
FREQUENTLY ASKED QUESTIONS

FTA Real Property Acquisition and the National Environmental Policy Act (NEPA)

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Grantees and sub-grantees should refer to FTA's statutes and regulations for applicable property acquisition and environmental review process requirements.

BACKGROUND

These frequently asked questions (FAQs) are intended to clarify and consolidate property acquisition aspects of federally funded transit projects as they relate to the environmental review process. The FAQs do not present or establish new policy. Instead, the answers direct the reader to existing sources of information (e.g., regulations, guidance, policy statements) as a means of explanation. Refer to the cited references for complete guidance when consulting one of the FAQs below.

Q1. WHAT REAL PROPERTY ACQUISITION RESOURCES SHOULD BE CONSULTED?

Depending on the timing and type of real property acquisition, and prior to initiating real property acquisition, consult the following, as appropriate:

- FTA Award Management Requirements ([FTA Circular 5010.1E](#)) for grant award responsibilities;
- FTA [Apportionments Notice](#) (published annually) for FTA program policies and procedures regarding funding programs;
- FTA [Environmental SOP #19](#) (Consideration of Contaminated Properties Including Brownfields) for the assessment and acquisition considerations for property that is or may be contaminated;
- FTA [Dear Colleague letter](#) on property acquisition under NEPA (Jan. 5, 2016);
- FTA Final Guidance on the Application of 49 U.S.C. 5323(q) to [Corridor Preservation](#) for a Transit Project (2014);
- FTA [Master Agreement](#);
- FTA Joint Development Guidance ([FTA Circular 70501B](#));
- FTA Environmental Impact and Related Procedures, [23 CFR part 771](#); or
- Uniform Act, [49 CFR part 24](#).¹

Q2. WHAT IS THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED (GENERALLY REFERRED TO AS “THE UNIFORM ACT” OR “URA”)?

The Uniform Act provides the requirements that federal agencies and project sponsors must comply with to acquire real property when federal funds are used in any part of a project ([49 CFR part 24](#).) These requirements apply whether real property is acquired before or after the completion of the National Environmental Policy Act (NEPA) environmental review process. The Uniform Act is implemented through the

¹ The Uniform Act does not address pre-NEPA acquisition (covered in these FAQs) and it assumes that the NEPA process is complete. However, there is no difference between how property is to be acquired under Uniform Act requirements for property acquired before or after NEPA is complete.

regulations found at [49 CFR part 24](#). The regulations cover requirements related to the broad categories of appraisal/evaluation, real property acquisition, and relocation assistance.

Generally, the purpose of the Uniform Act is three-fold:

- To ensure that owners of real property to be acquired for a federally-assisted project are treated fairly and consistently, to encourage acquisition of real property by agreement to relieve congestion in the courts, and to promote public confidence in federally-assisted land acquisition programs.
- To ensure that persons displaced as a direct result of a federally-assisted project are treated fairly, consistently, and equitably so that displaced persons will not suffer disproportionate injury as a result of projects designed to benefit the public as a whole.
- To ensure agencies implement the regulations in an efficient and cost effective manner. (49 CFR 24.1).

The provisions of the Uniform Act apply to the 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 (see 49 CFR 24.101(a) and (c)). Uniform Act requirements apply when there is federal financial assistance in *any part* of project costs, per 49 CFR 24.101(b).

Q3. WHAT DOES REAL PROPERTY ACQUISITION INCLUDE?

Real property acquisition involves the acquisition of interests in property necessary to construct, operate, and/or maintain an FTA-funded transit project or facility. This includes 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 (see 49 CFR 24.101(a) and (c)). Easements include surface and subsurface permissions. FTA recommends confirming applicability with your local FTA Regional Office.

Q4. HOW DOES FTA'S REAL PROPERTY ACQUISITION POLICY DIFFER FROM FHWA POLICY?

FTA and the Federal Highway Administration (FHWA) treat advance acquisition differently. Under FTA policy, the acquisition typically must either fall under FTA's corridor preservation statute (49 U.S.C. § 5323(q)) or qualify as a hardship or protective buy categorical exclusion (CE) ([23 CFR 771.118\(d\)\(3\)](#)) to justify the advance acquisition. (See [Dear Colleague letter](#)). FHWA has a broad authority for real property advance acquisition prior to NEPA completion in [23 U.S.C. § 108](#) that applies only to FHWA projects; if an FTA project sponsor applies 23 U.S.C. § 108 to its project, the project may not be eligible for FTA funding. Under FHWA policy, the acquisition can also occur when it is a hardship or protective buy under 23 CFR 771.117(d)(12).

Q5. HOW ARE REAL PROPERTY ACQUISITIONS AND BUSINESS RELOCATIONS CONSIDERED DURING THE NEPA PROCESS?

If real property is to be acquired for an FTA funded transit project, the project's NEPA documentation should contain a description of the property (the land, structures, location, etc.), the type of acquisition, and any relevant site assessment reports. In cases where an acquisition requires the displacement of businesses or individuals, commitment to the provisions of the Uniform Act should be stated and followed, and the associated social impact analyzed as part of the environmental NEPA documentation process. This analysis should identify the characteristics and needs of personal property and businesses to be displaced, describe inventory availability of comparable replacement dwellings and sites, discuss potential relocation challenges,

and describe methods to mitigate potential adverse impacts from the relocation. Temporary impacts are analyzed during the NEPA analysis, as well, and may be addressed through a temporary easement with the property owner.

Q6. WHAT IS THE APPROPRIATE TIMING TO ACQUIRE PROPERTY IN RELATION TO THE NEPA PROCESS?

Unless an early or at-risk (hardship or protective buy) acquisition meets the conditions described in Q11 (below), property cannot be acquired until NEPA is complete and an environmental determination or decision document has been issued (i.e., a combined final environmental impact statement (EIS)/record of decision (ROD), stand-alone ROD, finding of no significant impact, or CE determination). This restriction is found in FTA's environmental regulations ([23 CFR 771.113](#)) and includes offers to purchase the property or any other commitment to purchase the property or to proceed to a settlement ([FTA Circular 5010.1E](#)). Project sponsors should contact their FTA Regional Office with any questions about potential timing of property acquisitions and their corresponding NEPA documentation.

Q7. WHAT ARE "PRELIMINARY ACQUISITION ACTIVITIES" RELATED TO REAL PROPERTY ACQUISITION IN THE CONTEXT OF THE NEPA PROCESS?

Preliminary acquisition activities include any activity in support of or in preparation for implementing a program of real property acquisition.

Project sponsors may engage in preliminary acquisition activities during the NEPA process provided the activities do not limit the consideration of NEPA alternatives or violate the requirements of the Uniform Act. Examples of allowable activities are relocation planning and preliminary discussions with property owners that do not result in binding agreements. Any preliminary negotiations should be documented and include a statement for the property owner's signature indicating that the owner understands the discussions to be preliminary and non-binding as to price and other considerations. (See [FTA Circular 5010.1E](#))

Examples of allowable preliminary acquisition activities include:

- Title Searches;
- Right-of-way (ROW) Acquisition Cost Estimates;
- ROW Relocation Cost Estimates or Relocation Plans;
- ROW Plans, Exhibits, or Legal Descriptions;
- Public Meetings or Hearings;
- Environmental Site Assessments (ESAs); and,
- Appraisals (see considerations in Q8 and Q10, below).

Examples, which can be either implied or explicit, of prohibited acquisition activities during the NEPA process include:

- Any offer to purchase;
- Any negotiation to purchase;
- Any discussion on price;
- Any commitment to purchase or establishing any conditions of purchase; and,
- Any commitment to proceed to settlement.

Q8. WHAT ARE THE ENVIRONMENTAL SITE ASSESSMENT (ESA) REQUIREMENTS FOR PROPERTY ACQUISITION CONSIDERATIONS?

During the NEPA process, a Phase I ESA must be conducted for all properties being considered for acquisition as part of the project. A Phase II or Phase III ESA should be conducted if determined necessary by the Phase I ESA. Refer to FTA [Environmental SOP #19](#) for the appropriate timing of ESAs for the different project classes of action (CE, environmental assessment, or EIS). The results of all ESA(s) must be provided to the real estate appraiser for consideration in determining the market value of the property ([FTA Circular 5010.1E](#)).

Q9. WHAT MITIGATION SHOULD BE PROVIDED FOR RELOCATION AND REAL PROPERTY ACQUISITION IMPACTS?

Relocation and property acquisition impacts should be avoided to the maximum extent practicable. When that is not possible, relocation assistance and just compensation is appropriate in accordance with the Uniform Act, which establishes a policy for the fair and equitable treatment of persons displaced as a result of federal and federally assisted programs ([49 CFR part 24.1](#)) (see also [FTA Circular 5010.1E](#)). Under certain circumstances, mitigation beyond what is outlined in the Uniform Act may be appropriate. FTA recommends confirming the sufficiency of proposed mitigation for relocation or property acquisition impacts with your local FTA Regional Office.

Q10. WHY IS IT RECOMMENDED THAT AN APPRAISAL BE CONDUCTED AFTER NEPA IS COMPLETED?

While conducting real property appraisals is not a prohibited activity prior to NEPA completion, obtaining them prior to NEPA completion is not recommended. Uniform Act-compliant appraisals for total and partial acquisitions are comprehensive and can be expensive. Appraisals generally “expire” after six months (see [FTA Circular 5010.1E](#), Ch. IV) and FTA will require new appraisals or updates (if appropriate) for use in acquisition after NEPA completion when the age of an appraisal exceeds six months. Project sponsors take the risk of incurring duplicative valuation costs if appraisals are completed prior to the completion of NEPA.

Additionally, Uniform Act requires the property owner to be provided with an opportunity to accompany the appraiser on his/her inspection of the property (49 CFR 24.102(c)(1)). If an appraisal is being completed prior to NEPA clearance and the appraisal is intended to be used as the basis of just compensation for acquisition, the property owner must be invited to accompany the appraiser (49 CFR § 24.102(c)(1)). However, this interaction raises risks because it may potentially establish inaccurate property owner expectations related to project need or price.

Further, ESAs need to be provided to the appraiser *prior to* appraisal assignment (see Q8, [FTA Circular 5010.1E](#) and [Environmental SOP #19](#)). If ESAs are not complete at the time of appraisal assignment to an appraiser, it may necessitate an additional appraisal of the property once the ESA is complete.

Q11. UNDER WHAT CIRCUMSTANCES CAN PROPERTY BE ACQUIRED PRIOR TO THE COMPLETION OF NEPA (I.E., ADVANCE or EARLY ACQUISITION)?

There are two categories of limited exceptions to FTA’s usual prohibition on a project sponsor acquiring real property prior to the completion of the environmental review process: corridor preservation and hardship/protective acquisitions.

- **Corridor Preservation:** Right-of-Way (ROW) property may be acquired for a transit project prior to the completion of NEPA under certain circumstances and at the project sponsor's risk. Refer to *FTA Corridor Preservation Guidance* for a definition of ROW, examples of ROW acquisitions, and FTA's expectations and requirements for ROW acquisition. Any ROW acquisition should follow applicable requirements of the Uniform Relocation Act and its implementing regulation at [49 CFR part 24](#).
- **Hardship or Protective Acquisition:** To avoid undue prejudicing of the alternatives under consideration for the transit project, hardship and protective acquisition are permitted only for a particular parcel or a very limited number of parcels. Further, to utilize the protective acquisition exception, FTA requests proof there are imminent development plans that are incompatible with the grantee's plan for the property (e.g., zoning change application, filed building permits). A "for sale" property listing is not sufficient to meet the protective acquisition threshold. Contact your local FTA office for approval prior to applying this exception. This acquisition may qualify for a CE only when the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, under the NEPA process. Also, no project development on the acquired property may proceed until the NEPA process has been completed. See [23 CFR 771.118\(d\)\(3\)](#) for the Hardship and Protective Acquisition CE. Any acquisition undertaken under this exception must comply with applicable Uniform Act requirements ([49 CFR part 24](#)).

Q12. CAN A PROJECT SPONSOR ENGAGE IN ADVANCE OR EARLY ACQUISITION OF REAL PROPERTY PRIOR TO THE COMPLETION OF NEPA IF ONLY LOCAL FUNDS (NO FEDERAL FUNDS) ARE USED TO ACQUIRE REAL PROPERTY?

No, a project sponsor cannot engage in advance or early acquisition prior to NEPA completion unless one of the previously discussed exceptions apply (see Q11). The source of funds for the real property or corridor preservation acquisition is not the determining factor when considering whether the acquisition is allowed prior to the completion of the environmental review process. If there is or will be federal financial assistance in *any* part of project costs, NEPA and Uniform Act compliance is required, even if only local funds are used for the real estate acquisition portion of the project.

Q13. WHAT ARE THE IMPORTANT FACTORS TO CONSIDER WHEN PURCHASING A PROPERTY WITH LOCAL FUNDS THAT DOES NOT HAVE A KNOWN OR IMMEDIATE CONNECTION TO A FUTURE FTA FUNDED PROJECT? COULD THIS PROPERTY BE USED FOR A FEDERALLY-ASSISTED PROJECT THAT IS IDENTIFIED LATER?

If there is no clear, certain or reasonably foreseeable connection of the property acquisition to a future FTA funded project (i.e., the project is not in the Transportation Improvement Program (TIP) or long range plan), then the property does not need to adhere to the Uniform Act and FTA real property acquisition requirements. However, it is recommended to comply with the Uniform Act to ensure the acquisitions qualify for future federal participation, if determined to be an eligible project cost.

Whether the property can be used for a future federally-assisted project is highly dependent on the individual circumstances of when, how, and why a project sponsor acquired a specific property. FTA would need to individually review such "historical" acquisitions to determine if the intent of the acquisition was for a federally funded program or project, in which case the provisions of the Uniform Act would apply.

To determine whether a locally funded acquisition should follow Federal standards, project sponsors should contact their local [FTA Regional Office](#). FTA staff may request supporting documentation to clarify the intent and timing of the acquisition. This step is important because if the FTA Regional Office determines the real property was purchased with the intent to use it for a later Federal project, but the Uniform Act was not followed, it is highly likely the FTA would not be able to participate in the project.

Q14. CAN A LOCAL PROPERTY ACQUISITION BE TREATED AS A LOCAL MATCH FOR AN FTA GRANT?

Local funds expended by the project sponsor before the date of pre-award authority are not eligible for reimbursement or credit as a local match ([FTA Apportionments Notice](#)). The exception to this policy is right-of-way acquisition for corridor preservation, which would be considered an in-kind match and could be acquired prior to pre-award authority at the project sponsor's risk. Refer to FTA's [Corridor Preservation Guidance](#) for more information on this exception, including conditions.

Another exception is the use of contributions under the Office of Management and Budget's cost-sharing or matching regulation (2 CFR 200.306). In cases where property contributions are being applied to an FTA project, the contribution must meet all criteria found at 2 CFR 200.306(b). Additionally, eligibility for FTA funding and considerations FTA would use to determine who may receive an FTA grant award will be described on a case-by-case basis under an applicable FTA notice of funding opportunity, consistent with 2 CFR 200.306.

Q15. WHAT IS THE PROCESS FOR ACQUIRING AND USING REAL PROPERTY FOR FTA FUNDED JOINT DEVELOPMENT PROJECTS?

For FTA funded joint development projects, real property must be acquired, managed, and used in accordance with the Uniform Act ([49 CFR part 24](#)) and the acquisition guidelines provided in these FAQs. Please also refer to the FTA [Master Agreement](#) and FTA Award Management Requirements Circular [5010.1E](#).

Project sponsors can pursue joint development through new grants or of property previously acquired with FTA assistance. Eligible joint development expenses can be funded through all of FTA's capital grant programs and, as with any capital project, FTA grant funds may be used for real property acquisition, among other capital activities. To be eligible for funding, a stand-alone joint development or a joint development within a larger project must satisfy the eligibility requirements in the definition of capital project at 49 U.S.C. § 5302(3)(G).

See the most recent edition of FTA Circular 7050.1B, [Joint Development Guidance](#), for additional information.

Q16. WHAT IS THE PROCESS FOR THE DISPOSITION OF REAL PROPERTY?

Disposition is defined as: *The settlement of the federal interest in project property that is no longer needed for the originally authorized purpose* (FTA Circular 5010.1E). When real property is no longer needed for any transit purpose, the project sponsor requests instruction for disposition from FTA. FTA may approve the use of the property for other purposes. Refer to Chapter IV of FTA Circular [5010.1E](#) for the appropriate procedures. NEPA compliance, along with Section 106 and other environmental approvals, is not needed for disposition actions. Project sponsors should coordinate with their local FTA Regional Office on disposition instructions.