



FEDERAL TRANSIT ADMINISTRATION

NEPA and Early Real Estate Activity

November 1, 2012



U.S. Department of Transportation
Federal Transit Administration

Presentation Topics

- Pre-Award Authority for relocations and property acquisitions
- Corridor Preservation under MAP-21
- Hardship and Protective Buys
- Allowable ROW Activities during NEPA

What is Pre-Award Authority

- Costs incurred prior to grant award are not eligible unless specifically approved by FTA (Common Grant Rule)
- Is **NOT** a commitment by FTA to make a grant; merely identifies an acceptable project expense if a grant is made
- Financial risk is borne by the transit agency

Pre-Award Authority for Relocation and Real Property Acquisition

- FTA extends pre-award authority for relocations and property acquisition upon completion of the NEPA process (with a ROD, FONSI, or CE determination)
- Relocations and acquisitions must be done in accordance with the Uniform Act
- Intent is to maximize time allotted for relocations without affecting project schedule

Limits on Pre-Award Authority

- For New and Small Starts, pre-award authority does not cover:
 - Demolitions, unless extenuating circumstance such as fire hazard exists and FTA agrees;
 - Site preparation

NEPA Limitations on Actions

- NEPA regulations prohibit actions that would prejudice consideration of alternatives (incl. No-Build) prior to NEPA completion
 - Historically, property acquisition has been considered such a prejudicial action, with certain exceptions (hardship and protective buys) recognized through court cases
 - MAP-21 adds another exception, namely for corridor preservation

Corridor Preservation

- MAP-21 allows the acquisition of ROW for a future transit project (49 USC 5323(q))
- The ROW acquisition and the future transit project on that ROW are separate projects for purposes of planning and NEPA review
- Formerly applicable only to railroad ROW, MAP-21 expanded it to all ROW

Corridor Preservation

- The ROW-acquisition project requires an environmental review which may or may not be a CE, and considers, for example, contamination, historic resources, wetlands etc. on the ROW
- Upon completion of this NEPA review, pre-award authority is granted as described above
- Uniform Act must be followed

Corridor Preservation

- Acquired ROW, if assisted by FTA, must be put to transit use within a reasonable period of time
- Transit project on the preserved ROW, if FTA assisted, is subject to its own planning and NEPA review:
 - Acquired ROW may not be developed until NEPA review of project using it has been completed
 - Alternatives must be considered, despite ROW preservation
 - Disposition of any unused ROW required

Protective Buying

- Imminent threat of development by owner
 - e.g., application for building permit, zoning exception or subdivision
- Development would be inconsistent with planned transit use and owner's development efforts would be wasted
- NEPA review, normally a CE but includes site assessment for contamination, is required

Hardship Buying

- Example 1: Property owner's job has been transferred elsewhere but owner can't sell because public documents identify property as needed for transit project
- Example 2: Elderly owner must sell and move into an assisted-living complex
- NEPA review, normally a CE but includes site assessment for contamination, is required

Allowable Activities during NEPA Process

- obtaining right-of-entry or other easement in order to conduct land surveys, site assessments for contamination, archaeological investigations, geological investigations, or testing of vibration propagation;
- performance of land surveys;
- subsurface investigations by non-ground-disturbing techniques;
- subsurface investigations by ground disturbing techniques, provided that right-of-entry or easement has been acquired and that the ground disturbance is limited to that necessary to determine the impacts or the presence of protected resources;
- performing title searches;
- preparation of a relocation plan including interviews with potential displacees to whom the exact project status and future process for finalizing project plans and decisions have been explained;
- preliminary appraisals and reviews of preliminary appraisals; and
- a site assessment for potential contamination of the soil or buildings on the property (e.g., asbestos insulation or lead paint)

Activity not Allowed during NEPA Process

- Actual closing on the property, or
- Making an offer for the property
- Actual relocations

- Any Questions on Anything?