

NEPA and Early Real Property Acquisition

AzTA Conference

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U.S. Department of Transportation
Federal Transit Administration



Topics

- National Environmental Policy Act
- Planning for acquisition of real property
- Property acquisition categorical exclusions
- Uniform Relocation Assistance and Real Property Acquisition Act
- Factors to consider when using local funds for property acquisition



National Environmental Policy Act (NEPA)

- The primary law governing the environmental review process for all Federal agencies
- Requires a process to consider environmental, social, and economic impacts before carrying out a federal action
- Requires agencies to document the effects of actions likely to have significant environmental impacts
- Applies to Federal Actions -> FTA funded projects



Reference:

- Council of Environmental Quality Regulations: 40 CFR parts 1500-1508
- FTA Environmental Impact and Related Procedures for NEPA implementation: 23 CFR part 771

NEPA Classes of Action

Environmental Impact Statement (EIS)

Significant environmental impacts

Combined Final EIS/Record of Decision (FEIS/ROD) or ROD

Environmental Assessment (EA)

Potential for significant environmental impacts

Finding of No Significant Impacts (FONSI) *or* EIS

Categorical Exclusion (CE)

No Potential for significant environmental impacts

CE Determination

C-List vs D-List

Roles in Environmental Reviews

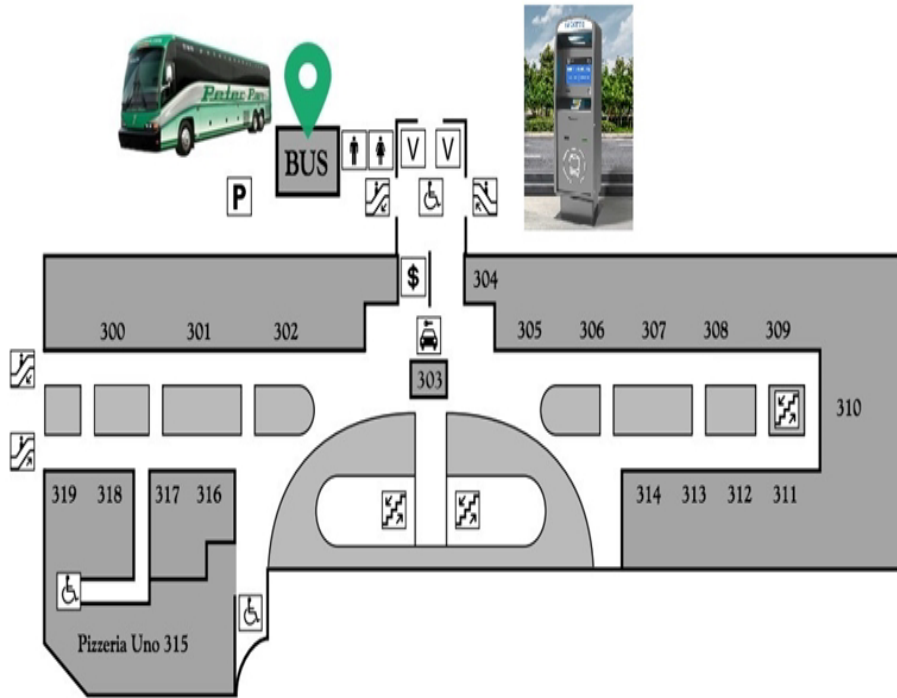
FTA

- Serves as NEPA Lead agency for projects seeking federal funding for transit projects
- Actively manages and provides oversight for the development of environmental documents
- Approves NEPA documents

Transit Agency

- Project sponsor
- Joint lead agency under NEPA
- Lead agency under California Environmental Quality Act (CEQA)
- Prepares environmental document and studies for FTA review and approval
- Implements projects

Early Coordination with FTA



- ✓ Define the Grant Recipient, Sub Recipient (if any) and project sponsors
- ✓ Discuss project scope and schedule
- ✓ Share project maps
- ✓ Identify real estate and right-of-way needs
- ✓ Consider potential environmental impacts and anticipated technical studies
- ✓ Plan for public outreach and agency coordination
- ✓ Identify potential funding sources

Real Property Acquisition Includes...

Acquisition of interests in real property necessary to construct, operate, and/or maintain an FTA-funded transit project or facility:

- **Acquisition** of fee title, fee title subject to a life estate, leasing (where the lease term, including options for extension, is 50 years or more), permanent easements and temporary construction easements
- **Easements** include acquisition of surface and subsurface rights

Reference: 49 CFR 24.101(a) and (c).



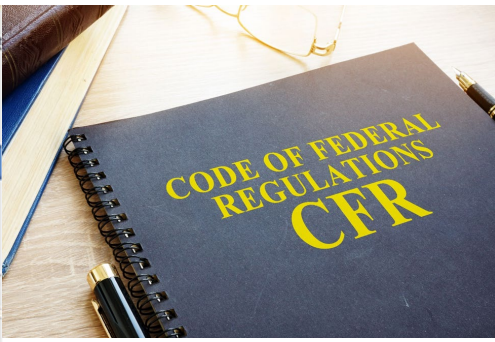
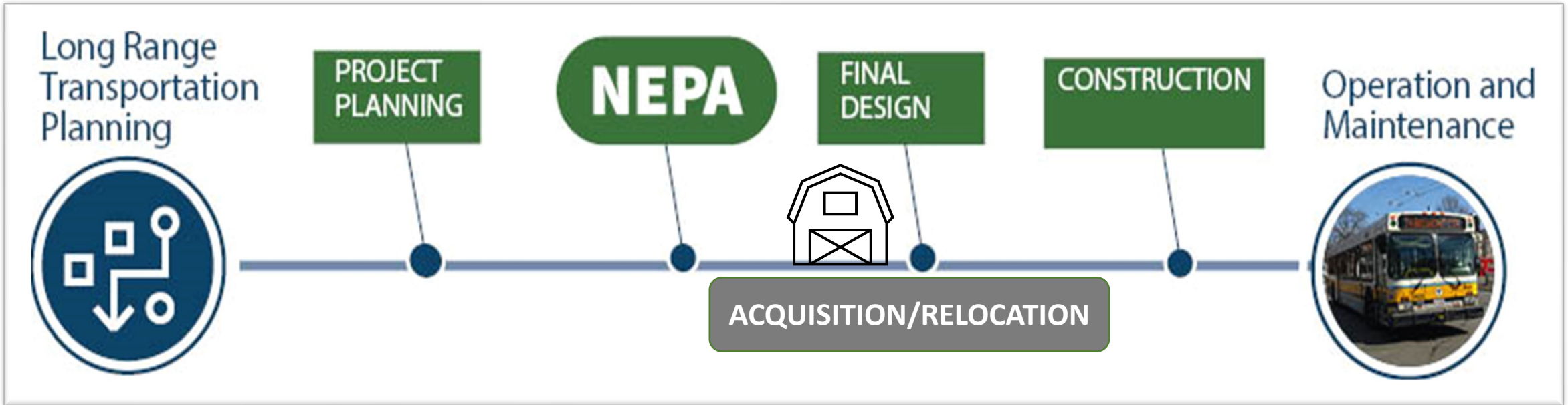
FTA's Policies on Property Acquisition

In general, property acquisition may not occur until **after** NEPA review is complete (23 CFR 771.113(a)).

- *Final design activities, **property acquisition**, purchase of construction materials or rolling stock, or project construction must not proceed until FTA has:*
 - ✓ *classified the project as a Categorical Exclusion; or*
 - ✓ *issued a Finding of No Significant Impact; or*
 - ✓ *issued a combined final Environmental Impact Statement (EIS)/Record of Decision (ROD) or a final EIS and ROD*



Transportation Project Lifecycle



NEPA & Timing of Real Property Acquisition

Acquisition-Related Activities Allowed During NEPA Review

- Conduct land surveys
- Perform title searches
- *Preliminary* appraisals
- Environmental site assessments (for hazardous materials)
- *Preliminary* displacee relocation assistance interviews and planning



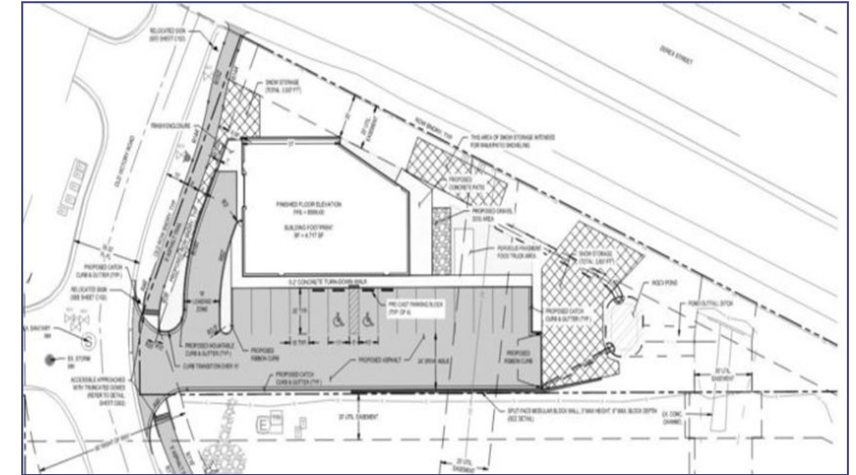
Acquisition Activities After NEPA Completion

- Appraisals*
- Offers to Purchase
- Negotiations
- Displacements



Exceptions for Early Property Acquisition

- Available exceptions:
 - CE(c)(6): Acquisition, Transfer of Real Property Interest does that does not result in a substantial change in the functional use of the property or in substantial displacements
 - CE(d)(3): Hardship acquisition
 - CE(d)(3): Protective acquisition
 - CE(d)(4): Corridor preservation (linear projects)
- NEPA and Uniform Act compliance are **required** for the acquisition



CE (c)(6)—Acquisition, Transfer of Real Property Interest

*Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and **does not result in a substantial change in the functional use of the property or in substantial displacements**, such as: Acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property.*

Examples– CE (c)(6)

- Acquisition of a parking facility and maintaining the functional use as a parking facility



- Acquisition of a private sidewalk to provide better access to a transit station



CE (d)(3)—Hardship and Protective Acquisitions

Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

- i. **Hardship acquisition is** early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. **This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.***
- ii. **Protective acquisition** is done to **prevent imminent development** of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.*

Examples– CE (d)(3)—Hardship and Protective Acquisitions

Hardship Acquisition

- Property owner's job has been transferred elsewhere but owner can't sell because public documents identify property as needed for a transit project.
- Elderly owner must sell and move into an assisted-living facility but cannot sell.

Protective Acquisition

- Imminent threat of development and development would be inconsistent with planned transit use (e.g., available developer plans, application for building permit, zoning exception).

CE (d)(4)—Acquisition of Right-of-Way

- Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

Example:

- Acquisition of property adjacent to an existing light rail station for future light rail expansion project.



Acquisition or transfer of interest in real property CE(c)(6)

- Acquisition or transfer of an interest in real property that is not within or adjacent to environmentally sensitive areas
- No substantial change in functional use of the property
- No substantial displacements

Hardship and Protective Acquisition CE(d)(3)

- i. Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner
- ii. Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site.

Acquisition of Right of Way CE(d)(4)

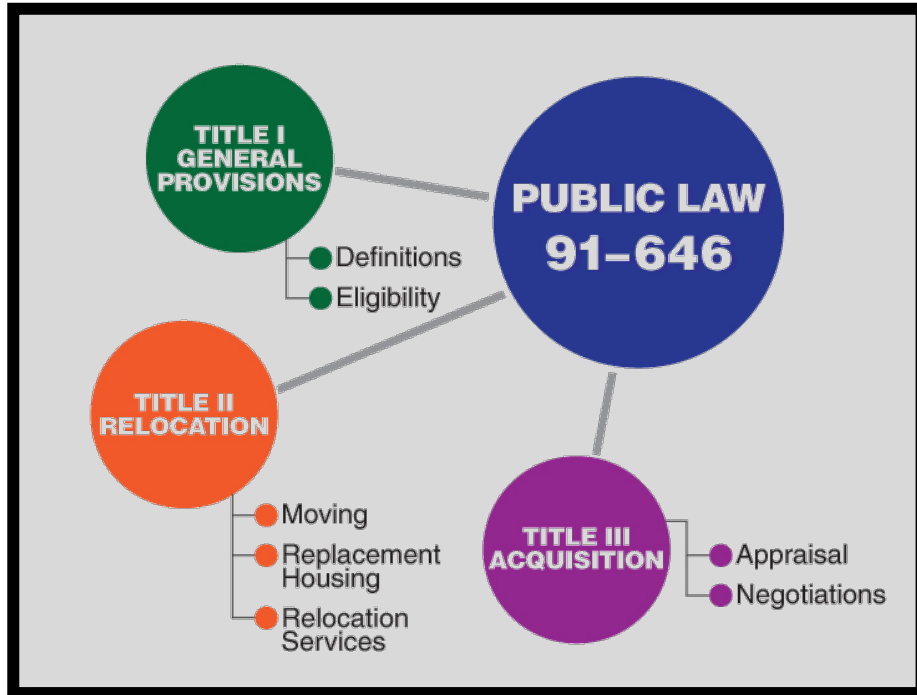
- No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

Documentation for Property Acquisition CEs

- Project description
- CE activity category
- Identify unusual circumstances, if any
- Project commitments
 - Uniform Act compliance
- Supporting documentation
 - Justification for the acquisition



The Uniform Act – The Law



Public Law 91-646

*Uniform Relocation Assistance
And Real Property Acquisition
Policies Act of 1970, as amended
{42 U.S.C. § 4601 et seq.}*

Takeaways for Key Uniform Act Principles

- Uniform Act is a Federal law that provides equity.
- Uniform Act applies to all projects with Federal assistance in any phase of the project.
- Federal Regulation for Uniform Act 49 CFR part 24 explains the requirements.
- The process for acquiring property includes appraising the property, negotiating with property owners, and providing relocation assistance.
- Property rights acquired include fee simple, perpetual easement, and temporary easement
- Voluntary acquisition applies when the property is not required for a project.
- Recordkeeping involves keeping files with information that shows compliance with the Uniform Act.

49 CFR part 24 – General Structure

- Subpart A: General
- **Subpart B: Real Property Acquisition**
- Subpart C: General Relocation Requirements
- Subpart D: Payments for Moving and Related Expenses
- Subpart E: Replacement Housing Payments
- Subpart F: Mobile Homes
- Subpart G: Certification



49 CFR part 24 – Subpart B – Real Property Acquisition

The *Subpart B Real Property Acquisition* requirements apply when there is, or is expected to be, federal financial assistance in **any phase** of a project costs.

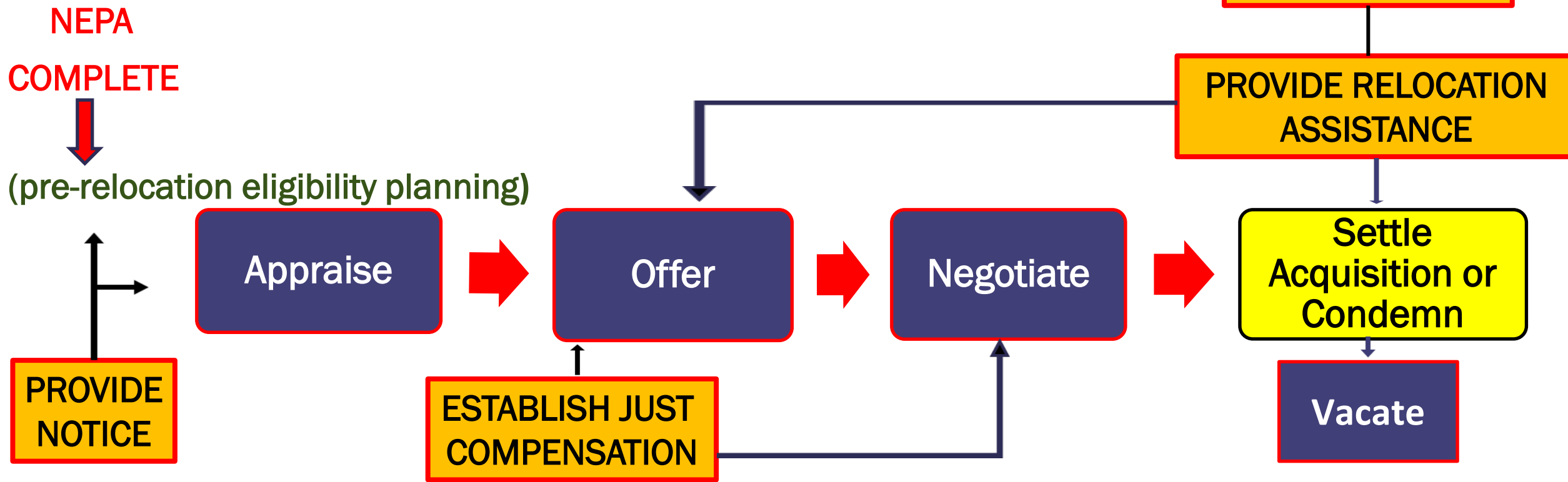


Subpart B Real Property Acquisition Requirements

- Basic acquisition and negotiations policies
- Criteria for appraisals
- Review of appraisals
- Acquisition of tenant owned improvements
- Title transfer incidental expenses
- Litigation expenses
- Donations

The Uniform Act Acquisition and Relocation Process

“Uniform Act” 49 CFR part 24 Process
Post-NEPA Completion



Acquisition Process – Property Rights

Real Property Needs Vary by Project

- Fee Simple Absolute (Fee)
- Less than Full Fee Interest (Easement)
- Temporary Interests (Temporary Easement)
- *Includes surface and sub-surface rights*



CONSTRUCT-OPERATE-MAINTAIN

SATISFACTORY CONTINUING CONTROL:

The legal assurance that project property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.

49 CFR part 24 – Subpart B (“Voluntary” Acquisition)

- Caution is recommended when utilizing these provisions. Voluntary acquisition is often misapplied. A project sponsor may not later choose to condemn if agreement can't be reached.
- Tenants displaced as a result of a voluntary acquisition remain eligible for Uniform Act required relocation assistance benefits.
- Consult your FTA region office for guidance **PRIOR TO** implementing these provisions of the Uniform Act to ensure proper application.

Applying Requirements Thought Process: Easy as 1 – 2 – 3

1

Determine applicability of NEPA and Uniform Act Requirements

2

Assess whether NEPA is complete

3

Determine whether the acquisition qualifies as a “voluntary” acquisition

Applying Requirements – Step 1 (Applicability)

Will the project include (or can it reasonably be expected to include in the future) federal financial assistance in any part of project costs?
(regardless of whether non-federal funds will be used to acquire the real property)



NO

NEPA* and Uniform Act would not apply. If real property is acquired without documented compliance with NEPA and Uniform Act requirements, the property may not be used in the future for a federally-assisted transit project.



YES

NEPA* and Uniform Act requirements apply.



Applying Requirements – Step 2 (Assess NEPA Status)

Has the recipient completed and received NEPA approval (or approval for an early or advance acquisition) for the project from the FTA region office?



YES

Recipient may proceed to acquire real property.



NO



STOP. Do not proceed until NEPA is complete.

Applying Requirements – Step 3 (Subpart B)

Does the real property acquisition meet the conditions necessary to qualify as a “voluntary” acquisition per either 49 CFR 24.101(b)(1) or 24.101(b)(2)?



The Subpart B-Real Property Acquisition requirements of 49 CFR part 24 do not apply.

No



The Subpart B-Real Property Acquisition Requirements of 49 CFR part 24 apply.

The Uniform Act – Recordkeeping

Critical Requirement

49 CFR §24.9 - Recordkeeping

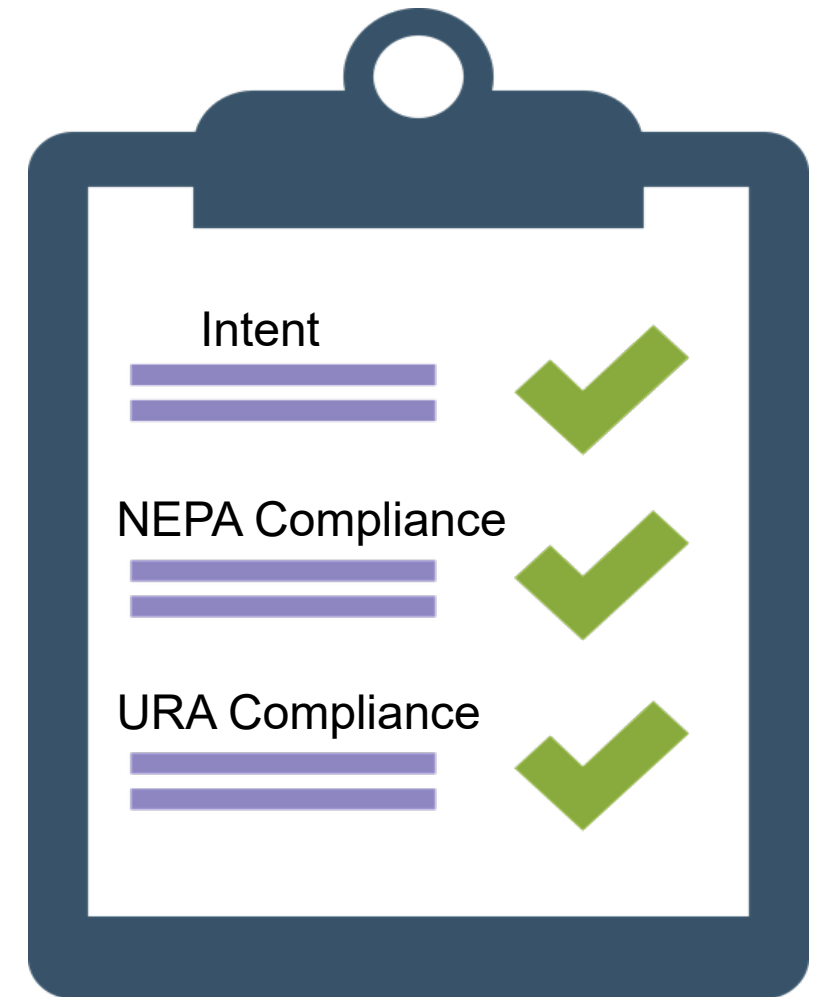


An Agency must maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance.



Factors To Consider When Purchasing Property With Local Funds

- Is there a clear intent to use the property for a future FTA funded project?
 - TIP or long-range plan
 - Communication records
 - Board or council resolutions
- Did the project comply with NEPA?
- Did the project comply with the Uniform Act?



Factors To Consider When Purchasing Property With Local Funds

Scenario 1

10 years ago, the City of Hollow purchased (with local funds) a 5-acre parcel to construct a fire station. That plan never came to fruition and the property remains vacant and unused. The City has determined the site would be perfect to accommodate an expansion of its bus maintenance facility, which is located immediately adjacent to this parcel.



Factors To Consider When Purchasing Property With Local Funds

Scenario 2

There is a vacant property currently for sale in a commercial area. The EZ Commute Transit Agency would like to purchase that property (with local funds) and later use it for a future FTA funded facility replacement project (date TBD). The property owner has a few pending offers.



Resources

- **FTA Guidance on Categorical Exclusions (CE) (23 CFR 771.118):**
<https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/guidance-implementation-ftas-categorical-exclusions>
- **FTA [Dear Colleague Letter](#): Real Estate and NEPA (July 2022):**
<https://www.transit.dot.gov/regulations-and-guidance/policy-letters/administrator-dear-colleague-letters>
- **FTA Real Property Acquisition and NEPA [FAQs](#) (2021):**
<https://www.transit.dot.gov/regulations-and-programs/environmental-programs/fta-real-property-acquisition-and-national>
- **FTA Final Guidance on the Application of 49 U.S.C. 5323(q) to [Corridor Preservation](#) for a Transit Project (2014):** <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/fta-final-guidance-application-49-usc-5323q-corridor>

Questions?



FTA Mission, Vision, Values



Mission

Improve America's Communities through Public Transportation



Vision

A Better Quality of Life for All Built on Public Transportation Excellence

Values

Service

Provide reliable, transparent, responsive, and anticipatory services to meet stakeholder needs

Integrity

Commitment to the highest professional and ethical standards

Innovation

Foster new ideas, concepts, and solutions for improved outcomes

Sustainability

Optimize decisions, resources, and systems to make long-term positive impacts on the environment, infrastructure, and safety

Equity

Remove barriers for systemically underserved communities to access all aspects of economic, social, and civic life

Thank you!



More
Information



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