


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 14, 2021

AGENDA ITEM:	
Resolution Adopting Policies and Procedures for Right-of-Way Acquisition	
PREPARED BY:	DIRECTOR APPROVAL:
Jeff Laycock, City Engineer	
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
Resolution, Right-of-Way Procedures, Waiver of Appraisal Procedure, Administrative Settlement Policy	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	
<p>The Washington State Department of Transportation (WSDOT) requires agencies using federal funds on projects administered by WSDOT to have Approved Right-of-Way (ROW) Procedures that meet program requirements. The City's ROW Procedures were last updated in 2017. The ROW Procedures are intended to be updated at least every three years and when changes to staff occur.</p> <p>The attached ROW Procedures and Waiver of Appraisal Procedure documents are standard form documents from WSDOT. Only the City staff listed in the document have authority to manage and administer right-of-way activities on federally funded projects.</p> <p>The attached Administrative Settlement Policy is <u>not</u> a standard form document from WSDOT. The policy is intended to formalize the City's administrative settlement policies and procedures as outlined in the attachment. This includes Chief Administrative Officer and Public Works Director authority to offer 10% within fair market value. Any settlement above 10% fair market value will require Mayor or Council approval depending on the settlement amount. The Mayor will have authority to offer above 10% fair market value for settlements below \$100,000. Council will have authority to offer above 10% fair market value for settlements above \$100,000. The only change to this policy is the amount of the Mayor's threshold increased from \$75,000 to \$100,000.</p>	
RECOMMENDED ACTION:	
Staff recommends that Council approve a resolution and authorize the Mayor to sign the attached Right-of-Way Procedures, Waiver of Appraisal Procedure and Administrative Settlement Policy thereby adopting the City's right-of-way procurement policy consistent with the Washington State Department of Transportation program requirements.	
RECOMMENDED MOTION:	
I move to approve the resolution and authorize the Mayor to sign the attached Right-of-Way Procedures, Waiver of Appraisal Procedure and Administrative Settlement Policy.	

CITY OF MARYSVILLE
Marysville, Washington

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, ADOPTING POLICIES AND PROCEDURES FOR RIGHT-OF-WAY ACQUISITION AS REQUIRED BY THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY TO OBTAIN SUCH RIGHTS-OF-WAY WHEN THE COST OF ACQUISITION IS LESS THAN \$100,000.00, AND REPEALING RESOLUTION 2431.

WHEREAS, when right-of-way is acquired using federal grant funds, the City must conform with federal regulations; and

WHEREAS, the Washington State Department of Transportation (WSDOT) has policies that conform with applicable state and federal regulations; and

WHEREAS, to fulfill these requirements the City must acquire rights-of-way and real property in accordance with the policies set forth in the WSDOT Right-of-Way Manual and the Local Agencies Guidelines Manual; and

WHEREAS, adopting WSDOT documents -- LPA001 – ROW Procedures & Staff Experience and LPA003 – Waiver of Appraisal Procedure – is necessary to comply with these requirements; and

WHEREAS, adopting policies and procedures for right-of-way acquisition and administrative settlements is also necessary to comply with these requirements; and

WHEREAS, to expedite the acquisition of real property and interests in real property for right-of-way, the City Council authorizes the Mayor to execute all necessary documents to transfer ownership when the compensation paid for such property is less than \$100,000.00; and

WHEREAS, adopting the Right of Way Acquisition Administrative Settlement Policy & Procedures for Marysville will enhance the City's ability to relieve traffic congestion and improve its transportation network.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARYSVILLE that WSDOT documents -- LPA001 – ROW Procedures & Staff Experience and LPA003 – Waiver of Appraisal Procedure attached as Exhibits A and B are adopted for use by the City.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARYSVILLE that the City Council authorizes the Mayor to execute all necessary documents to transfer ownership when the compensation paid for such property is less than \$100,000.00.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARYSVILLE that the Right of Way Acquisition Administrative Settlement Policy & Procedures attached as Exhibit C is adopted for use by the City.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARYSVILLE that Resolution 2431 is hereby repealed for the reason that it is replaced by this Resolution.

ADOPTED by the City Council at an open public meeting this _____ day of _____, 2021.

CITY OF MARYSVILLE

By _____
JON NEHRING, MAYOR

Attest:

By _____
TINA BROCK, DEPUTY CITY CLERK

Approved as to form:

By _____
JON WALKER, CITY ATTORNEY

The City of Marysville, 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. 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, and a brief summary of their qualifications pertaining to the specific ROW function(s) for which they are listed. The procedures shall be updated whenever staffing changes occur. The AGENCY will be approved to acquire based upon staff qualifications.
 - i. **PROGRAM ADMINISTRATION :**
Oversee delivery of the R/W Program on federal aid projects for the agency. Ensures R/W functions are carried out in compliance with federal and state laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Ensures agency’s approved R/W 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
 - 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).

Esco Bell; Public Works Director, Jeff Laycock; City Engineer

(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.

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.

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.

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.

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 eligible activities;
- Keep R/W 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.

Gloria Hirashima; Chief Administrative Officer, Esco Bell; Public Works Director, Sandy Langdon; Finance Director, Jon Walker; City Attorney, Jeff Laycock; City Engineer, Pat Gruenhagen; Project Manager, Steve Miller; Project Manager, Adam Benton; Project Engineer, Kyle Woods; Project Engineer, Nick Greene; Project Engineer

(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. 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.
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.

Jon Nehring, Mayor

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

Date

**CITY OF MARYSVILLE
RIGHT-OF-WAY PROCEDURES
RELEVANT EXPERIENCE**

- 2010 – Present
Gloria Hirashima, Chief Administrative Officer
Provided oversight of right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2021 – Present
Esco Bell, P.E., Public Works Director
Provided oversight of right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects. Coordinated right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2015 – Present
Jon Walker, City Attorney
Provides legal review and process for right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2000 – Present
Sandy Langdon, Finance Director
Provides fiscal and administrative oversight of right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2007 – Present
Jeff Laycock, P.E., City Engineer
Provided oversight of right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects. Coordinated right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2016 – Present
Steve Miller, P.E., Project Manager
Coordinated right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2017 – Present
Pat Gruenhagen, P.E., Project Manager
Coordinated right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2016 – Present
Adam Benton, Project Engineer
Coordinated right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2021 – Present
Nick Greene, E.I.T., Project Engineer
Coordinated right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.
- 2006 – Present
Kyle Woods, Project Engineer
Coordinated right-of-way acquisitions and negotiations performed by City staff and consultants on federal-aid projects.

WAIVER OF APPRAISAL PROCEDURE

The City of Marysville, hereinafter referred to as “AGENCY”, desiring to acquire Real Property according to 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.
- C. The Public Works Director signs the AOS authorizing a first offer to the property owner(s).

CITY OF MARYSVILLE

APPROVED:

Jon Nehring, Mayor

Local Programs Right-of-Way Manager

RIGHT OF WAY ACQUISITION ADMINISTRATIVE SETTLEMENT POLICY & PROCEDURES

The City of Marysville hereby agrees to implement the following policy and procedures to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion to the courts. It is the city's intent to make every reasonable effort to expeditiously acquire real property by negotiation. Furthermore, the City of Marysville recognizes the inexact nature of the process by which just compensation is determined. Therefore, the implementation of the policies and procedures set forth are necessary in resolving differences with property owners:

1. Any administrative or stipulated settlement, which exceeds the fair market value, must be well documented, thoroughly justified, and the rationale for the settlement shall be set forth in writing.
2. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. It must analyze the specific parcel in the context of the project.
3. If the total compensation paid to acquire property or any interest in property for right-of-way purposes is less than \$100,000.00:
 - (a) The mayor has the authority to execute all deeds and other documents necessary to acquire property or any interest in property for right-of-way purposes;
 - (b) The chief administrative officer and the public works director have authority to approve administrative settlements that do not exceed fair market value by more than ten percent (10%);
 - (c) The mayor has authority to approve administrative settlements that exceed fair market value by more than ten percent (10%), provided the mayor determines that it is in the public interest.
4. If the total compensation paid to acquire property or any interest in property for right-of-way purposes is \$100,000.00 or more, the city council has authority to approve all administrative settlements including those that exceed fair market value by more than ten percent (10%), when the council determines that such action is in the public interest.
5. In arriving at a determination to approve an administrative settlement, full consideration to all pertinent information, but not limited to the following:
 - (a) The negotiator's recorded information, including parcel details, estimates, bids, research information, all available appraisals, including the owner's, and the owner's rationale for increased compensation as well as the probable range of value if the matter was to go to trial in an eminent domain/condemnation action.

- (b) The ability to acquire the property, or possession, through the condemnation process to meet the construction schedule.
- (c) Recent court awards in cases involving similar acquisition and appraisal problems.
- (d) Likelihood of obtaining an impartial jury in local jurisdictions, opinion of legal counsel where appropriate.
- (e) Estimate of trial cost weighted against other factors.

Approved by:

Jon Nehring, Mayor

Date