



U.S. Department
Of Transportation
**Federal Transit
Administration**

Headquarters

1200 New Jersey Avenue, S.E.
Washington DC 20590

JAN 5 2016

Dear Colleague:

The Federal Transit Administration (FTA) has been continuing its efforts to improve the environmental review and approval process – shortening project delivery timeframes and minimizing unnecessary documentation, while still ensuring environmental protection. Recently, it has come to our attention that there is some confusion involving the early acquisition of real property that may be needed for a transit project and uncertainty as to which specific FTA regulations apply. Specifically, some FTA grantees have been acquiring property in advance of completing the National Environmental Policy Act (NEPA) environmental review process. This letter is to remind you that requirements for FTA regarding advance acquisition and compliance with NEPA are unique and that the failure to conduct NEPA prior to acquiring real property jeopardizes future federal participation in a project. Even real property purchased entirely with local funds must adhere to certain FTA requirements, such as the Uniform Relocation Act, to preserve the ability to use FTA funds for a project that would require the use of that real property.

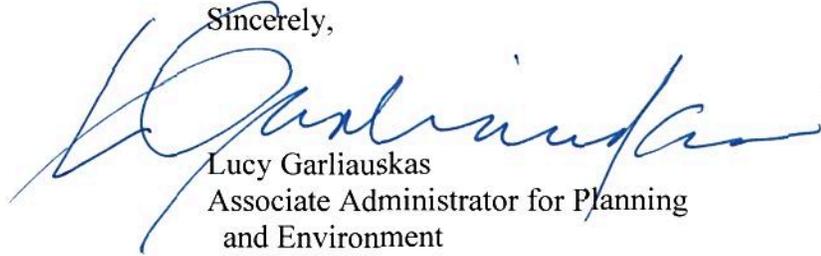
Please note that although the FTA and the Federal Highway Administration (FHWA) share regulations (23 CFR § 771.113) that address the timing of Administration activities, including property acquisition, the two U.S. Department of Transportation agencies treat advance acquisition differently. For example, the broad authority for advance acquisition prior to NEPA completion in 23 U.S.C. § 108 applies only to FHWA. Even for real property that an FTA grantee purchases using only local funds, the acquisition typically must either fall under FTA's corridor preservation rule (49 USC § 5323(q)) or be a hardship or protective buy (23 CFR § 771.118(d)(3)) in order to justify the advance acquisition if the grantee plans to seek FTA funds for the project that will use that property.

Additionally, there are certain circumstances in which FTA grantees may acquire property in advance of the completion of NEPA using automatic pre-award authority. This option only extends to acquisitions for transit projects that qualify for a categorical exclusion pursuant to 23 CFR § 771.118(c). Of course, all pre-award authority is contingent on compliance with federal requirements. Should an advance acquisition occur for a project that does not qualify for a categorical exclusion under 23 CFR § 771.118(c), FTA may be unable to provide financial assistance for the entire project. FTA's Regional Offices can assist with determining whether a particular project would meet the definition for a specific type of categorical exclusion.

Therefore, I strongly encourage you to contact your FTA Regional Office prior to any property acquisition, even with local funds, for an FTA-assisted project. Your Regional Office will work with you to identify which option may be best for your project and help you to avoid foreclosing

the ability to use FTA funds for a particular project. If you have any questions or need additional information, please contact Chris Van Wyk, Director of FTA's Office of Environmental Programs, at (202) 366-1733 or ChristopherVanWyk@dot.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lucy Garliauskas', is written over the typed name and title.

Lucy Garliauskas
Associate Administrator for Planning
and Environment