



Miller & Miller, P.S.

Sound Transit

**Performance Audit Report
Real Property Acquisition**

November 28, 2017

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SOUND TRANSIT

Real Property Acquisition

Performance Audit Report

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Sound Transit

Performance Audit Report- Executive Summary

Introduction

We are pleased to present this performance audit report on Sound Transit's (ST) real property acquisition activities. The purpose of this performance audit is to determine whether ST real estate acquisition management controls, policies and procedures are designed and operating to ensure fair and reasonable acquisition prices for properties acquired, including allowable relocation costs, and timely acquisition in alignment with construction schedules.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Objectives

This project's audit objectives are designed to address the following questions:

- To determine whether management controls are designed well and working effectively to ensure:
 - A fair and reasonable acquisition price, including allowable relocation costs, in compliance with applicable federal, state, local and agency regulations.
 - Timely acquisition in alignment with construction schedules.
- To benchmark, to the extent practicable, Sound Transit's practices to those of comparable public and/or private entities.
- To identify opportunities for continuous improvement with practical recommendations.

This project focuses on certain activities performed by ST's Real Property Division, Design, Engineering & Construction Management Department, but is limited to the real estate and property rights acquisition functions.

Information Contained in this Report

This report is a summary of the project outcomes. Appendix A presents the regulatory criteria used in this performance audit. Appendix B present the results of the risk assessment analysis and provides more detailed information on the recommendations involving opportunities for continuous improvement.

Scope, Approach and Methodology

The scope of work for this audit involves evaluating operating and compliance aspects of ST staff's involvement in acquiring real estate and right-of-way interests in ST's expansion

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programs. The scope of this performance audit does not involve any work by ST's other functions that maybe involved in real estate acquisition or any other ST programs.

We focused our audit efforts on activities occurring during 2017. However, many of our selected items for testing included activities that preceded this period. To the extent necessary we included the activities that occurred prior to 2017. Since the real property and easement acquisitions are the largest expenditure of funds during the first six months of 2017 and in consideration of its overall importance to Sound Transit's capital program, we focused our audit effort on acquisitions. However, our testing also extended to moving and relocation costs.

We selected property and easement files to test the administrative internal controls and to determine whether acquisitions occurred in a timely manner and resulted in equitable values.

Summary of Results, Findings and Recommendations

We found that ST's real estate function performed well in that real property and related interests were acquired in an equitable and timely manner; that ST complied with its own policies; and those policies conformed to Federal requirements. While we found no issues related to our audit objectives, which are required to be reported in accordance with *Government Auditing Standards*, we have discussed areas where ST should consider improvements in its internal processes. Those areas are more fully described in the Results and Recommendations section of this report beginning on page 8.

We wish to thank ST's management and staff for the outstanding level of support and assistance provided in this project.



Certified Public Accountants

November 28, 2017

Summary of Results, Findings and Recommendations

Results Summary

We found that ST acquired property and property interests for equitable values, in a timely manner and followed its own policies and procedures that were generally in conformance with Federal requirements. Certain key internal controls are effective and the internal control system is functioning as described. Issues and recommendations are more fully discussed in the section titled “Results and Recommendations”.

Findings Summary

We found no issues related to our audit objectives, which are required to be reported in accordance with *Government Auditing Standards*.

Recommendations Summary

In accordance with our audit objective to identify opportunities for continuous improvement, we have developed certain recommendations for ST to consider. We consider each recommendation to be relatively minor, but when all are considered in a combined manner, the effects would be more than minor. Our recommendations have not been fully “vetted” as to their feasibility. As such, we expect that ST may not implement all of our recommendations due to feasibility considerations.

Issues and recommendations are more fully discussed in the section titled “Results and Recommendations”.

Scope and Methodology

Introduction

ST has established the scope of this performance audit project in our contract. This section describes the project requirements, objectives and the limitations on the scope of work that was conducted.

Real Property Function Environment

The ST Real Property function is a critical function in ST's plan to expand its light rail service in the central Puget Sound. Without acquiring property for station construction, route alignment and acquiring easement rights for its planned requirements, the expansion projects cannot be completed.

The ST Real Property function operates in an environment with many external and internal constraints to its performance. Governmental jurisdiction laws may limit ST's ability to condemn property owned by other governments. Washington state laws prohibit a "quick take" process that is allowed in other states. This means that reluctant owners could delay project use of their property until a court trial is held to adjudicate the value of property to be "taken". ST's efforts tend to create its own real estate market, whereby past settlements may affect negotiations with owners' legal counsels for future negotiations. The Federal Transit Administration (FTA) requires that values of property over a certain limit or settlements that exceed a prescribed limit must be approved by the FTA. All of these external constraints tend to delay the property acquisition process.

While the ST Real Property function is critical to the expansion plans, it is dependent on other ST functions, such as the Planning, Environmental and Project Development and Design, Engineering and Construction Management Departments to identify both the properties and easement rights to be acquired and the necessary timeline to ensure that the expansion (construction) can be completed on the planned schedule and within budget constraints. The ST Real Property function is also dependent upon ST's Legal Department in cases where condemnation proceedings are required. Design changes within ST functions can have a significant impact on how well the ST Real Property function performs.

Navigating the external and internal constraints is a significant effort.

Scope of Performance Audit

The scope of work for this performance audit involves evaluating operating and compliance aspects of ST staff's recent involvement in acquiring real estate and right-of-way interests in the ST's expansion programs. The scope of this performance audit does not involve any work by ST's other functions that may impact the real estate acquisition function or any other ST programs.

We considered all recent processes involved in the administration of the real property and real estate rights acquisition to be included in the scope of this work. Of the approximately \$129 million expended during the first six months of 2017, approximately \$106 million was expended on property and easement acquisitions. The

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remaining amounts paid were for relocation and moving costs (approximately \$7.3 million) and engineering, legal fees and other costs. We focused our efforts on property and easement costs, but also sampled some of the other relocation and moving costs. The engineering, legal fees and other costs were excluded from our procedures as those costs were considered to be outside the scope of this audit.

Audit Objectives and Reporting Requirements

The performance audit requires the independent auditor to be responsible for the following objectives related to the scope of work.

- To determine whether management controls are designed well and working effectively to ensure:
 - A fair and reasonable acquisition price, including allowable relocation costs, in compliance with applicable federal, state, local and agency regulations.
 - Timely acquisition in alignment with construction schedules.
- To benchmark, to the extent practicable, Sound Transit's practices to those of comparable public and/or private entities.
- To identify opportunities for continuous improvement with practical recommendations.

Audit Methodology

Our work in the performance audit included an assessment of the internal control procedures used in real estate and right-of-way acquisitions relevant to ST's expansion programs. Our work included evaluating results of individual acquisitions in relation to the stated audit objectives of determining whether ST real property and right-of-way acquisitions resulted in timely resolution and equitable values.

Work Flow and Internal Controls:

We obtained the policies and procedures, the current work flow and organization of processing real estate acquisition and rights from ST documents, and tested related procedures against the sample of documents contained in the Real Property Division's files. We employed two sampling methodologies: judgmental and a statistically based random selection. The purpose of the judgmental selection was to provide audit evidence for large and complex acquisitions. We used statistically based random sampling to provide audit evidence for the remainder of payments made during the first six months of 2017. The random sample included several engineering and legal fees that were excluded from our scope of work. Total tested values from both judgmental and random samples were approximately \$96.6 million or 75% of total expenditures. We believe our sample selection was sufficient to provide the appropriate audit evidence.

The relevant ST policies and procedures are compared to the US Federal government requirements in Appendix A of this report. Based on our tests to observe documents that provide evidence of ST's compliance with its own policies and procedures, we can conclude that the internal control system is functioning as described.

Based on our audit procedures, we can confirm that the following key internal control procedures are effective:

- Title searches on properties identified in preliminary engineering plans are obtained.

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- Owners are informed of ST plans to “use” their property.
- Appraisals are obtained, those appraisals are reviewed (the appraisal review is documented), and the result is used to prepare the offer document.
- A diary of the ST real estate agent assigned to each property is prepared that documents property owner contacts. However, as expected, we noted that any owner contact after referring the file to ST legal function was not included in the ST real estate agents’ diaries.
- If applicable, the owner’s counter-offer and related appraisal is obtained (this was not fully complied with as owners cannot be compelled to negotiate or make their appraisals known during pre-trial negotiations).
- Results of negotiations, including mediation, were documented in the files via an administrative settlement memorandum approved by the ST Executive Director. This information was presented to FTA in a letter to which the FTA responded with their approval (only applies to large acquisitions (\$2 million or more), with changes more than \$100,000 or 20% more (whichever is larger) than the determination of just compensation).
- The closing documents are included in the files.

In addition, ST uses an acquisition file checklist to document that all required activities are completed and documented. Important acquisition milestones are included in a database that is used to track and report outcomes.

Evaluation of Values:

Introduction: When a local agency (non-Federal agency) acquires real estate using Federal funds both state law and Federal law applies. In 1970 Congress established the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (PL 91-646) and 49 CFR part 24, the implementing regulation, which requires certain protections for property owners whose land is needed for a project. Prior to the URA, only state condemnation laws applied and in the opinion of Congress did not provide adequate protections.

One of the key requirements of the URA is the multi-step process to develop an offer for the property owner. The property to be acquired must be appraised; the appraisal independently reviewed; and in the final step, the agency must establish its offer in an amount not less than the approved appraisal.

Washington State law may impose additional burdens, but it cannot reduce the protections afforded by the URA. For example, Washington law requires that a property owner be compensated if they desire to obtain their own appraisal.

An agency like ST must develop a real estate acquisition program that complies with both the URA and Washington State law if it is to acquire property for right-of-way using Federal funds. In addition, the FTA has various grant requirements that are imposed as a part of the grant contract. All of these are rolled together by an agency to develop its process. ST has effectively done this for its real estate acquisition work.

Work Performed: We obtained parcel specific information from ST’s real estate database and documentation files based on our sample. We analyzed thirteen (13) property

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acquisitions representing twenty-six (26) parcels totaling \$80.3 million. We analyzed six (6) easement acquisitions representing twenty (20) parcels totaling \$8.8 million. We analyzed eight (8) other right of way payments, such as damages or costs to cure totaling \$5.8 million. We tested 38 payments, mostly from our random sampling totaling \$1.7 million for moving, relocation and other costs. We compared the final settled value to the determination of just compensation. We reviewed the appraisals used for the determination of just compensation and also reviewed other ST documents contained in the acquisition files to support that the final settled value was equitable. The total of our testing represents a large percentage of the total values paid. As such, we believe our sample provides the evidence sufficient to support our findings.

Risk Assessment:

We collaborated with ST Real Property management, to produce a risk assessment of the RP objectives, risks and risk control procedures. The results of this risk assessment analysis are provided in Appendix B.

Peer Agency Benchmarking:

ST circulated a questionnaire to five agencies, considered to be similar to Sound Transit to capture how they measure performance and certain specific questions regarding timings and values of acquisitions and requested information about their staffing structure. We did not obtain sufficient responses to our requests to use in our evaluation.

Results and Recommendations

Results

We found that ST's Real Property function was compliant with its own policies and procedures, which adhere to the US Federal procedures (see Appendix A). We found that ST performed and documented the following on a consistent basis:

- Potential real estate necessary for the various expansion programs were identified and included in the Governing Board's resolutions to allow the Chief Executive Officer to procure the identified parcels by either negotiated settlement or condemnation procedures.
- Title searches and correspondence with property owners were conducted early in the process. Agreements that allow access to the property were processed promptly (in almost all cases). The files document that required environmental studies and hazardous materials studies were conducted. The files document the "Just Compensation" determination based on an appraisal, the appraisal review, and the related offer to purchase.
- The real estate agent's diary was generally complete, but it did not usually include the efforts of the legal function's efforts in pre-trial negotiations. However, these files did contain the legal function's suggestions and legal advice regarding the administrative settlement resolution. The files also contained the approval of the top ST administrative official, the request to the Federal Transit Agency manager for approval of the administrative settlement and the acceptance of the request.
- While the relocation and moving payments are considered relatively insignificant to this performance audit, we did note that the relocation payments made did follow the same scrutiny as other real estate payments.

In addition, we found the following:

1. In each instance a Sound Transit representative sent a letter to the identified impacted property owner notifying them of the impending acquisition action. However, we understand that such written communication was not always considered effective from the property owners' perspectives.
2. In each instance either one or two appraisal reports (depending upon anticipated acquisition value) were obtained. We performed an administrative appraisal review of the appraisal reports, and reached the conclusion that the various reports were prepared in compliance with federal regulations, as set out in 49 CFR, 24.103 (criteria for appraisals). The appraisal reports each utilized the various appraisal approaches to value in accordance with the stated appraisal problem.
3. If there were more than one real property owner interests within any one acquisition parcel, such interests were separately defined as required by federal regulations at 49 CFR, 24.105.

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4. In each instance an appraisal review report was prepared within a reasonable timeframe of typically less than two months from the date of the submittal of the appraisal report. Our administrative review reached the conclusion that the appraisal review reports were in substantial compliance with federal regulations, as set out in 49 CFR, 24.104 (review of appraisals).

5. Once the estimate of just compensation was recommended by the review appraiser, Sound Transit's internal reviewer prepared the Determination of Just Compensation. The written offers were made to the property owners within a reasonable time frame of generally less than two months after the establishment of the estimate of just compensation. The written offers were appropriately prepared and were typically delivered in person, unless otherwise requested by the property owner. All acquisition offers were presented in compliance with federal regulations, as set out in 49 CFR, Subpart B.

6. For each of the acquisition parcels, the various acquisition agents prepared a "Diary of Right-of-Way Activities", which summarized each contact with the property owner. The diary also typically described any pertinent actions on the part of Sound Transit staff regarding consideration of any requests, comments, or counter offers made by the impacted property owners.

7. None of the parcels reviewed (except for one parcel) were able to be acquired based upon the approved offer of just compensation prior to the filing of condemnation action, and in each instance the acquisition agent sent a letter notifying the property owner of proposed condemnation action. All proposed condemnation actions letters were sent after a reasonable timeframe of negotiations had transpired.

8. Once condemnation action was initiated, an appropriate deposit of the estimate of just compensation was entered into the Court if the property owner agreed to "Possession and Use", unless an administrative settlement was entered into prior to the need for deposit of funds.

General Observations

1. The method of assigning individual parcel acquisitions during the preliminary engineering phase of the project leads to some degree of confusion. One individual acquisition parcel may be composed of several identified tax parcels, which collectively define the individual acquisition parcel. For example, parcels EL 305, 307, 308, 310, 315, 317, and 321 were separately stated in terms of tax parcel designation; however, they were actually combined into one acquisition parcel composed of the seven individual tax parcels. To add to the confusion for review purposes, a parcel given the designation of EL 310B, was actually a relocation assistance payment parcel. While we understand the property title needs for these acquisitions, it would seem that significant confusion and paperwork could be avoided by some accommodation between the preliminary engineering and acquisition phases of work.

2. As noted above, none of the parcels (except for one parcel) reviewed were able to be settled based upon the approved offer of just compensation prior to undertaking condemnation action. This is due to many factors.

All real property owners are entitled under Washington State law, to reimbursement from Sound Transit for reasonable costs of both obtaining their own appraisals, along with legal fees for representation. Sound Transit policy is to reimburse the impacted property owner up to \$5,000 in incurred appraisal fees, and up to \$7,500 in incurred legal fees. Payments above the DOJC may be well known in the real estate and legal communities. This might contribute to the perception that administrative settlements are likely to result in financial

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gain. In all parcels reviewed where the property owner obtained their own appraisals and then provided them to Sound Transit for consideration, such appraised values were greater than the Sound Transit approved appraisals.

3. The Federal Transit Administration has established limitations on the extent of administrative settlements that can be incurred without receiving FTA prior approval. For example, on East Link parcel acquisitions, any proposed parcel administrative settlement in excess of twenty percent or \$100,000 over the approved just compensation offer, must obtain prior FTA approval. In each of the parcels reviewed, if the proposed administrative settlement exceeded the established FTA threshold, appropriate FTA approval was obtained and documented.

4. Within the past eighteen months, Sound Transit has attempted to streamline the way in which environmental contamination is addressed. Sound Transit now will attempt to have all testing completed prior to the preparation of the appraisal report. Property owners will also be advised of the possibility of adjusting the offer of just compensation, if previously unidentified environmental concerns affecting market value are discovered.

Overall Conclusion

Sound Transit is in substantial compliance with all applicable requirements of both the federal acquisition regulations at 49 CFR, Part 24, and the Federal Transit Administration acquisition guidelines as set out in FTA Circular 5010.1E. The appraisal and acquisition processes are taking place in a timely manner, and the acquisition process is not considered to be coercive.

Although almost all reviewed parcel acquisitions required either an administrative cost settlement or legal condemnation action, this is mostly a programmatic result of the long-term continuation of Sound Transit acquisition actions, coupled with a rapidly escalating real estate market.

Results in Relation to Audit Objectives

In accordance with *Government Auditing Standards* the following discusses our results in relation to our audit objectives.

Were all real estate parcels, and real estate rights acquired within the timelines required by the expansion plans?

We obtained a download of property and easement rights acquisitions from ST's cash disbursement system and real estate database to evaluate the timeliness of acquisitions. We compared the dates of appraisal completion to either the "Possession and Use" (P&U) dates or the closing dates (the date the property or easement rights were closed). When possession and use is granted, it is not necessary to close the transaction prior to notice to proceed or actual construction since possession and use agreements enable the agency to proceed with construction prior to closing. ST Real Property management represented that the notice to proceed dates for the construction contracts were well in advance of the actual start of construction.

The following chart presents the results.

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	DOJC	Final	Variance \$	Variance %	Duration in Days
Closed Properties	\$ 70,598,400	\$ 90,471,918	\$ 19,873,518	27.99%	443
Possession and Use Parcels	\$ 24,208,200	\$ 24,208,200	\$ -	N/A	427
Total Values	\$ 94,806,600	\$ 114,680,118			

It requires significant time to acquire real property and easements in adherence with ST policies and procedures and in accordance with US Federal government requirements. Due process must be followed including allowing the property owner to consider the offer and to provide additional information that might affect the determination of just compensation.

We analyzed the ST data on individual parcels as previously described. Excluded from the summary chart above is one parcel that was acquired from the Port of Everett for a final value of \$1,234,000 that took many years to settle resulting in a final settlement value of 189% of the DOJC and one parcel that did not enter into condemnation or an administrative settlement for \$434,600 or 6% above the DOJC. We believe excluding these properties is appropriate for our analysis. On average it took 443 days, or 1.21 years, measured from the date of the appraisal to the parcel closing date. For the parcels that have obtained Possession and Use, but not closed, it took, on average, 427 days, or 1.17 years to obtain the possession and use. The range of days to settle on closed properties was from 189 days to 755 days. On average, the final settlement amount was 28% above the determination of just compensation based on the ST appraisal and appraisal review process. The range of days on properties that only acquired Possession and Use was from 301 days to 551 days. For properties that only acquired a possession and use there is no difference between the DOJC and the payment made as those properties are still in the adjudication process. The overall averages are significantly skewed by our selection of large and complex acquisitions. However, due to the significant size of our selection in relation to the total population, we expect the results of our selections to be near the total population.

Summary of Results:

The property and easements necessary to accomplish the expansion projects appear to have been obtained within time requirements.

Did the real estate and right-of-way acquisitions result in equitable values?

As noted above, for the closed full fee takings and easements, ST paid on average 28% more than the initial determination of just compensation. The final settlement values included information provided by the property owners and in many cases involved mediation and agreed-upon settlement amounts. Our conclusions are based on the samples described in the methodology section of this report as well as the conclusion reached as described above. The sample was designed to include both large value and lower value acquisitions. As such, samples were selected based on values and random sampling methodologies, and we did not employ other statistical sampling methodologies.

Summary of Results:

Based on the entirety of information obtained, it does appear that ST acquired necessary real estate and right-of-way interests on an equitable basis.

Recommendations

Since we have no findings required to be reported under *Government Auditing Standards*, our following recommendations flow from our collaboration with ST RP management's risk assessment analysis included in Appendix B. We have organized the recommendations into related groupings with priorities listed within each grouping.

RP Activity Scheduling (all recommendations in this grouping are considered near-term, but may be difficult to implement):

1. ST should develop a risk assessment process that combines risks to the project construction schedule with risks involved with potentially difficult property acquisition and relocation issues, so that RP may effectively organize its work activities to meet proper priorities.
2. ST should include environmental reports in the risk-based approach contained in item #1 above. Specifically, ST should weigh the risks of performing appraisals before the required environmental reports are obtained. Environmental reports should be obtained prior to appraisal work, but there may be situations where the risk to the project schedule outweighs the risk of RP reperformance of appraisals.
3. ST should establish a process whereby project management and RP management agree on an acquisition schedule that best utilizes RP resources and addresses specific property risks.
4. RP workload is driven by ROW engineering and project management needs. Forecasts of staffing needs to meet construction schedules should be provided and sufficient staff obtained and trained prior to workload spikes.

Systems to improve RP's efficiency (considered as a near-term priority, but acquiring ROW software takes time).

5. ST should consider an integrated ROW software solution to eliminate multiple systems and multiple data inputs to provide efficiency to ST's data needs. Such a system should track the ROW engineers' assessment of the property needs, property data, parcel number, the owner contact dates and information provided, the required appraisals, appraisal reviews, DOJC negotiations and relocation efforts. Such a system would also provide consistency of forms used to document compliance and activities. This is considered as a near-term priority.

Community Relations (near term or longer-term priority) These recommendations should be able to be addressed in the near-term, but due to the need for other priority items discussed above this may take more time.)

6. ST RP should accompany outreach staff in initial visits, or at least provide talking points. RP staff may identify potential risks from this early interaction. Also see Note 3 to risk assessment.
7. Early identification using the process in Note 3 to the risk assessment analysis should be considered.
8. ST's RP function should train all functions that impact RP compliance in federal compliance issues.

Other Miscellaneous Recommendations (longer-term recommendations)

9. The method of assigning individual parcel acquisitions during the preliminary engineering phase of the project leads to some degree of confusion. While we

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- understand the property, title needs for these acquisitions, it would seem that significant confusion and paperwork could be avoided by some accommodation between the preliminary engineering and acquisition phases of work.
10. ST should use multiple survey firms to provide surveys prior to RP appraisal work.
 11. For Design-Build type of contracts, ST should not change design. ST enters into design-build contracts to allow the contractor to both design the construction project and to build the related infrastructure. In such contracts, the firm selected makes the design decisions. For GCCM contracts, the frequency of design changes should be minimized. This recommendation should not prevent ST design changes when functionally necessary. However, ST needs to recognize that design changes affect the efficient acquisition of property and easement rights.
 12. There does not appear to be an effective control procedure to address the risk that ROW function over or under estimates easements required to conduct the construction program. Over estimates result in property acquired in excess of needs and under estimates results in revisiting easement negotiations, revised appraisals and possibly construction contract change orders. The project team should consider consulting with RP management when making decisions regarding the appropriate easement to be acquired.
 13. ST should require a "lease versus buy" analysis in all applicable situations.

Views of Responsible Officials

This report provides a complete response to the questions posed by ST. It adequately addresses the concerns raised, reaches reasonable conclusions, and provides useful recommendations. We intend to act in a timely manner to address the principal recommendations. Although ST's Real Property management agrees with the recommendations and all of them affect Real Property's work, most of them fall outside of the control or influence of Real Property.

Appendix A: Compliance Requirements

The criteria used in this performance audit to determine whether ST acquired real property and right-of-way easements in conformity with applicable requirements are the Uniform Act 49 CFR Part 24, Federal Transit Administration (FTA) Circular 5010.1E, *Sound Transit’s Real Property Acquisitions and Relocation Assistance Policies, Procedures and Guidelines, Revision 3, July 2013* and the draft *Right of Way Process and Procedure* manual. We only used the criteria significant to our performance audit. The Uniform Act, the FTA Circular, and ST policies contain many more requirements, but we have not included them in this analysis because they are not relevant to our performance audit objectives. The following documents our comparison procedures:

Uniform Act 49 CFR Part 24	FTA Circular 5010.1 E	Sound Transit Policies July 2013 and Draft Right of Way Process and Procedure manual
§ 24.102 BASIC ACQUISITION POLICIES:	Chapter IV paragraph (2) (a) (1)	
<p>(a) <i>Expeditious acquisition.</i> The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.</p> <p>(b) <i>Notice to owner.</i> As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part.</p>	<p>To ensure eligibility for Federal funding, the grantee should follow the typical process sequence when acquiring real property for a project: National Environmental Policy Act (NEPA) Approval → Title Search → Appraisal → Appraisal Review → Just Compensation Determination → FTA Concurrence (if required) → Offer to Owner → Settlement.</p>	<p>A, B, C Right-of-Way (ROW) Plan Design and Certification. D. Environmental E. Title Reviews F. Appraisal and Appraisal Review, FTA Submittal (if required) G. Offer and Negotiations I. Administrative Settlements</p>
<p>(c) <i>Appraisal, waiver thereof, and invitation to owner.</i> (1) Before the initiation of negotiations, the real property to be acquired shall be appraised</p>	<p>b. Appraisal of Real Estate. (1) General. An offer of just compensation will be established on the basis of a recent independently prepared appraisal that estimates a fair market value.</p>	<p>7.1. <i>Appraisals.</i> Before initiating negotiations to acquire real property, ST will obtain an appraisal of the property.</p>
<p>(d) <i>Establishment and offer of just compensation.</i> Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The</p>		<p>7.2a. <i>Establishment and offer of just compensation.</i> Before the initiation of negotiations, Sound Transit will establish an amount which it believes is just compensation for the real property. The amount will not be less than the</p>

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<p>amount shall not be less than the approved appraisal of the fair market value of the property.</p>		<p>approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.</p>
<p>(f) <i>Basic negotiation procedures.</i> The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with §24.106.</p>	<p>(e) (2) Making an Offer. After the just compensation determination has been made by the agency, with FTA concurrence, if required, an offer can be made to the owner.</p>	<p>7.2b Along with the initial written purchase offer, Sound Transit will give the owner a written statement of the basis for the offer of just compensation. 7.2 Sound Transit will make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with Section 7.4.</p>
<p>(g) <i>Updating offer of just compensation.</i> If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s).</p>		<p>7.2c <i>Updating offer of just compensation.</i> If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, Sound Transit will have the appraisal(s) updated or obtain a new appraisal(s).</p>
<p>(i) <i>Administrative settlement.</i> The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports</p>	<p>(e) (5) Administrative Settlements. Any settlement in excess of the grantee's approved just compensation must be addressed as an administrative settlement</p>	<p>7.2e <i>Administrative settlement.</i> When authorized by the Sound Transit Board, and subject to any approvals required in connection with federal funding, the purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed.</p>

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such a settlement.		
<p>(j) <i>Payment before taking possession.</i> Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property.</p>		<p>7.2f <i>Payment before taking possession.</i> Before requiring the owner to surrender possession of the real property, Sound Transit will pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than Sound Transit's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property.</p>
<p>§ 24.104 REVIEW OF APPRAISALS.</p>		
<p>The Agency shall have an appraisal review process</p>	<p>c. Appraisal Review of Real Estate. (1) General. All appraisals for acquisition of real property are to be reviewed in accordance with the Uniform Act and 49 CFR 24.104. The review appraisal should determine the soundness of the report's value estimate. d. Appraisal Concurrence Process. Prior FTA concurrence is required when the grantee's recommended offer of just compensation exceeds \$500,000, or when a property appraised at \$500,000 or more must be condemned.</p>	<p>7.1 c (1). <u>Review of appraisals.</u> A qualified review appraiser (see Paragraph b (4) above) will examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value. Draft manual F.5 All appraisals that exceed the FTA exception threshold are submitted for concurrence.</p>
<p>§ 24.105 ACQUISITION OF TENANT-OWNED IMPROVEMENTS.</p>		<p>7.3.a <i>Acquisition of improvements.</i> When acquiring any interest in real property, Sound Transit will offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This will include any improvement of a tenant-owner who has the right or obligation to</p>

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		remove the improvement at the expiration of the lease term.
<p>§ 24.202 Applicability. These requirements apply to the relocation of any displaced person as defined at § 24.2(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation.</p>	<p>Chapter IV paragraph (2) (f) Relocation Assistance. The relocation assistance program provides a variety of advisory services and benefits to displaced people, businesses, and non-profit organizations. The highlights of this program element and FTA policies related to it are summarized in the following (not included in this document)</p>	<p>8. These requirements apply to the relocation of any displaced person as defined at Section 5.1h. Sound Transit will fully inform any person who qualifies as a displaced person of his/her rights and entitlements to relocation assistance and payments provided by the Uniform Act and these Procedures. Sound Transit will notify the displaced person that in order to be eligible for payments under this Section 8, the displaced person must: (1) provide Sound Transit with reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved (Sound Transit may waive this requirement) and (2) permit Sound Transit to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.</p>
		Section 8 has many other policies related to relocation not included herein.
<p>§ 24.301 Payment for actual reasonable moving and related expenses. (a) General. (1) Any owner-occupant or tenant who qualifies as a displaced person (defined at § 24.2(a)(9)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary.</p>	<p>Chapter IV paragraph (2) (f) (4) All displacees, both business and residential, are reimbursed for certain moving expenses per Section 24.301 through Section 24.306.</p>	<p>9. If Sound Transit determines that the implementation of the Project will result in the displacement of a person who is dwelling on or conducting business on the real property being acquired, Sound Transit will reimburse or make a fixed payment in lieu of reimbursement to the displaced person for certain costs and expenses required to move the individual, business, farm operation, or other personal property.</p>
		Section 9 has many other policies related to moving expenses not included herein.
<p>§ 24.401 Replacement housing payment for 180-day homeowner-occupants. (a) Eligibility. A displaced person is eligible</p>	<p>Chapter IV paragraph (2) (f) (2) No lawful occupant will be required to move without at least 90 days' advance</p>	<p>10.1 Additional Payments For certain homeowners, in addition to payments otherwise authorized by these</p>

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<p>for the replacement housing payment for a 180-day homeowner-occupant if the person:</p> <p>(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and</p> <p>(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after...</p>	<p>notice per 49 CFR § 24.203(c).</p> <p>(3) In the case of residential displacees, at least one comparable replacement dwelling must be made available before the displacees must move. Rental assistance and replacement housing payments are provided to make the dwellings affordable and available at the time the notice is given. See 49 CFR § 24.204.</p>	<p>Procedures, Sound Transit will make an additional payment to persons displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days immediately before the initiation of negotiations for the acquisition of the property. The additional payment will be made only to persons who purchase and occupy a decent, safe, and sanitary replacement dwelling within one year after the date when the person receives final payment from Sound Transit for the acquired dwelling or the date when Sound Transit's obligations under RCW 8.26.075 are met, whichever date is later, unless Sound Transit extends this period for good cause.</p>
		<p>Section 10 has many other policies related to replacement housing not included herein.</p>

Appendix B: Risk Assessment Analysis

In order to assess the performance of Sound Transit’s Real Property function and identify areas where current control procedures may not sufficiently address the risks that objectives may not be achieved, the following risk assessment analysis was conducted.

Color Code: Highlighted items indicate issues where enhanced control procedures should be considered

Type Key: O=Operational, C= Compliance, F=Financial

Objectives	Type	Identification of Risks	Risk Management Policies and Procedures
1. Real Property and right of way (ROW) rights are obtained in compliance with the Uniform Relocation Act (URA) and FTA Guidelines.	C	<p>ST’s Real Property (RP) staff are unaware of legal requirements.</p> <p>Planning, community relations, other DECM functions and operations are unaware of legal requirements and risk of noncompliance.</p> <p>Time pressures on project management and ROW engineering may cause some compliance requirements to be overlooked.</p>	<p>ST hires RP staff with knowledge and experience in URA and FTA guidelines compliance.</p> <p>ST’s RP function uses checklists to assure Federal compliance.</p> <p>ST’s RP function should train all functions that impact RP compliance in federal compliance issues.</p> <p>ST has recently begun a co-located team for project management that includes RP staff on the team, which should improve the team’s understanding of legal compliance and communication of RP issues. See Note 4 for additional discussion.</p>
2. Real Property and right of way (ROW) rights are obtained to allow the expansion project to proceed on time.	O	<p>The expansion project is not sufficiently described to allow Real Property (RP) staff to conduct their work.</p> <p>RP lacks sufficient staffing to both manage consultants and perform its own RP workload. Procedures to match up workload to required staffing is not performed in advance of workload spikes.</p>	<p>ST obtains a "Civil Certified" list of required property and easements ROW from preliminary engineering with sufficient detail.</p> <p>RP workload is driven by ROW engineering and project management needs. Forecasts of staffing needs to meet construction schedules should be provided and sufficient staff obtained and trained prior to workload spikes.</p>

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Objectives	Type	Identification of Risks	Risk Management Policies and Procedures
<p>2. Real Property and right of way (ROW) rights are obtained to allow the expansion project to proceed on time.</p>		<p>Lack of survey resources may require ST to use other mapping techniques, which may change when the legal survey occurs, requiring ST's RP to re-do the appraisal.</p> <p>Frequent design changes delays RP activities, requiring rework of RP activities.</p> <p>ST project management, construction management and ROW engineering do not communicate needs in a timely manner.</p> <p>There is no integrated ROW system that allows all related functions to access the same system with the same data only entered once, so that all functions can work off of the same information.</p> <p>ST project management or ROW engineering may set priorities for property and ROW rights acquisitions, separately from RP management, that doesn't allow RP acquisitions in the most efficient or cost-effective manner. RP staff do not have legal descriptions, drawings of the proposed acquisitions, NEPA/SEPA reports and titles, prior to performing work. This may result in needless repetition of appraisal work, delaying the timing of acquisitions.</p>	<p>ST should use more than one survey firm to provide surveys prior to RP appraisal work.</p> <p>For Design-Build type of contracts, ST should not change design. For GCCM contracts, the frequency of design changes should be minimized.</p> <p>See Note 4.</p> <p>ST should consider an integrated ROW software solution to eliminate multiple systems and multiple data inputs to provide efficiency to ST's data needs. Such a system should track the ROW engineers' assessment of the property needs, property data, parcel number, the owner contact dates and information provided, the required appraisals, appraisal reviews, DOJC negotiations and relocation efforts. Such a system would also provide consistency of forms use to document compliance and activities.</p> <p>ST should establish a process whereby project management and RP management agree on an acquisition schedule that best utilizes RP resources and addresses specific property risks. Also see Note 4.</p> <p>Current ST policy requires all such items to be obtained prior to initiation of property valuation work. However, ST has not fully implemented this policy. See Note 1.</p>

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Objectives	Type	Identification of Risks	Risk Management Policies and Procedures
2. Real Property and right of way (ROW) rights are obtained to allow the expansion project to proceed on time.		<p>Scheduling of RP efforts do not include a risk assessment of individual properties and ROW. Those with most risk to the timelines would be organized to begin RP activities in order of risk and/or complexity such as:</p> <p>Other government agencies: property and easements Commercial property and easements Commercial relocation and moving requirements Residential relocation/last resort housing requirements Residential moving requirements Other risk assessment related risks: Properties that are likely to be involved in condemnation proceedings are not identified early in the process. Properties that are likely to be involved in condemnation proceedings are not addressed (worked) early in the process. Community and government relations functions interact with owners or dislocated persons that sets unrealistic expectations and risk may not be identified.</p>	<p>See Notes 3 and 4.</p> <p>ST RP should accompany outreach staff in initial visits, or at least provide talking points. RP staff may identify potential risks from this early interaction. Also see Note 3.</p>
2.a. Settlements are expedited to obtain properties within time requirements.	O	<p>Reluctant owners may slow down the settlement process.</p> <p>ST requires process to settle with owners that includes senior management without regard to the size of the settlement.</p>	<p>Early identification using the process in Note 3 should be considered.</p> <p>FTA requires an FTA review of all settlements in excess of \$100,000 or 20% variance from DOJC. ST should consider allowing RP management to settle for amount less than, but near the FTA review limits.</p>

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Objectives	Type	Identification of Risks	Risk Management Policies and Procedures
3. All properties are obtained in sufficient time to allow for proper construction contracting.	O, F	RP rights are not obtained in time to "let" a construction contract.	See Note 2.
		In a design-build contract the percentage of properties acquired affects the uncertainty built into the bid price.	See Note 2.
		In a GCCM contract, lack of properties acquired will result in change orders, increasing the cost of the contract. ROW function over or under estimates easements required to conduct the construction program. Over estimates result in property acquired in excess of needs and under estimates result in revisiting easement negotiations, revised appraisals and possibly construction contract change orders.	See Note 2.
		RP management does not communicate issues in RP acquisition to those that "let" contracts. RP management does not communicate issues in RP acquisition to those that manage ongoing construction contracts.	Other than the frequent meetings discussed below, there does not appear to be any additional effective control procedure to address this risk. ST should consider consulting with RP management when making decisions regarding the appropriate easement to be acquired. RP management is involved in frequent meetings with ST project management to discuss RP acquisition issues. RP management is involved in frequent meetings with ST project management to discuss RP acquisition issues.
4. Payments for RP and ROW rights are proper and reasonable.	F, C	Delays in RP activities result in increased costs paid for properties because of general real estate escalation.	See Note 1.
		Appraisals, appraisals reviews and determination of just compensation reviews are not proper or in accordance with Federal requirements.	ST RP schedules such activities to assure compliance with Uniform Act, FTA guidance and ST policies. ST RP uses compliance checklists to assure FTA compliance.

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Objectives	Type	Identification of Risks	Risk Management Policies and Procedures
		<p>For those owners, which have the wherewithal to contest ST's offer and lengthen the legal process, there is a risk that ST will agree to an administrative settlement in excess of a reasonable settlement.</p> <p>Project management makes decisions on whether a "full take" or damages on a "partial take" without the proper "lease versus buy" analysis is conducted.</p>	<p>ST has a process to have review and approval of administrative settlements at the top level of management. For large administrative settlements FTA concurrence is required.</p> <p>ST should require a "lease versus buy" analysis in all such situations.</p>

Notes to Risk Assessment:

NOTE 1: Appraisal Process

On August 24, 2017, ST implemented a revised approach to its appraisal process. Prior to this date, the environmental condition of the parcel to be acquired may not have been known by the appraiser at the time the appraisal report was prepared. As of the August 24th, ST adopted a policy of not proceeding with the appraisal until the environmental report was available. The environmental condition of the property is a factor in valuation and without it being known by the appraiser, the appraiser would insert into the report a hypothetical condition that the property was clear of any environmental issues. Later, if this was not true, the valuation would be amended to reflect the correct condition. This leads to numerous re-appraisals which were costly to the project in terms of time and money.

The new ST policy also addresses other situations where appraisal work was being needlessly repeated. These include a requirement that the appraiser be given legal descriptions, drawings of the proposed acquisitions, and title work prior to commencement of their work. These policy changes reflect the current standards recommended by FTA in its 5010. E. document and meet the requirements of the URA set out in §24.2(a)(3), definition of an appraisal; and §24.103(a)(2)(i), criteria for appraisals.

RP tried to implement this new policy but the projects have fallen behind schedule, and RP has been directed to move forward appraising property without the environmental reports. There is the perception that this will somehow speed up the process but the actual result will be that it will create additional work and cause the delay of appraisal work downstream. An undetermined amount of the work will have to be redone based on the reports that ST eventually receives, and the process of tracking and following up on the eventual environmental reports creates an additional layer of time consuming process and costs. It also creates uncertainty for the delivery dates of the appraisal. ST's appraisal consultants can't commit to a delivery date because they do not know when they will receive the information they need to complete their work. In addition, having the appraisers start their work but then wait for the environmental reports creates a situation that by the time the appraisers receive the environmental reports, they will be compelled to go take another look at the market to see if there have been any additional sales comparables that have appeared since they first examined the market. In a dynamic market such as ST is in, it is likely that

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additional sales have occurred, and the appraisers will be compelled to include the more recent data in the reports which will cause additional delays on an undetermined number of appraisals.

NOTE 2: Scheduling of RP Activities

ST has begun using a set schedule with trigger points to assure that real estate is acquired in a timely manner necessary to meet construction letting schedules. The approach acknowledges the limitations imposed by the State of Washington eminent domain laws which preclude the taking of property through condemnation without payment of just compensation to the owner. In practice, this is largely overcome by an amiable agreement between the owner and ST which permits ST to make an initial deposit and simultaneously obtaining possession and use. The property owner's rights are still protected since later, the final valuation can be decided. However, not every property owner will agree to such an expedited approach. Therefore, the schedule must assume worse-case, i.e. an owner may not grant possession and use, and delay the acquisition until their case has been adjudicated. By assuming a worst-case alternative, the construction letting should never be affected by real estate acquisition delays.

The new process establishes a two-year overall schedule for land acquisition. The schedule permits time to obtain title work, appraisals and other necessary prerequisites. Also, within the two-year period, 90-days are set as the optimum period for negotiations. At the end of the 90-day period, a thirty-day letter is sent to an owner indicating that if there is no settlement of the pending acquisition, ST will file condemnation. At the end of the 30-day period, condemnation is initiated. In the event that an owner is not agreeable with the "deposit in exchange for possession and use" alternative, adequate time remains in the schedule to postpone the obtaining of possession while the case is handled in the courts. Finally, when an award is determined by the court, title, possession and use is granted to ST. Of note is the difference between counties. ST operates in the 3 major counties of Puget Sound, King, Pierce, and Snohomish. The majority of ST's work is in King County and the 2-year schedule is accurate because once ST files condemnation, King County gives condemnation cases priority and automatically sets a trial date approximately 8 months out. That fits nicely into ST's schedule. On the other hand, Pierce and Snohomish Counties do not prioritize condemnation cases, and ST has to get in line like everyone else. The result is ST doesn't know how long it's going to be between the time ST files for condemnation and the trial begins until ST actually files and a date is assigned. In some cases, the overall 2-year schedule may be more than enough, but in other cases, the worst-case scenario may be as much as 2.5 years when it comes to Pierce and Snohomish Counties. The way ST mitigates this is ST identifies which properties are most likely to be litigated and gets those started early. That way, by the time the project is ready to go to bid advertisement, ST should have trial dates set and can adjust accordingly. This appears to be a useful approach to the schedule issue given the unusual feature in State law and various county requirements.

NOTE 3: Preliminary right of way owner contacts

A courtesy visit with each owner of real property needed for a project to exchange information and develop rapport should be conducted. The ST employee making the contact needs to be knowledgeable regarding title issues, the acquisition process, schedule, compensation matters, and relocation. Typical discussions involve the status of the title, occupancy of the property, and special uses of the property, and discussion of proposed project impacts.

These meetings are typically held one-on-one at the subject property. The property owner is not under obligation to participate, but most are interested in the information that can be provided. One or two ST personnel should be the limit for a visit unless there are unusual issues. The meetings will usually be set up by appointment, although informal meetings can also be useful. The property owner should be informed of the purpose of the meeting, and the likely topics to be discussed.

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Timing: The meetings should be conducted prior to RP going to the Board of Directors to request acquisition authority under threat of condemnation, and before the appraisal of the property but after public announcement of the project. Each meeting should take about an hour on-site. If the parcel also involves relocation, another hour needs to be added for those discussions.

Topics: After the parties introduce themselves, the property owner is shown the plans, verbally informed of the depicted impacts, and informed that the plans are still preliminary thus subject to change. A plat of the property with the proposed project depicted is often a “leave-behind” although it needs to be marked as preliminary. The property owner should be encouraged to comment on the effect of the project especially for any commercial parcels. This is also a good time to address any usual title issues involving ownership and encumbrances. Any errors in the title report should be noted and provided to the title company for resolution.

If there are questions as to realty and personality (commercial and industrial improved properties), the agency staffer can arrange a subsequent visit to formally determine realty/personality, and ownerships. This may occur concurrent with the appraisal inspection. If there is a likelihood of relocation, this meeting can also service to obtain displacement information (the relocation questionnaire). A discussion of the relocation program can occur, and the General Information Notice can be provided. The property owner should also be given a contact name and phone number for any follow-up questions or information.

The comments of the owner, especially regarding unforeseen impacts of the agency plans, can be relayed to ST RP and ST engineering to assist in scheduling their activities to address property-specific risks.

Note 4: Organizational structure and communications.

The Director Real Property and the Director Community Outreach both report to the Deputy Executive Director Business and Construction Services. The Civil Engineering Supervisor (ROW) reports to the Deputy Director Civil & Structural Engineering, who in turn reports to the Deputy Executive Director Design and Engineering. As such, the common management oversight between Real Property and Civil Engineering (ROW) goes all of the way up the organizational structure to the Executive Director of the Department of Design, Engineering, and Construction Management (DECM). Sound Transit is a large and complex organization, so organizational “silos” organically grow over time, but their existence should be recognized as an impediment to effective coordination and communication. ST has recently begun a co-located team for project management that includes RP staff on the team, which should improve the team's understanding of legal compliance and communication of RP issues. However, this arrangement has had some unintended consequences. Co-locating the Real Property Project Managers with the project team has isolated the RP project managers away from the RP consultants that they manage daily in the delivery of property for the projects as well as the RP support staff and RP management.

ST has instituted a new procedure designed to enhance effective communication of right of way engineering needs and RP needs to effectively organize its work activities. DECM has implemented a process in which senior management assesses project needs and real estate priorities for the two current major projects, Lynnwood Link and Federal Way Link. This should improve communication, coordination and provide clarity as to the priorities so that RP will be better able to allocate limited resources in a logical and efficient manner. There are still conflicting demands on RP from the other projects and this process of assessing project needs and prioritization needs to be expanded to include all projects program wide.

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ST should develop a risk assessment process that combines risks to the project construction schedule with risks involved with potentially difficult property acquisition and relocation issues, so that RP may effectively organize its work activities to meet proper priorities.