otherwise be subjected to discrimination under any activity or program for which the State of Alaska receives Federal funding. The Alaska Department of Transportation & Public Facilities' compliant Nondiscrimination Policy Statement is available online at [http://dot.alaska.gov/tvi\\_statement.shtml](http://dot.alaska.gov/tvi_statement.shtml).

Discrimination is also prohibited by the State in the selection and retention of contractors whose services are retained for (or incidental to) construction, property management, and ROW acquisition (including contracts for appraisal services, title reports, and title insurance and disposal of improvements).

## 1.6. Oversight Agreement

Section 106 of Title 23, United States Code ([23 USC 106](#)) requires FHWA and the State to enter into an agreement to document a new delegation of responsibilities.

This [Stewardship and Oversight Agreement](#) sets forth the agreement between the FHWA Division Office and the DOT&PF with respect to Title 23 project approvals and related responsibilities, and Federal-aid Highway Program oversight activities.

Several instances are specified in [23 CFR](#) where approval actions differ for interstate projects. See the current Stewardship and Oversight agreement for guidance on ROW project responsibilities.

## 1.7. Summary of Project Activities

This section includes a brief summary of the various phases of a highway project. Projects are developed according to the applicable Federal phases. Individual projects may vary and some phases are rarely, if ever, used.

Project phases are generally categorized as follows:

- Phase 0: Placeholder: This is used to hold funds until they are ready to be allocated, sometimes when match comes from another entity;
- Phase 1: Unprogrammed Legislative Authority;
- Phase 2: Preliminary Engineering (Design): This generally includes pre- and post-Environmental Document work through Final Plans, Specifications, & Estimates (PS&E). Some ROW appraisal and acquisition activities may be conducted in this phase with pre-approval of the Regional Preconstruction Engineer (see Ch. 2);
- Phase 3: ROW (some ROW appraisal and acquisition activities may be conducted in Ph. 2 with pre-approval of the Regional Preconstruction Engineer (see Ch. 2);
- Phase 4: Construction;
- Phase 7: Utility Relocation;
- Phase 8: Statewide Planning & Research; and
- Phase 9: Other: This category is sometimes used for items such as Planning and Environmental Linkage (PEL) studies.

A more detailed flow chart is available in Chapter 4 of the [Alaska Highway Preconstruction Manual](#). Most ROW activities are accomplished during Phases 2 and 3.

### **1.7.1. Phase 2**

Project development for a Federal-aid highway project begins with FHWA's Authority to Proceed (ATP) for Preliminary Engineering through Environmental Document Approval or ATP for Reconnaissance Engineering. An approval details the decision on how, or whether, to proceed with project design. Primary activities include engineering and environmental studies to identify and analyze reasonable alternative solutions to the problem or deficiency, and work necessary to produce an approved Environmental Document. ROW work in support of environmental studies is normally performed under the Preliminary Engineering authorization.

ROW's first involvement in a project generally begins with review of the preliminary design plans to determine property, easement, and permit needs and costs or when the regional Environmental Group requests relocation studies for the proposed project. Using preliminary design plans provided by the Engineering Manager, ROW staff prepare estimates of the probable number of parcels for each alternative, their acquisition and relocation costs, and "incidentals" - the cost of performing ROW activities.

ROW and Environmental staff also assess the number and socio-economic effects of residential and business displacements it causes and report the results to the Engineering Manager.

If there is a public hearing on the Environmental Document where ROW acquisition is anticipated, ROW staff may attend and discuss the acquisition and relocation processes.

Under certain circumstances as set forth in Chapters 2 and 6 of this manual, the agency may conduct certain ROW acquisition activities outside their usual phases. In most cases, FHWA issues the ATP through final PS&E after Environmental Document approval. The primary activity is engineering to identify and analyze principal design features and design elements that will satisfy the project's purpose and need and produce final construction plans and specifications.

Some project support activities include such things as surveys; materials/foundation investigation; traffic/accident analysis; ROW plans; valuations and market data research including relocation studies (see Chapters 2 and 6); environmental re-evaluation; utility agreement development; and (on projects with bridges or major structures) coordination with the Bridge and Statewide Materials Sections.

Once the project has received design approval, the ROW Engineering Group identifies land needs based on design plans and completes a title search for the project (using either staff or a title company) and then prepares the ROW plans based upon project design and title information.

### **1.7.2. Phase 3**

DOT&PF generally requests from the Federal agency ATP for Appraisal and Acquisition after final ROW plans have been completed, unless this



authority was requested under Phase 2. See Chapters 2 and 6.

ROW activities under Phase 3 generally include the appraising, acquiring, and managing of property and relocating affected parties.

After FHWA has given ATP with appraisal and acquisition, the parcels on the project are valued, either by waiver valuation or appraisal and review) to establish Just Compensation for each parcel.

After approval by the Regional ROW Chief, the ROW agent contacts each property owner and attempts to acquire the parcels with the offer of Just Compensation. If negotiations fail or title complications exist, and if administrative settlement at a price above value is imprudent or unsuccessful, condemnation proceedings are initiated through LAW. These proceedings may significantly affect project schedules and budgets. The proposed acquisition must be for the greatest public good and the least private injury and the Preconstruction Engineer must approve the decision to proceed with condemnation.

Property owners may request construction items be added to the plans. The ROW agent submits such requests for Engineering Manager approval using [Memorandum of Agreement \(MOA\) Form 25A-R605](#).

If acquiring property necessitates relocating an affected party, the acquisition agent and relocation agent should be present at the initial meeting with a property owner. These agents will coordinate efforts until the property has been acquired and the party is relocated.

When a parcel with improvements is acquired, the Property Management Group is notified so they can make arrangements to clear the improvements from the property to prepare it for project construction. The Property Manager prepares an inventory of improvements and excess property acquired.

The Property Manager then arranges for clearing the acquired ROW of any improvements, controlling encroachments, and disposing of lands no longer necessary for public use.

When all necessary property rights have been obtained a (or otherwise noted) and all displaced parties have relocation housing made available to them, the Regional ROW Chief certifies the project

and signs the appropriate [Project Certification Form](#) that is circulated by the Project Manager before requesting construction authority.

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