

Right of Way and the LPA Process

We are in this boat together

- ▶ The rules are not new, they have always been there
- ▶ In the past the rules were not followed, causing some LPA's to have their reimbursements denied
- ▶ The guidance developed by KYTC is not meant to hinder or punish the LPA's, rather it is meant to ensure that their projects meet all the necessary requirements so that they will receive their reimbursements

Guidance

- ▶ Right Of Way Guidance Manual, 2019
 - ▶ 402-5 Acquisition Procedures by Subagents of KYTC & LPAs (Central Office Procedures)
 - ▶ 403-6 Acquisition Procedures by Subagents of KYTC & LPAs (District Office Procedures)
- ▶ Right of Way Acquisition Process (Booklet)
 - ▶ <https://transportation.ky.gov/RightofWay/Pages/Acquisitions.aspx>
- ▶ LPA Project Administration Website
 - ▶ <https://transportation.ky.gov/LPA/Pages/default.aspx>
- ▶ Revised LPA Guide - Published July 21, 2016 (Online Guide - The LPA Guide is a living document, check the bulletin board regularly!)
 - ▶ <https://transportation.ky.gov/Program-Management/Pages/LPAGuide.aspx>
- ▶ LPA Checklist

What is an LPA Project anyway?

- ▶ As far as KYTC is concerned, an LPA project is a project that receives funding that requires KYTC to administer and provide oversight for the project
- ▶ Can be federal or state funded
- ▶ Many cabinet Divisions can be involved
- ▶ There will be one administering office within the cabinet that has primary responsibility for the project.
- ▶ The Administering Office is the LPAs primary point of contact; the LPA will work closely with its Administering Office over the life of the LPA project.

Funding Type & Administering Offices

Project Type (Source of Funding)	KYTC Administering Office	Local Match Required? (generally 20% of total, which is 25% of Federal award)	Project cost should include KYTC Direct Cost? (generally 10% of total)	Application Based?
Surface Transportation Program (STP)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
National Highway System (NHS)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
Planning (PL)	KYTC Division of Planning (502) 564-7183	Yes	No	No
Surface Transportation dedicated for Louisville (SLO)	Infrastructure: KYTC Highway District 5 (502) 210-5400	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Surface Transportation dedicated for Lexington (SLX)	Infrastructure: KYTC Highway District 7 (859) 246-2355	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Surface Transportation dedicated for Northern Kentucky (SNK)	Infrastructure: KYTC Highway District 6 (859) 341-2700	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			

Funding Type & Administering Offices

Project Type (Source of Funding)	KYTC Administering Office	Local Match Required? (generally 20% of total, which is 25% of Federal award)	Project cost should include KYTC Direct Cost? (generally 10% of total)	Application Based?
Surface Transportation dedicated for Henderson (SHN)	Infrastructure: KYTC Highway District 2 (270) 824-7080	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Transportation Alternatives Program (TAP)	KYTC Office of Local Programs (502) 564-2060	Yes	Yes - TMAs dedicated TAP No - Statewide TAP	Yes
Congestion Mitigation and Air Quality (CMAQ)	KYTC Office of Local Programs (502) 564-2060	Yes	No	Yes
Earmarks (HPP, IMD, PLH, Delta Region, etc.)	KYTC Division of Program Management (502) 564-3388	Varies	Yes	Sometimes
Ferry Boat Earmarks	KYTC Division of Planning (502) 564-7183	Varies	Yes	No
Bridge Replacement (BRX or BRZ)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
Highway Safety Improvement Program (HSIP)	KYTC Division of Traffic (502) 564-3020	Yes	Yes	Sometimes
Highway Safety (NHTSA)	KYTC Division of Highway (502) 564-1438	Yes	Yes	No
Recreation Trails Program (RTP)	Department of Local Government (502) 573 2382	Yes 50% for non-motorized 20% for motorized	No	Yes

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”)

- ▶ There must be a written record of contacts documenting all communication
- ▶ LPAs are responsible for informing property owners of their rights under The Uniform Act
- ▶ Requires the LPA to perform certain relocation planning activities
- ▶ Requires that persons displaced because of a federally funded project receive compensation for relocation expenses
- ▶ Requires property owners receive just compensation for their property
- ▶ And lot’s of other stuff!

Items that require approval
by KYTC will be noted by a ✓
From this point forward

R/W Acquisition Requires Many Prequalified Personnel

- ▶ Title & Closing Attorneys - Does title searches for every parcel and administers the closing for each parcel
- ▶ Appraisers - Establishes values for each taking that require appraisals. Minor Acquisition Reviews (MAR) can be done by the acquisition agents.
- ▶ Review Appraisers - Review and approve all appraisers. Typically handled by KTYC personnel
- ▶ Acquisition Agents - Negotiates with property owners and maintains proper documentation.
- ▶ Relocation Agents - Handles all aspects of relocation process when necessary
- ▶ Prequalified Firms - Firms must prequalified by KYTC

Prequalified Firms

- ▶ Firms must be prequalified for right of services.
- ▶ 2 categories of prequalification
 - ▶ Acquisition Services
 - ▶ Relocation Services
- ▶ On LPA projects, right of way firms will generally have prequalified Title & Closing Attorneys, Appraisers, Acquisition Agents and Relocation Agents on their teams.
- ▶ Review Appraisers are usually KYTC staff
- ▶ The firm will develop a fee proposal that includes all services. After the LPA and KYTC approves the fee the LPA enters into a contract with the firm. ✓

Development of R/W Plans ✓ (Design Phase)

- ▶ Plans that show the fee simple r/w and easements required for the project
- ▶ Determining existing R/W
 - ▶ Record Plans
 - ▶ KRS 178.025 Road presumed established -- Presumption of width and area of public road right-of-way Existing R/W for State Roads
 - ▶ KRS 178.040 Change in width of county road or right-of-way -
- Minimum width of right-of-way -- Acquisition of right-of-way
- ▶ Strip Maps - Plan sheets that focus on r/w and easement takings
- ▶ Summary Sheet - Large table listing all parcels, owners, area of acquisition and other information.

First Steps to Begin R/W Process


- ▶ Authorization - KYTC's process for setting up the funding for the project. Done by Administering Office and Program Management. Items required for a R/W authorization include:
 - ▶ Approved R/W Plans ✓
 - ▶ R/W estimate ✓
 - ▶ MOA for R/W Phase ✓
- ▶ ✓ MOA for R/W Phase - Agreement between the LPA and KYTC that identifies exactly what the LPA and KYTC are each responsible for.
- ▶ ✓ Official Order- An Official Order authorizes acquisition of right of way using eminent domain procedures afforded by law to the Commonwealth of Kentucky.
- ▶ ✓ Notice to Proceed - From both KYTC Division of Right of Way and the Administering Office

R/W Activities Allowed Before the Official Order

- ▶ If the Secretary of the Kentucky Transportation Cabinet has authorized preliminary funds, the director requests authority to proceed with preliminary activities prior to the official order and notice to proceed (NTP) such as:
 - ▶ Developing a project report
 - ▶ Securing title reports
 - ▶ Compiling relocation worksheet data
 - ▶ Pre-acquisition data, such as comparable sales book, PVA information, MAR value range

Project Report (TC 62-75)

- ▶ A project report is required on all projects
- ▶ It contains a listing of every parcel and details of each parcel including but not limited to:
 - ▶ Complexity of the Acquisition
 - ▶ Valuation method required
 - ▶ Number of relocations
 - ▶ Several other details
- ▶ On consultant projects, the project report is prepared before and presented at the scoping meeting

 KENTUCKY TRANSPORTATION CABINET Department of Highways DIVISION OF RIGHT OF WAY AND UTILITIES		TC 62-75 Rev. 05/2019 Page 1 of 1
PROJECT REPORT		
SECTION 1: PROJECT INFORMATION		
COUNTY	ITEM NO.	
PROJECT NO.	FEDERAL NUMBER	PROJECT
LENGTH OF PROJECT	# OF PARCELS	CROSS SECTIONS AVAILABLE AND USED?
		<input type="checkbox"/> Yes <input type="checkbox"/> No
COMPILED BY		DATE COMPILED
SECTION 2: PROJECT SUMMARY		
# OF ENTIRE ACQUISITIONS	# OF PARTIAL ACQUISITIONS	RELOCATIONS
Vacant <input type="checkbox"/>	W/1 Remainder <input type="checkbox"/>	Residential <input type="checkbox"/>
Improved <input type="checkbox"/>	W/2 Remainder <input type="checkbox"/>	Non-Residential <input type="checkbox"/>
	W/3 or more <input type="checkbox"/>	Misc. Move <input type="checkbox"/>
	W/LL Remainder <input type="checkbox"/>	Outdoor Ads <input type="checkbox"/>
# OF PARCELS IN "MAJOR" CATEGORY		<input type="checkbox"/>
# OF PARCELS IN "MINOR" CATEGORY		<input type="checkbox"/>
# OF PARCELS IN MAR CATEGORY		<input type="checkbox"/>
SECTION 3: PROJECT DESCRIPTION <i>(overall complexity of project, special problems that may be encountered, estimated availability of data, recommended studies and analysis) Text limited for accurate printing. Use attachment if needed.</i>		

Title Report

- ▶ Done by title attorney
- ▶ It is recommended the Title Attorney be on the Office of Legal Services approved list
- ▶ Can be started in design phase once impacted properties are identified
- ▶ Can do this before you know the exact amount of taking on each parcel
- ▶ Chain of title is searched back for 35 years
- ▶ Clears title issues before purchase of the right of way or easements

Scoping Meeting

- ▶ The scoping meeting is to provide a detailed process in which the Cabinet (District) wishes for the project to progress. It is recommended that all persons involved with a right of way project attend the scoping meeting
- ▶ LPA personnel involved with the project
- ▶ Consultant attendees should include the Project Manager, Appraiser, Review Appraiser, all Negotiators and Relocation Agents
- ▶ The District attendees should include the Right of Way Supervisor, Property Management Agent, Relocation Agent, Utility Agent, Design Project Manager, and Branch Manager of Project Development, District Environmental Coordinator, and Design Consultant if needed

Notice to Owners

- ▶ As soon as the NTP is issued a notice to owners should be sent out to all potentially affected property owners
- ▶ The letter should contain the following items:
 - ▶ Project Information (Road name, project numbers, etc)
 - ▶ Notification that surveyors will be on their property
 - ▶ Brief description of Evaluation / MAR Process
 - ▶ Notification that others, (appraisers, acquisition agents, etc.) may be contacting them
 - ▶ The Right of Way Acquisition Process booklet as an attachment

Property Valuations

Minor Acquisition Review (MAR)✓

- ▶ An abbreviated valuation process may be allowable for noncomplex acquisitions that involve no damages to the property
- ▶ Allowable when the value of the acquisition is less than \$10,000
- ▶ May be allowable when the value of the acquisition is between \$10,000 and \$25,000, if the property owner does not request an appraisal
- ▶ If the value is over \$10,000 property owner can request an appraisal
- ▶ For Consultant projects, the district right-of-way supervisor shall approve the range of values, Value calculations of the acquisition and just compensation

Property Valuations

Appraisals✓

- ▶ Appraisals determine the just compensation as the difference in the fair market value of the entire property prior to the acquisition and the fair market value of that part of the property that remains after the acquisitions
- ▶ Must be done by qualified KYTC staff or a KYTC Prequalified Fee Appraiser
- ▶ All appraisals will be reviewed by either a staff review appraiser or a prequalified fee review appraiser assigned the parcel by KYTC
- ▶ See the Right of Way Appraisal Guidelines for more information (New guidelines submitted for approval on 8/12/19)
 - ▶ <https://transportation.ky.gov/RightofWay/Pages/Appraisals.aspx>

Negotiations

- ▶ Good faith negotiations are carried out by a prequalified Acquisition Agent and managed by a prequalified Project Manager
- ▶ If negotiations are carried out by a consultant, the Acquisition Agent and Project Manager cannot be the same person
- ▶ Acquisition agents record details of each meeting with the property owner in a document called the Record of Contacts
- ▶ Acquisition agents develop and maintain a parcel file that contains all the necessary documentation for each parcel
- ▶ No offers can be made without an approved current environmental document

Payment to Property Owners

- ▶ Once the acquisition agent and property owner agree on the price, a payment packet is compiled by the agent. This packet will be submitted and approved as outlined in the MOA
- ▶ The LPAs must keep the Payment Packets for their records
- ▶ Payment Packet requires electronic signatures
- ▶ Once the required approvals are acquired, checks are then cut to the property owner as specified in the MOA
- ▶ The acquisition agent that negotiated the parcel cannot deliver the check to the property owner
- ▶ Make sure to discuss these items in the scoping meeting

Donated Property

- ▶ Property can be donated to a project
- ▶ Owners must be informed of their right to receive just compensation
- ▶ The value of donated property can be used as match if approved by KYTC✓
- ▶ Appraisals are required to determine the value of donated property if used for match if the value of the property exceeds the MAR limitations

Relocation Assistance

- ▶ Assists persons property owners impacted by a transportation project in facilitating their relocation in the fairest and most cost-effective manner
- ▶ Can provide any of the following:
 - ▶ Advisory services
 - ▶ Moving payments
 - ▶ Supplemental housing payments
 - ▶ Closing cost payments
 - ▶ Other incidental expenses related to relocation
- ▶ Must be performed by qualified KYTC personnel or a consultant prequalified in Relocation Services
- ▶ See the Relocation Assistance Guidance Manual, January 2019 for more information

Condemnations

- ▶ After all reasonable attempts have been made to negotiate for a property and no agreement can be reached, it may become necessary to initiate a condemnation under the laws of eminent domain
- ▶ There are considerable costs and delays associated with the condemnation process
- ▶ Some condemnation costs are not reimbursable

LPA Checklist (R/W Section)

Right-of-Way & Utilities				
Note: Only Question #1 applies to Non-infrastructure Projects				
Checklist Item	Yes	No	N/A	Comments
1. Right-of-Way Certification Date Approved: _____ <i>Provide a copy of the Right-of-Way Certification with the LPA-PDC</i> Has <u>all</u> Right-of-Way for the project been secured?	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Have <u>all</u> displaced persons been relocated to decent, safe, and sanitary housing per the requirements outlined in the Uniform Act? If 'No', please provide a detailed explanation and attach to the LPA-PDC. (23 CFR 635.309)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Have all Encroachment Permits been obtained for projects that will be constructed on KYTC Right-of-Way? Date Approved: _____ <i>Provide a copy of the Encroachment Permits with the LPA-PDC</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Are any utilities located within the project area? If yes, have all Utility Agreements/No Impact Letters been approved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. What do the Utility Impact Notes indicate? <input type="checkbox"/> No utilities remain located in the project area at the time of the letting <input type="checkbox"/> Utilities will be moved during construction by others and not by LPA selected contractor <input type="checkbox"/> Utilities will be moved during construction by a contractor <input type="checkbox"/> Utilities will remain in project area and must be avoided by Contractor <i>Provide a copy of the Utility Impact Notes with the LPA-PDC. If applicable, list anticipated relocation completion dates in the utility notes.</i>				
6. Is the project located on or adjacent to or require the adjustment of railroad facilities or property? If yes, has the railroad agreement been approved? <i>Provide a copy of the Railroad Impact Note with the LPA-PDC</i>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

The R/W Certificate ✓

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	RIGHT OF WAY CERTIFICATION	
	(Empty space for additional information)	

<input type="checkbox"/> Original	<input type="checkbox"/> Re-Certification	RIGHT OF WAY CERTIFICATION	
ITEM #	COUNTY	PROJECT # (STATE)	PROJECT # (FEDERAL)
PROJECT DESCRIPTION			
<input type="checkbox"/> No Additional Right of Way Required Construction will be within the limits of the existing right of way. The right of way was acquired in accordance to FHWA regulations under the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, as amended. No additional right of way or relocation assistance were required for this project.			
<input type="checkbox"/> Condition # 1 (Additional Right of Way Required and Cleared) All necessary right of way, including control of access rights when applicable, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way, but all occupants have vacated the lands and improvements, and KYTC has physical possession and the rights to remove, salvage, or demolish all improvements and enter on all land. Just Compensation has been paid or deposited with the court. All relocations have been relocated to decent, safe, and sanitary housing or that KYTC has made available to displaced persons adequate replacement housing in accordance with the provisions of the current FHWA directive.			
<input type="checkbox"/> Condition # 2 (Additional Right of Way Required with Exception) The right of way has not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Some parcels may be pending in court and on other parcels full legal possession has not been obtained, but right of entry has been obtained, the occupants of all lands and improvements have vacated, and KYTC has physical possession and right to remove, salvage, or demolish all improvements. Just Compensation has been paid or deposited with the court for most parcels. Just Compensation for all pending parcels will be paid or deposited with the court prior to AWARD of construction contract.			
<input type="checkbox"/> Condition # 3 (Additional Right of Way Required with Exception) The acquisition or right of occupancy and use of a few remaining parcels are not complete and/or some parcels still have occupants. All remaining occupants have had replacement housing made available to them in accordance with 49 CFR 24.204. KYTC is hereby requesting authorization to advertise this project for bids and to proceed with bid letting even though the necessary right of way will not be fully acquired, and/or some occupants will not be relocated, and/or the just compensation will not be paid or deposited with the court for some parcels until after bid letting. KYTC will fully meet all the requirements outlined in 23 CFR 635.309(c)(3) and 49 CFR 24.102(j) and will expedite completion of all acquisitions, relocations, and full payments after bid letting and prior to AWARD of the construction contract or force account construction.			
Total Number of Parcels on Project		EXCEPTION [5] Parcel #	
Number of Parcels That Have Been Acquired		ANTICIPATED DATE OF POSSESSION WITH EXPLANATION	
Signed Deed			
Signed Condemnation			
Signed R/OE			
Notes/ Comments (Use Additional Sheet if necessary)			
LPA RW Project Manager		Right of Way Supervisor	
Printed Name		Printed Name	
Signature		Signature	
Date		Date	
Right of Way Director		FHWA	
Printed Name		Printed Name	
Signature		Signature	
Date		Date	

Reviews and/or Approvals Required During Your R/W Journey

- ▶ Right-of-Way Plans ✓
- ▶ Right-of-Way Estimate ✓
- ▶ Prequalified Acquisition Consultant Fee Proposal ✓
- ▶ Official Order ✓
- ▶ Appraisals ✓
- ▶ Range of values for minor acquisitions (MARs) ✓
- ▶ All MARs and Deeds and Grants of Easement ✓
- ▶ Right-of-Way Certificate (must be signed by District R/W supervisor and Director of R/W) ✓
- ▶ Completed Parcel Files ✓
- ▶ Any forms used by the LPA for their right of way process ✓

Questions for the Panel

- ▶ Kelly R. Divine, Assistant Director, Division of Right of Way and Utilities, Kentucky Transportation Cabinet
- ▶ Susan B. Oatman, P.E., Division of Program Management, Kentucky Transportation Cabinet
- ▶ Mike Penick, MBA, SR/WA, Right-of-Way Manager, Division of Transportation, Louisville/Jefferson Co. Metro Government
- ▶ David Moses, PE, PLS, Vice President, Integrated Engineering
- ▶ Chad J. Cutsinger, SR/WA, R/W Acquisition Services, Qk4