


Right of Way Acquisition:

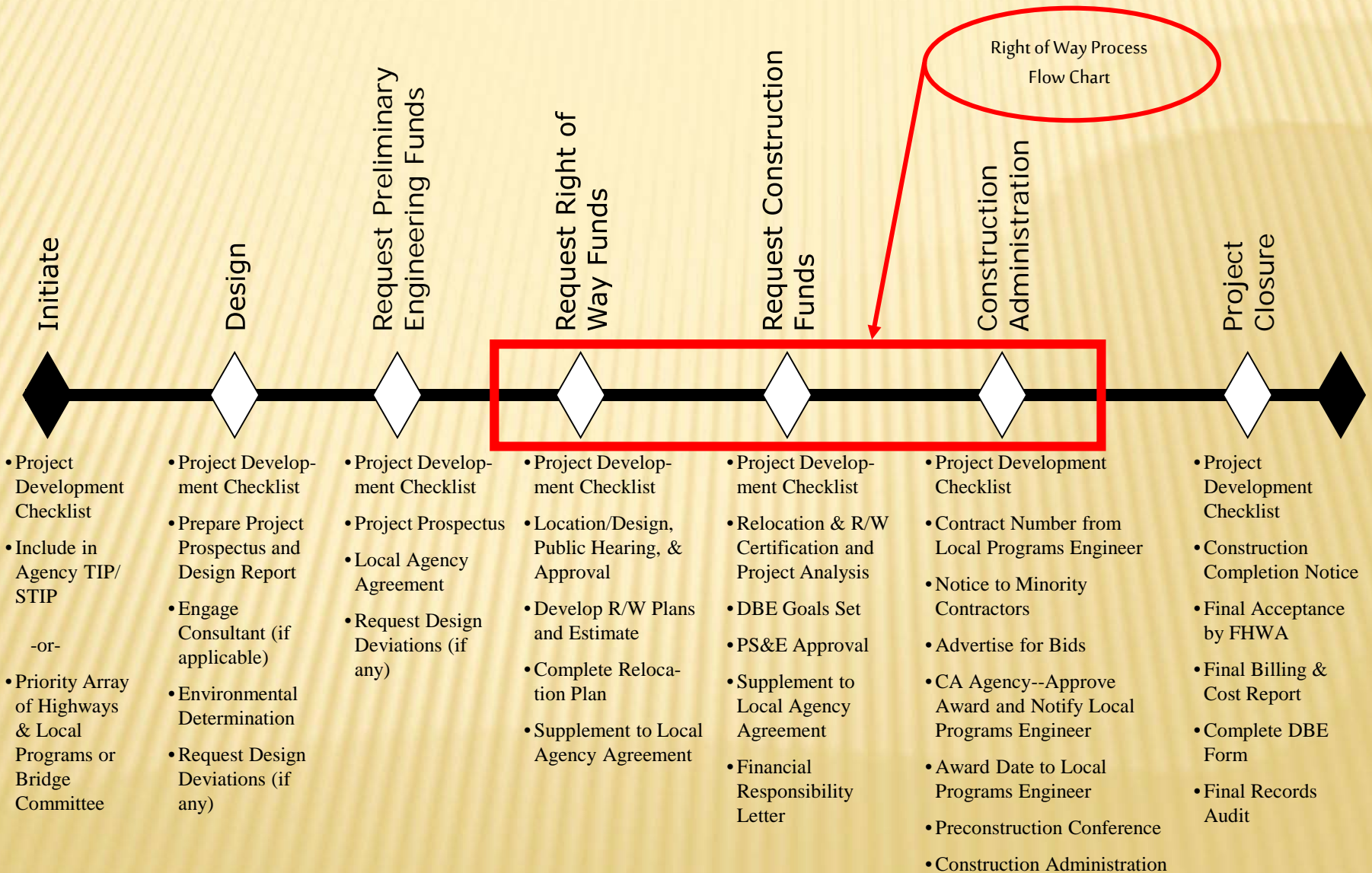
# The "Do" List

Or

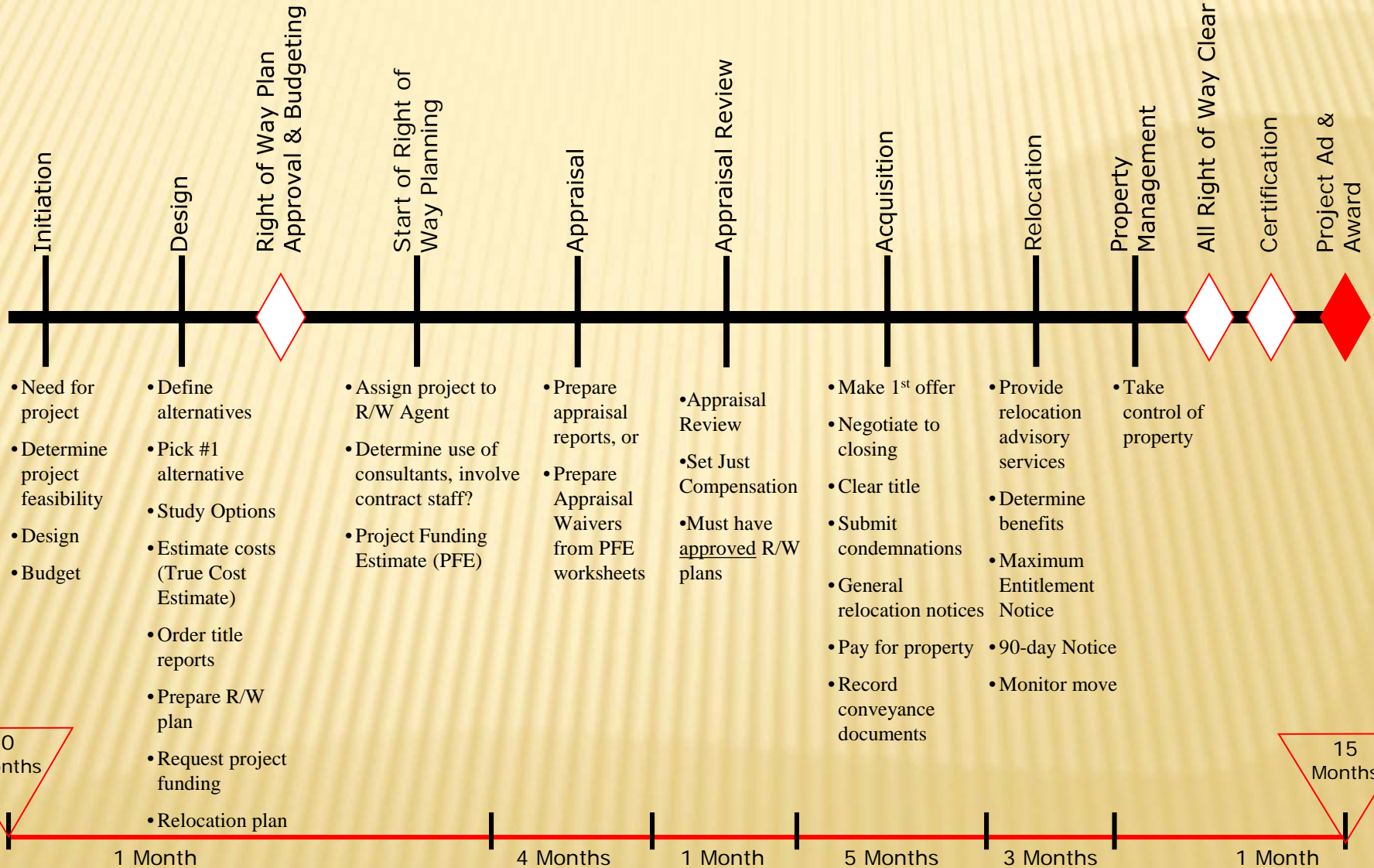
"Everything you always wanted to know about right of way but were afraid to ask."



# Federal Aid Project Development Process



# Right of Way Process



**It's the law!**

**FIFTH AMENDMENT U. S. CONSTITUTION**

No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

# Planning

**It's not just a project area, it's someone's house or business.**

- When we spend so much time planning a project before we ever contact a property owner we forget their point of view and that this may be news to them.
- Obtain a Right of Entry of Temporary Construction Easement when:
  - Survey work takes you onto someone's property more than a few feet.
  - Any invasive work is being done (staking, boring, sampling, ect)

# Planning

## Prepare a Right of Way Plan

Minimum Requirements:

1. Survey line or center line
2. Old and new R/W limits with enough ties to write legal descriptions of the area to be acquired
3. Show all rights to be acquired: fee, permanent easement, temporary easement
4. Ownership boundaries of all parcels
5. Parcel identification (number or name)
6. Table showing parcel specific information: name of owner, before area, after area, type of acquisition, sq ft of area to be acquired, area of the remainder
7. Seal and signature of Professional Engineer or land surveyor
8. Track any revisions on the r/w plan

# Planning

## Cost Estimating

- Assessed Value is often incorrect
- Remember labor, escrow, administrative settlement/condemnation

# Planning

## Schedule

- Plan enough time for R/W appraisal, acquisition and relocation
  - When we buy a house on the open market *all* parties are motivated.
  - When we buy R/W only we are motivated, not the sellers
  - If we push too hard to fast we face increased costs and possible condemnation.
  - We can't make an offer to purchase prior to having
    1. approved R/W Plans
    2. NEPA ROD (federal \$)
    3. Justification to acquire in advance of NEPA (local \$)
    4. appraisal/appraisal review/agency signed statement of just compensation
- Build wiggle room into your schedule or find yourself in the “sacred date” scenario



# Planning

## Assignments

- Review your filed WSDOT Right of Way Procedures
- Make written assignments to staff and include your expectations
- Appraiser will meet on site with property owner for a joint inspection
- Appraiser and Relocation Agent will make a joint site inspection with owners
- If you don't have experienced r/w staff hire consultants
- Make sure your consultant scope of work meets the funding requirements and meets your needs and expectations

# Planning

Have a process, policies in place prior to starting R/W phase

- When in doubt, use WSDOT process and forms
- Know your internal process for:
  1. reviewing and approving administrative settlements
  2. processing files and paying owners/relocation claims
  3. title clearing expectations – clear only what you need to construct or everything?

# Acquiring

Anytime you work with people you have an unknown and opportunity for lots of surprises!

- Deaths, heirs and probate... oh my!
- If you don't succeed at first, reassign
- Heed the advice of your r/w field staff
- When in doubt get an impartial second opinion on what to do next.

# Relocation

Anytime you move stuff, people or businesses you have a relocation.

It's time consuming and expensive.

If federally funded you must have a completed, reviewed and approved Relocation Plan.

If you think there might be relocation, there probably is.

Just when you think there is no relocation, there is.

# Certifying

- Even if you don't have state or federal funds in your project writing a certification letter to the project file is a great idea.
- Give your LPA Coordinator time to review the project.

# Constructing

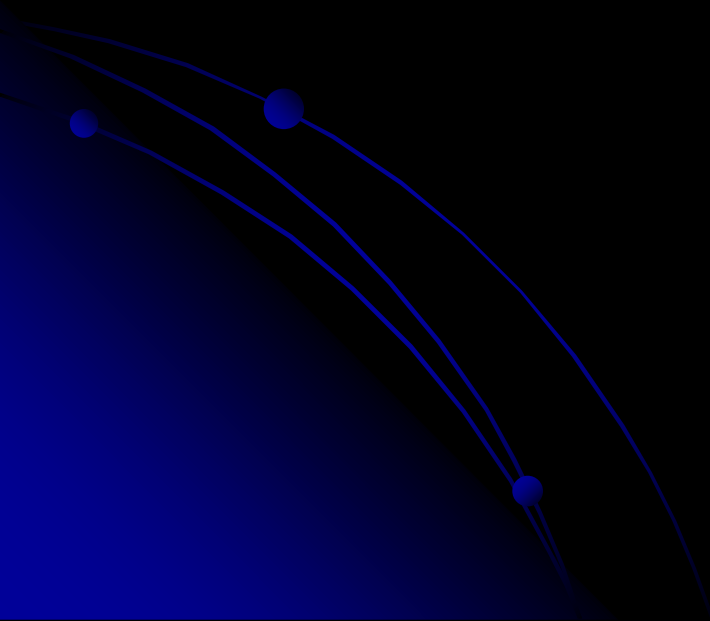
- You can't construct if you don't have the R/W acquired. Ever.
- If you are in condemnation and don't have a Possession and Use Agreement you can't construct.

# General Tips

- R/W staff know how to read plans, but they also need contact, information and coordination with you.
- Roles: R/W staff are the representatives of the agency and the advocates for the property owners and displacees.
- It's about problem solving and finding common ground, not salesmanship.
- Give the contractor a file with all agency/owner agreements (Construction Memos) and a copy of the R/W Plans.

Right of Way Acquisition:

# The "Don't" List





# 1. Don't discuss money with property owners!

In other words, what you (or your representatives) cannot do is talk about a probable price.

Recommendation: simply tell property owners that they will be offered just compensation after the property has been appraised.

Most of all, leave such matters to your R/W agent!

## **2. Don't attempt to short-change property owners!**

From the FHWA's website: "Just compensation is the price an agency must pay to acquire real property."

### **3. Don't initiate negotiations before the property has been appraised**

Federal regulations make it clear that all property rights to be acquired must be appraised *before* negotiations begin.

Furthermore, every appraisal must be reviewed by an independent reviewer *before* the first offer is made.

## **4. Don't allow your appraiser to inspect a property alone.**

The appraiser is required to make a diligent effort to contact the owners and offer them the opportunity to be present during the property inspection.

The appraiser must also include a record of property owner contacts in the appraisal report.

## **5. Don't forget to provide your concurrence with the review appraiser's report**

It's a federal regulation. An acquisition agent is not authorized to make an offer to purchase before the agency official authorized to do so adds a statement to the review appraiser's certificate, concurring with the review appraiser's determination of just compensation.

## 6. Don't leave a property owner with an uneconomic remnant that you didn't offer to acquire.

An “uneconomic remnant” is a portion of the property remaining after the acquisition which has little or no utility or value *to the owner*.

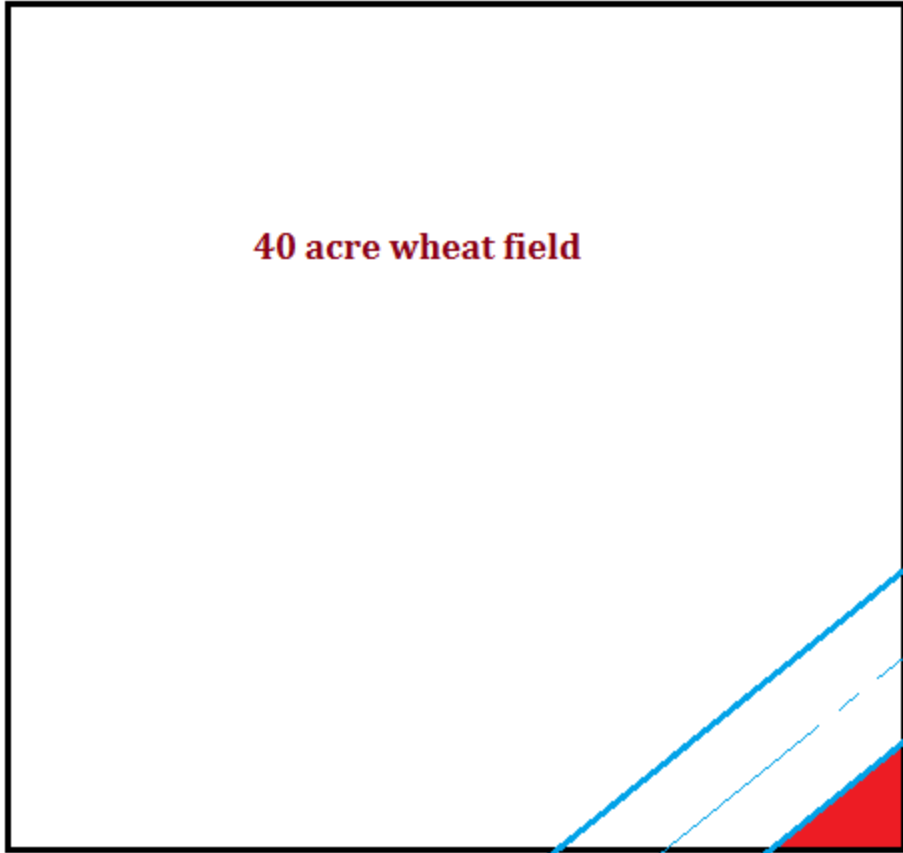
The review appraiser determines whether a remainder qualifies as an “uneconomic remnant.”

**40 acre wheat field**

**New 4-lane arterial**



**40 acre wheat field**



**New 4-lane arterial**



## 7. Don't offer a property owner a lump sum for the acquisition

List the property rights acquired individually. Here's an example:

1,000 SF of land in fee:	\$10,000
500 SF permanent easement:	\$ 2,500
250 SF temp. constr. easement:	\$ 500
Damages to remainder property:	\$ 5,000
Total:	\$18,000

## **8. Don't claim possession of a property before payment to the owner has been made**

Perhaps you've obtained a signed deed and you've already recorded it. But until your office has issued a check to the owner, you cannot claim possession.

## **9. Don't attempt to have occupants vacate unless at least 90 days advance written notice has been given**

In other words, don't be in a big rush to get people (either owners or tenants) off the property you are acquiring. The Uniform Act guarantees displacees certain rights.

## **10. Don't squeeze your tenants!**

It doesn't matter how much your project could use the money. Federal regulations require that you charge tenants no more than fair market rental.

You will probably need the services of an appraiser to determine the market rental rate for the class of property you intend to rent back to the former owner or tenant.

# 11. Don't adopt coercive tactics

An acquiring agency must negotiate in good faith. This includes being responsive to property owners and giving them an adequate amount of time to consider both the impacts to their property and the price offered. Condemnation is a last resort measure.

## **12. Don't make property owners pay any transaction-related fees!**

Yes, the acquiring agency must pick up the tab for any fees that might apply to “normal” real estate transactions.

# **13. Don't ask property owners to donate property without informing them of their right to receive just compensation**

By all means, ask the property owner if he/she will consider donating the needed right of way from their property. But inform them that they have the right to just compensation and an appraisal, and have them sign a donation statement.

# **14. Don't force an owner to institute legal proceedings to prove the fact of the taking of his property**

In other words, it shouldn't be necessary for property owners to file an inverse condemnation suit to demonstrate that you are taking their property.





**15 (and finally). *Please*—don't attempt to advance your project schedule by squeezing the right of way phase of your projects!**

Your project has suffered a couple of unavoidable delays. Now you want to make up for lost time.

“Oh, well. The right of way staff will just have to work faster.”

## END OF PRESENTATION SLIDES

The next 2 slides are handouts that were provided to meeting attendees

### The "Don't" List – Some Cautionary Notes

1. Don't... discuss compensation with property owners
2. Don't... short-change property owners
3. Don't... initiate negotiations before the property has been appraised
4. Don't... allow your appraiser to inspect a property alone
5. Don't... forget to provide your concurrence with the review appraiser's report
6. Don't... leave a property owner with an uneconomic remnant that you didn't offer to acquire
7. Don't... offer a property owner a lump sum for the acquisition
8. Don't... claim possession of a property before payment to the owner has been made
9. Don't... make occupants vacate unless at least 90 days advance written notice has been given
10. Don't... squeeze your tenants!
11. Don't... adopt coercive tactics
12. Don't... make property owners pay any transaction-related fees!
13. Don't... ask property owners to donate property without informing them of their right to just compensation
14. Don't... force an owner to institute legal proceedings to prove the fact of the taking of his property
15. Don't... attempt to advance your project schedule by squeezing the right of way phase

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See our web page at <http://wsdot.wa.gov/Northwest/RealEstate/>

# CERTIFIED Land Services

FINDING COMMON GROUND SINCE 1999

## IT'S ABOUT PEOPLE ...

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At CERTIFIED LAND SERVICES, we get it. If you can't acquire the property for your project in time, there may be no project. And that's what makes CERTIFIED just right for your project. At CERTIFIED, we know that property acquisition isn't just about land. It's about people. Since 1999, we have been helping clients and property owners find common ground so that vital projects just like yours can move forward on schedule. From rights-of-entry to rights-of-way, we consistently negotiate timely, fair and defensible outcomes.

## IT'S ABOUT SERVICE ...

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CERTIFIED Land Services offers a full range of services, including:

- ✓ Project Management and Administration
- ✓ Project Scoping and Planning
- ✓ Public Involvement and Facilitation
- ✓ Obtaining Rights of Entry and Temporary Easements
- ✓ Funding Estimates
- ✓ Research/Preparation of Relocation Plans
- ✓ Negotiation/Acquisition of Properties
- ✓ Title Evaluation and Lien Removal Services
- ✓ Relocation Planning and Advisory Services
- ✓ Calculation of Relocation Benefits / Claims
- ✓ Closing Assistance
- ✓ Agency Certification Assistance
- ✓ Property Management
- ✓ Emergency Construction On-Call Assistance
- ✓ R/W Policies and Procedures Development

## IT'S ABOUT SATISFIED CLIENTS ...

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*"Thanks so much for the energy and dedication you put into this project with us. The results have made for an incredibly smooth construction phase!" Randy Brackett*

## HOW TO CONTACT US ...

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