

# Federal Highway Administration Every Day Counts Innovation Initiative



## Flexibility in Current Right-of-Way Practices and Procedures

*The Right of Way (ROW) process is currently a major part of the project development process. Significant time savings can be achieved by employing flexibilities already provided for in statute and FHWA regulations. This initiative will underline opportunities for improved coordination of ROW activities with other key project development actions in preliminary design; land acquisition, relocation, utilities accommodation and to certify ROW for a project ; NEPA mitigation land needs; and a number of other areas where streamlined approaches may prove beneficial. The proposed initiative deals only with flexibilities allowed under existing regulations and statutes. Legislative changes required for additional flexibilities will need to be addressed separately.*

## The Right of Way Initiative is the Right Way to Go

The Right of Way (ROW) process is a major part of transportation project development. To make the process faster and easier, the “Flexibility in Current Right-of-Way Practices and Procedures” will assist transportation agencies in taking advantage of the many areas of flexibility already allowed under FHWA regulations and statutes.

Before building a highway project, land and property must be acquired. ROW practices and procedures determine how Federal, State, and local agencies can acquire this land and property. Throughout the ROW process, Federal, State, and local agencies must:

- Fulfill legal requirements intended to protect property owners and tenants
- Maintain the integrity of the NEPA process

**Coordinating ROW with Project Development.** Coordinating ROW activities more successfully with other key project development actions can substantially shorten project delivery. Areas in which streamlined approaches can be employed include:

- Preliminary design
- Land acquisition, relocation, and utilities accommodation
- NEPA mitigation land needs

This initiative deals only with flexibilities allowed under existing regulations and statutes. Additional flexibilities that require new legislative changes will need to be addressed separately.

**Unnecessary Caution Causes Unnecessary Delays.** To ensure compliance with all relevant regulations, transportation agencies often approach the ROW process cautiously. State DOTs, MPOs, and local agencies may move elements of a project through the ROW process sequentially rather than concurrently. This can significantly lengthen the highway project development process.

There are many reasons for this hesitation. Agencies can be reluctant to use unproven approaches for fear of not meeting NEPA and Uniform Act requirements. They may also fear incurring non-reimbursable expenses.

**Advantages of “At-Risk” ROW Activities.** There are several flexibilities that can be utilized to expedite the ROW acquisition process. It is important that State, MPO, and local agency ROW staff are well versed and trained in all applicable ROW regulations. When done correctly, the risk of incurring non-reimbursable expenses is negligible. The Federal Highway Administration (FHWA) stands ready to help with this and it is strongly advised that a State work with FHWA if it intends to pursue “at-risk” activities.

**Shortening Project Delivery.** This initiative can have a major impact on project delivery time. FHWA will ensure that State DOTs, MPOs, and local agencies are able to employ these ROW process flexibilities:

- Appraisal Waiver valuations with clearly defined thresholds
- Incentive Payments to Advance Acquisition and Relocation
- Conditional ROW Certification
- Appraisals and negotiations of property acquisition (up to \$10,000) by the same individual
- Functional Replacement in acquisition and relocation of Public Facilities
- Advancement of a Project to Construction under Right-of-Entry for Federal Lands Transfer

**Division Office and Resource Center Support.** To implement the Flexibility in Current ROW Practices and Procedures initiative, the FHWA offers a range of services. The Office of Real Estate Services, FHWA Division Offices (DO) and the Resource Center (RC) will take the lead in promoting existing flexibilities to the State DOTs, MPOs, and local agencies. It will offer a range of presentations and training programs to ensure that ROW staff is well versed and trained.

Additional support will come from DOs who will work with States to clarify how to apply the flexibilities within existing Right-of-Way regulations and policies. These flexibilities are immediately available for use in the development and implementation of projects.

Injecting more flexibility into ROW practices and procedures is just one of the better, faster, smarter ways to conduct business championed by the *Every Day Counts* Initiative. It brings transportation agencies one step closer to FHWA’s ultimate goal, as described by the Federal Highway Administrator, Victor Mendez: to cut project delivery time in half and more quickly advance innovation into daily practice.