



Early Property Acquisition and NEPA Compliance Webinar

April 25, 2024, 2:00-3:30 PM ET

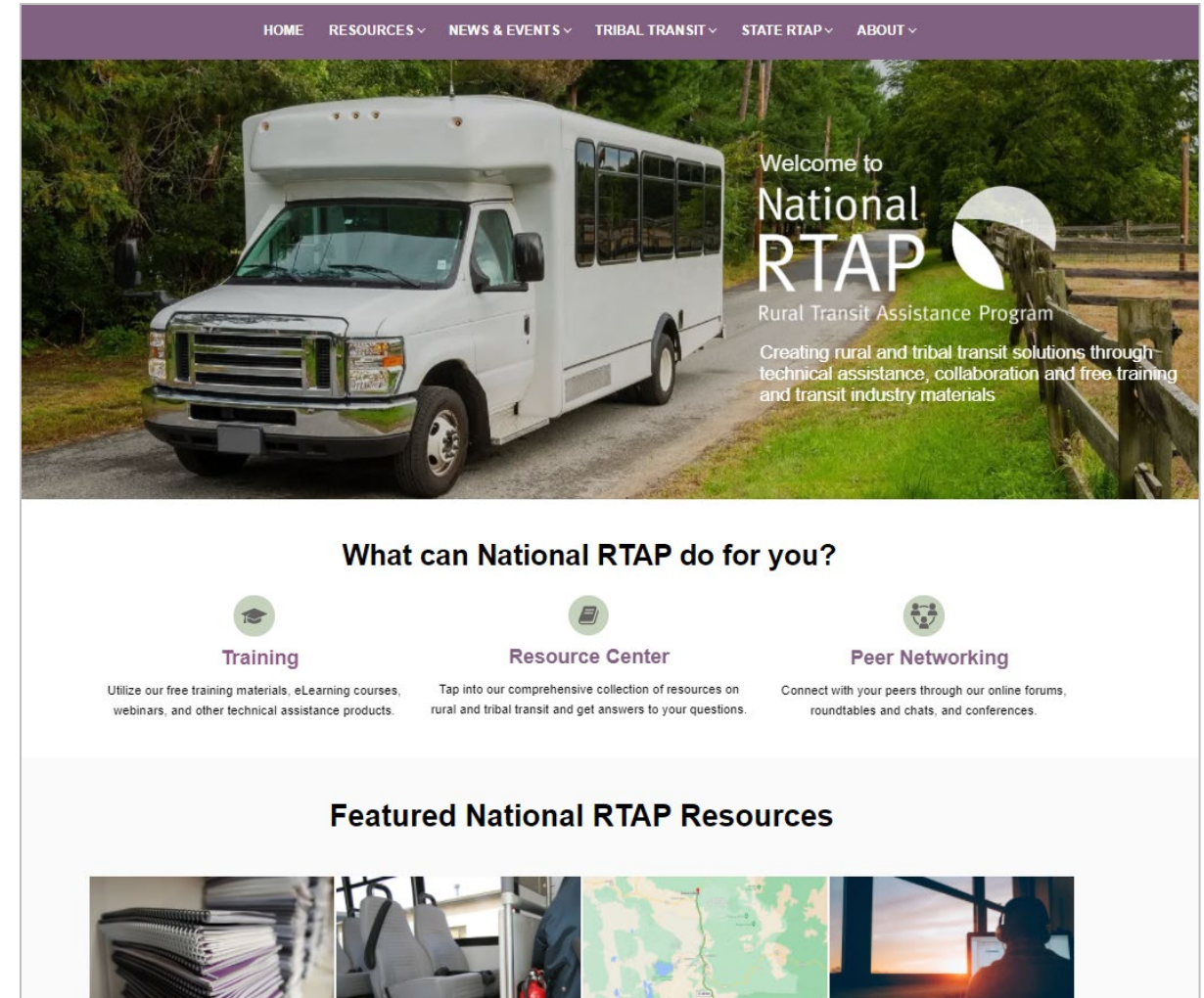


Webinar Housekeeping

- Recording and slides will be posted at NationalRTAP.org/Webinars
- Enter questions in the Q&A box (not the Chat)
- Toward the end of the webinar, you can raise your “virtual hand” to ask a question verbally
- There will be optional polls and quizzes throughout the webinar
- Having trouble with Zoom? Chat with us or email info@nationalrtap.org
- A brief post-webinar survey will pop-up in your browser after the webinar

National Rural Transit Assistance Program

- Funded by FTA through Section 5311
- Free training and technical assistance resources and services
- For rural and tribal transit providers and state programs
- Guided by a 14-member Review Board from state DOTs and transit providers
- Offices in Massachusetts and Washington, DC
- Learn more at nationalrtap.org



National RTAP Resources and Services



Training

Books, eLearning, videos,
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Technical briefs, toolkits,
topic guides, articles, news

Technology Tools

For procurement, GTFS, cost
allocation, website building

Peer Networking

Conferences, roundtables, online
forums, social media

Assistance

Reference services, research, tech
support – bring us your questions!

Speaker Introductions

Dee Phan, Environmental Protection Specialist,
FTA Office of Environmental Policy & Programs

- Coordinates and develops FTA policies, regulations, procedures, and guidance related to FTA's responsibilities under NEPA and other environmental laws/requirements.
- Previously managed environmental reviews at FAA's Phoenix Airports District Office, FTA's Region VII Office, and Arizona DOT.
- Holds a M.A. in Environmental Studies from University of Illinois and a B.S. in Earth Science from Loras College in Iowa.

Peter Clark, Realty Specialist, FTA Office of
Program Management

- Provides technical assistance for FTA Division Offices and grant recipients.
- Has over 20 years of right-of-way experience managing capital development programs and projects for the Federal Highway Administration, Georgia DOT, and Montgomery County DOT.
- Holds a B.A. in Business Administration from Morehouse College and a J.D. from the University of Miami School of Law.

NEPA and Real Property Acquisition

RTAP Webinar
April 25, 2024



U.S. Department of Transportation
Federal Transit Administration



Topics

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



Polls

1. Thinking back on your last project, was your real estate budget:

- Higher than required
- Lower than necessary
- Just about right

2. Thinking back on your last project, was your schedule to acquire:

- Too short
- Too long
- About right

3. Does your Agency have eminent domain authority?

- Yes
- No
- Don't know

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



NEPA Regulations:

- CEQ Regulations for Implementing NEPA: 40 CFR parts 1500-1508
- FTA/FHWA/FRA Regulations: 23 CFR part 771- Environmental Impact and Related Procedures, supplements the CEQ regulations

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

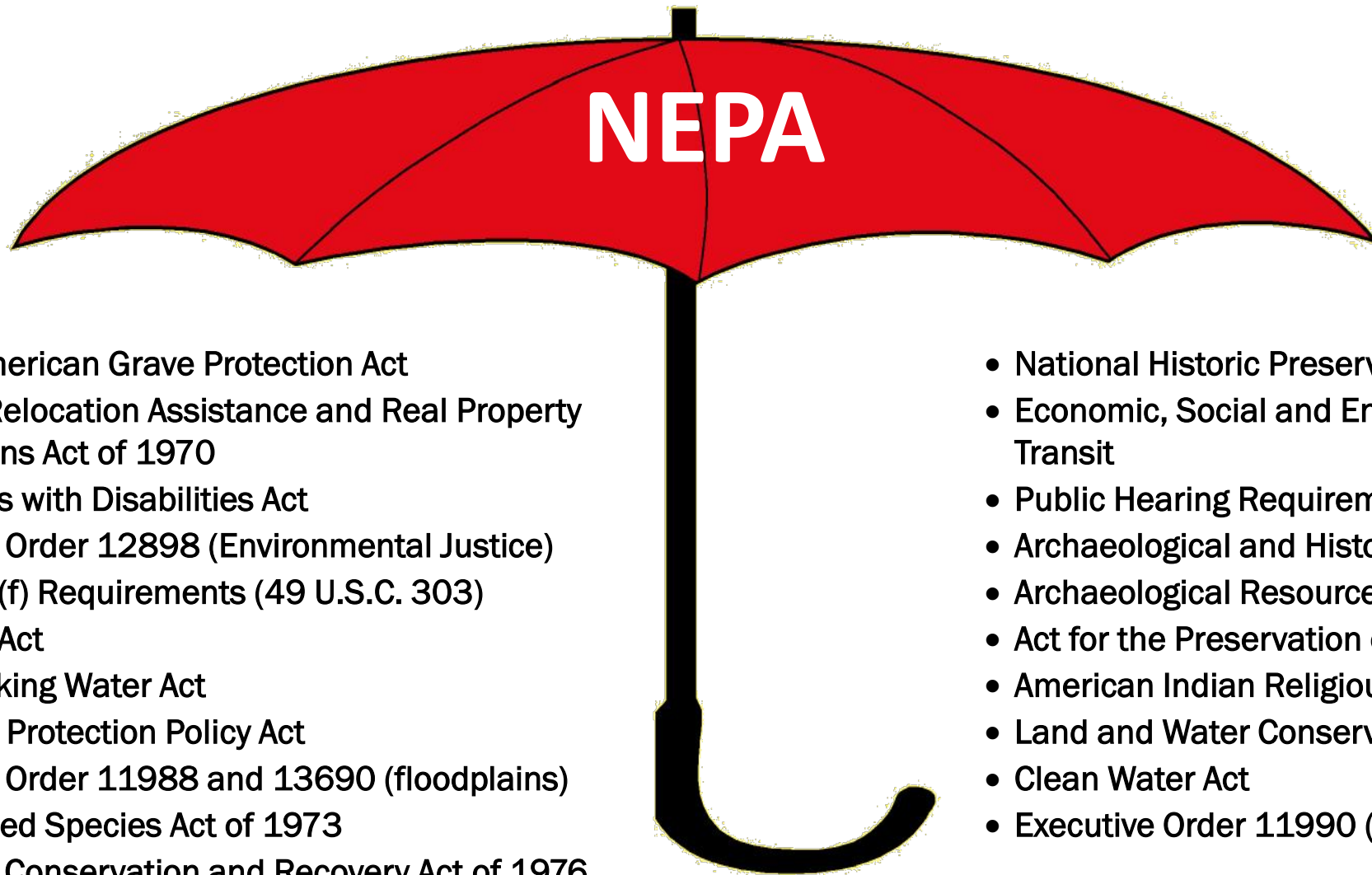
Categorical Exclusion (CE)

No Potential for
significant
environmental
impacts

CE Determination

C-List vs
D-List





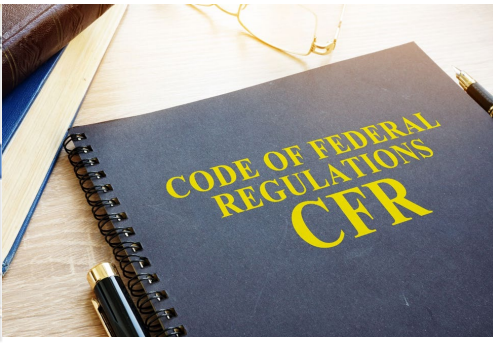
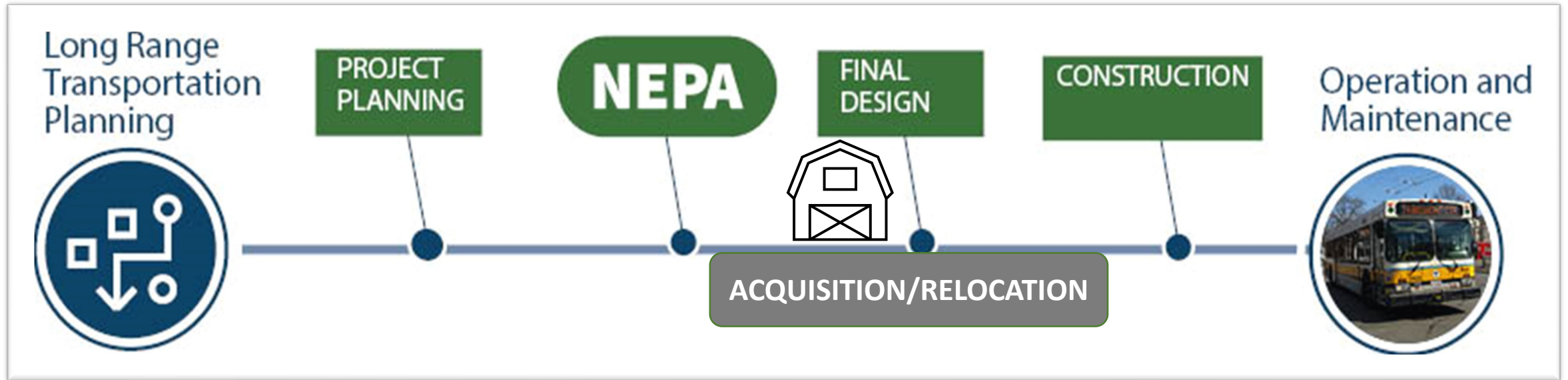
NEPA

- Native American Grave Protection Act
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- Americans with Disabilities Act
- Executive Order 12898 (Environmental Justice)
- Section 4(f) Requirements (49 U.S.C. 303)
- Clean Air Act
- Safe Drinking Water Act
- Farmland Protection Policy Act
- Executive Order 11988 and 13690 (floodplains)
- Endangered Species Act of 1973
- Resource Conservation and Recovery Act of 1976
- Comprehensive Environmental Response, Compensation and Liability Act

- National Historic Preservation Act
- Economic, Social and Environmental Effects of Transit
- Public Hearing Requirements
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- Act for the Preservation of American Antiquities
- American Indian Religious Freedom
- Land and Water Conservation Fund Act
- Clean Water Act
- Executive Order 11990 (wetlands)

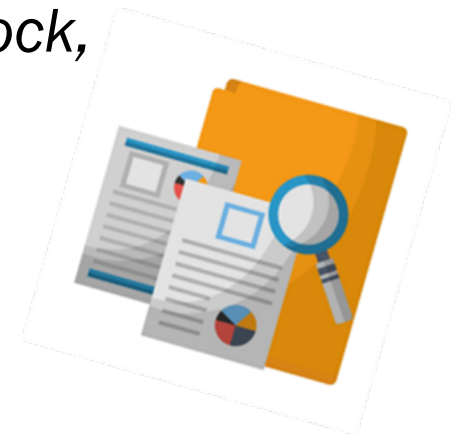
And more...

Transportation Project Lifecycle



FTA's Policies on Property Acquisition

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



Real Property Acquisition Includes...

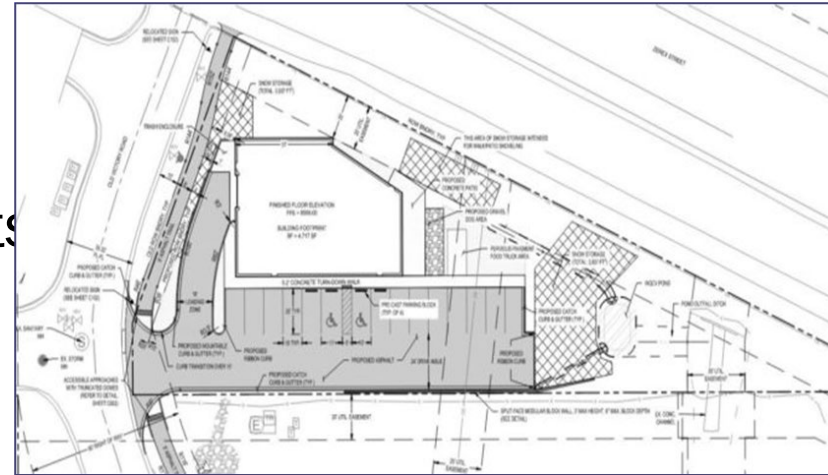
Acquisition of interests in real property necessary to construct, operate, and/or maintain an FTA-funded transit project or facility:

- 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



Exceptions for Early Property Acquisition

- Available exceptions:
 - Hardship acquisition
 - Protective acquisition
 - Corridor preservation (linear projects)
- NEPA and Uniform Act compliance
- are **required** for the acquisition



FTA's Early Property Acquisition Policy vs. FHWA's Policy

FTA

- At-risk corridor preservation (49 U.S.C. §5323(q))
 - Applies only to FTA linear projects
- Acquisition qualifies as a hardship or protective buy CE (23 CFR 771.118(d)(3))

FHWA

- At-risk real property (23 U.S.C. §108)
 - Applies only to FHWA projects
- Acquisition qualifies as a hardship or protective buy CE (23 CFR 771.117(d)(12))

NEPA & Real Property Acquisition Timing

Acquisition-Related Activities Allowed During NEPA Review

- Conduct land surveys
- Perform title searches
- *Preliminary* appraisals
- Environmental site assessments
- *Preliminary* displacee relocation assistance interviews and planning



Acquisition Activities Upon NEPA Completion

- Appraisals*
- Offers to Purchase
- Negotiations
- Displacements



What is a Categorical Exclusion (CE)?

- CEQ Definition – a category of actions that normally do not have significant environmental impacts
- FTA Definition – actions that meet the CEQ definition and, based on past experience with similar actions, have no significant impact
- FTA has two types of CEs:

C-List – 23 CFR 771.118(c)

D-List – 23 CFR 771.118(d)

FTA's C-List CEs

- (1) Utility and Similar Appurtenance Action
- (2) Pedestrian or Bicycle Action
- (3) Environmental Mitigation or Stewardship Activity
- (4) Planning and Administrative Activity
- (5) Action Promoting Safety, Security, Accessibility
- (6) Acquisition, Transfer of Real Property Interest**
- (7) Acquisition, Maintenance of Vehicles / Equipment
- (8) Maintenance, Rehab, Reconstruction of Facilities
- (9) Assembly or Construction of Facilities
- (10) Joint Development of Facilities
- (11) Emergency Recovery Actions
- (12) Action Within Existing Operational Right-of-Way
- (13) Action With Limited Federal Financial Assistance
- (14) Bridge Removal and Related Activities
- (15) Preventative Maintenance of Culverts/Channels
- (16) Geotechnical and Other Similar Investigations

(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– (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



FTA's D-List CEs

- (1) Highway Modernization
- (2) Bridge Replacement or Rail Grade Separation
- (3) Hardship or Protective Property Acquisition
- (4) Acquisition of Right-of-Way
- (5) [Reserved]
- (6) Facility Modernization
- (7) Minor Facility Realignment for Rail Safety Purposes
- (8) Facility Modernization/Expansion Outside Existing ROW
- Other – General Exclusion (not listed explicitly in regulation)

(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– (d)(3)

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).

(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.

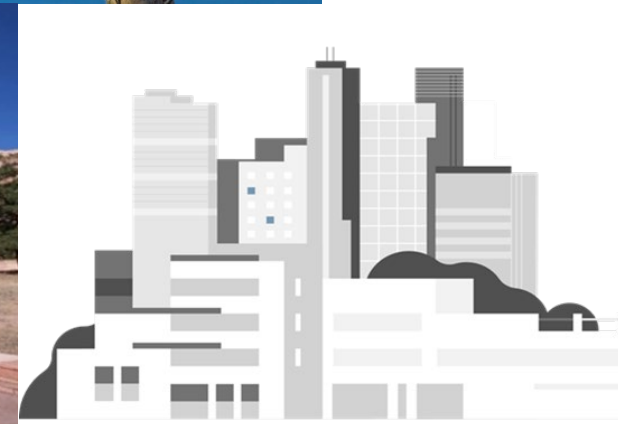
Example:

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



Documentation for Property Acquisition CEs

- Project description
- CE activity category
- Unusual circumstances
- Project commitments
 - Uniform Act
- Supporting documentation
 - Justification



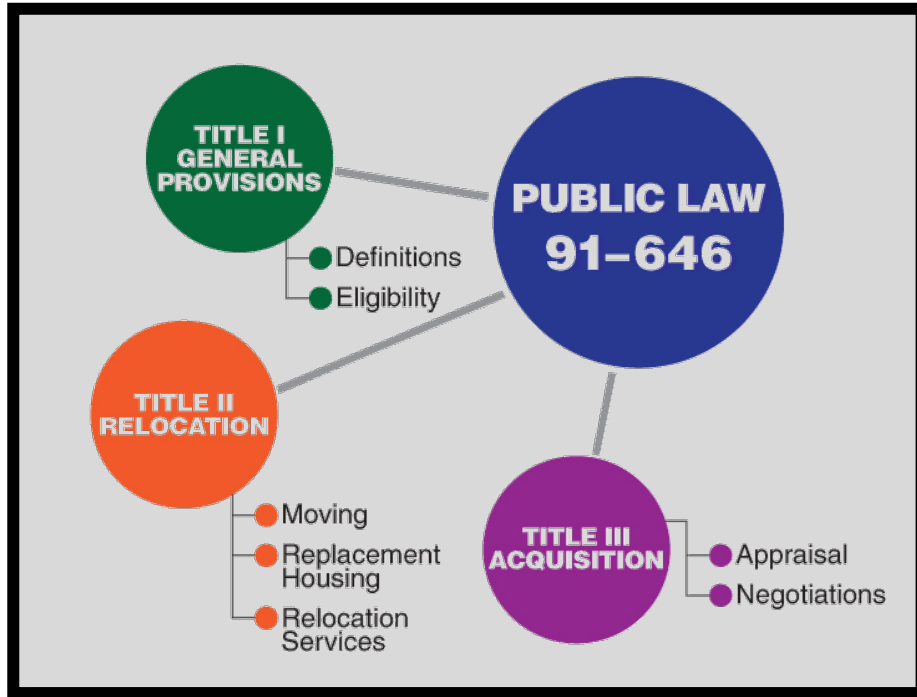
Quiz – answers in yellow

1. Two of the categories of limited exceptions to FTA's general prohibition on the acquisition of real property prior to completion of the environmental review for project construction are Corridor Preservation and Hardship/Protective Acquisition. **True or False?**
2. Uniform Act requirements do not apply when FTA has approved a hardship or protective acquisition through a categorical exclusion. **True or False?**
3. Which of the following property acquisition activities are prohibited prior to NEPA completion. **Check all that apply:**
 - A. Parcel boundary surveys
 - B. Interviewing persons that may be displaced to determine needs
 - C. Preparing acquisition cost estimates
 - D. **Negotiating damages to a remainder parcel with a property owner**
 - E. **Negotiating engineering changes with a property owner to arrive at a settlement on price**
 - F. **Making a purchase offer**

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.

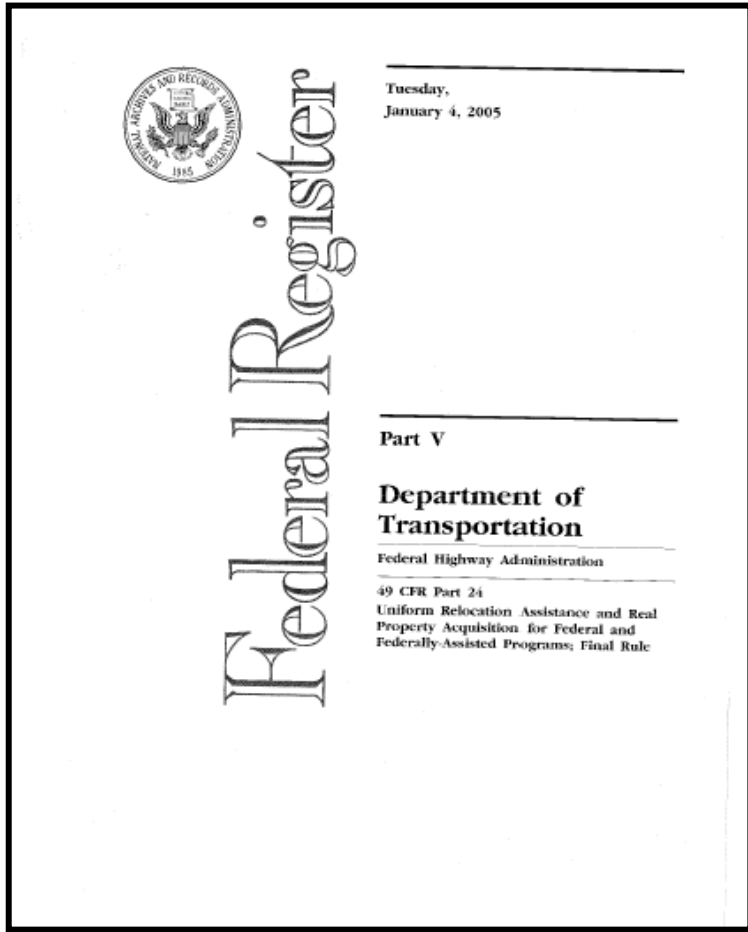
The Uniform Act – The Law



Public Law 91-646

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

The Uniform Act – Implementing Regulations 49 CFR part 24



- **Three-Fold Purpose/Objectives**
- Ensure **owners** of real property are treated fairly and consistently.
- Ensure **persons displaced** from real property are treated fairly, consistently, and equitably.
- Ensure that Agencies **implement** the regulations in a cost effective and efficient manner.



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

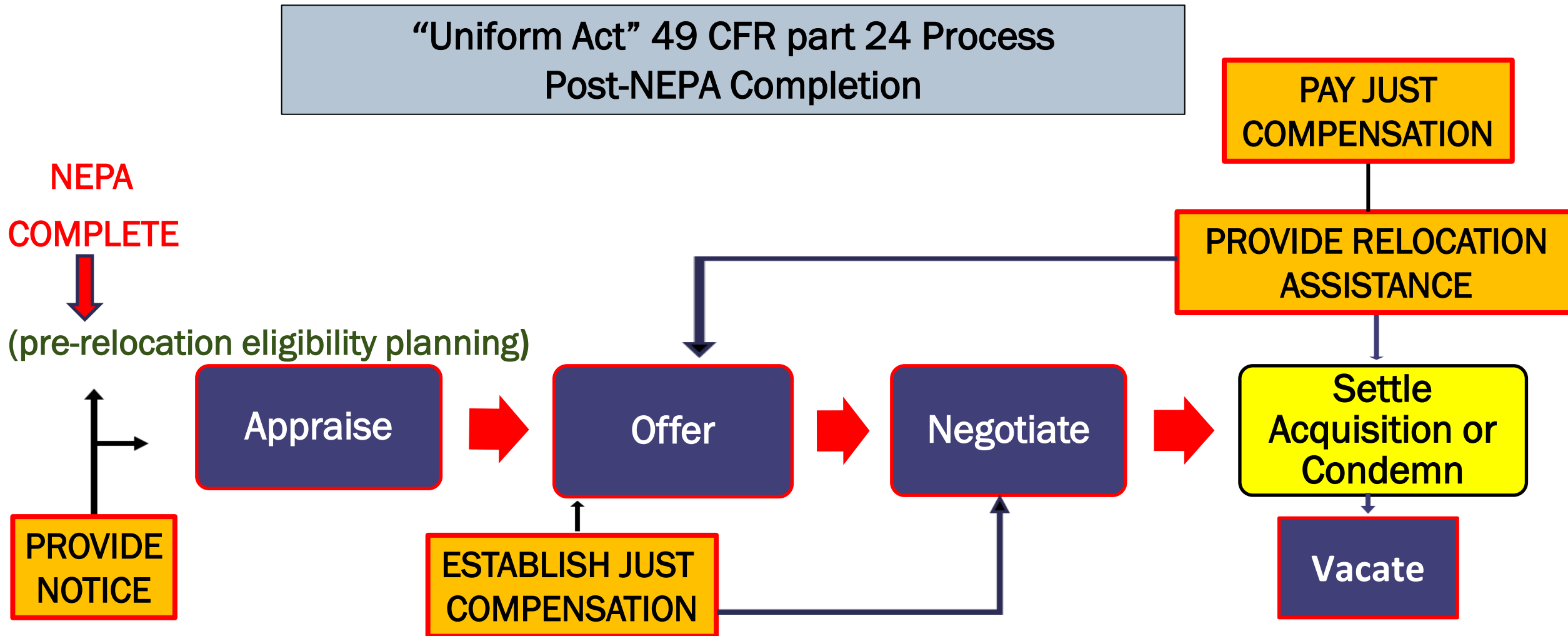
The *Subpart B Real Property Acquisition* requirements apply when there is, or is expected to be, federal financial assistance **in any phase** of a project costs.



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



Milestone Checklist for the Acquisition of Real Property*

- ☐ **Consult with FTA Regional Office to verify funding eligibility, planning, environmental, and other applicable Federal requirements before proceeding further**
- ☐ Develop a Property Map or Exhibit that clearly delineates the land to be acquired
- ☐ Obtain Phase 1 Environmental Site Assessment's (ESA's), as necessary, and ensure compliance with the NEPA/environmental review process
- ☐ Prepare surveys and plats for proposed property acquisition
- ☐ Order preliminary title reports to identify owners and encumbrances
- ☐ Source, select, and negotiate contract for Uniform Act qualified appraisers and review appraisers
- ☐ Source, select, and negotiate contract for Uniform Act qualified land acquisition/relocation consultants
- ☐ Conduct Phase II ESA's as warranted
- ☐ Prepare a 49 CFR § 24.205(a) relocation plan (if acquisition requires displacements)

****STOP. DO NOT PROCEED UNTIL NEPA HAS BEEN COMPLETED****

- ☐ Provide notice to property owner(s) that the property will be acquired
- ☐ Provide property owner(s) with information on basic protections under the Uniform Act law
(See FTA [Acquisition and Relocation Brochure](#))
- ☐ Provide displaced persons with information on basic protections under the Uniform Act law
(See FTA [Acquisition and Relocation Brochure](#))
- ☐ Obtain appraisals and review appraisals in compliance with 49 CFR part 24, Subpart B
- ☐ **Seek and obtain FTA concurrence** in appraisals if valuation exceeds FTA C. 5010 threshold
(Consider using FTA's voluntary [Concurrence Transmittal Checklist](#))
- ☐ Establish the amount of just compensation and prepare written offer package
- ☐ If displacements, prepare relocation assistance packages based on displacement type
- ☐ Present written offer to owner(s) and notice of owner rights and entitlements under the law
- ☐ If displacements, present Notice of Relocation Eligibility and 90 Day Assurance to displaced persons
(Concurrent with offer to purchase)
- ☐ Engage in negotiations allowing a minimum of 30 days for owner(s) to consider the offer
- ☐ Negotiate a settlement of the acquisition or proceed to condemnation if necessary
- ☐ **Seek and obtain FTA concurrence** to condemn if appraised value exceeds FTA C. 5010 threshold
(Consider using FTA's voluntary [Concurrence Transmittal Checklist](#))
- ☐ Justify all administrative settlements in writing as reasonable, prudent, and in the public interest
- ☐ **Seek and obtain FTA concurrence** in administrative settlement if it exceeds FTA C. 5010 threshold
(Consider using FTA's voluntary [Concurrence Transmittal Checklist](#))
- ☐ Close transaction/obtain court award, pay just compensation, record conveyances
- ☐ Complete relocation assistance for displaced persons
- ☐ Ensure all displaced persons have vacated the project property
- ☐ Clear property for project use

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)

“Voluntary” Acquisition Provisions

49 CFR § 24.101(b)(1) – An Agency **has** but **will not use** its eminent domain authority to acquire.

49 CFR § 24.101(b)(2) – An Agency **does not have** eminent domain authority to acquire.

*If an Agency can document the **applicability of** and **compliance with** the conditions related to either of these two provisions, the Uniform Act Subpart B requirements related to appraisal and basic acquisition requirements would not apply.*

WARNING: Application of either of these provisions effectively forecloses the ability of the acquiring Agency to acquire the property if negotiations fail to result in an amicable agreement.

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

“Voluntary” Acquisition Conditions

49 CFR § 24.101(b)(1) – An Agency that **has** but **will not use** its eminent domain authority.

- ✓ No specific site or property needs to be acquired.
- ✓ The property to be acquired is not part of an intended, planned, or designated project area that all needs to be acquired.
- ✓ The Agency will provide written notice and will not acquire if negotiations with the property owner fail.
- ✓ The Agency will provide a written statement on the market value of the property.

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

“Voluntary” Acquisition Conditions

49 CFR § 24.101(b)(2) – An Agency **does not have** eminent domain authority.

- ✓ Agency must advise property owner in writing that it cannot condemn for the property.
- ✓ The Agency will provide a written statement on what it believes is the market value of the property.

The Uniform Act – Recordkeeping

Critical Requirement

49 CFR §24.9 - Recordkeeping

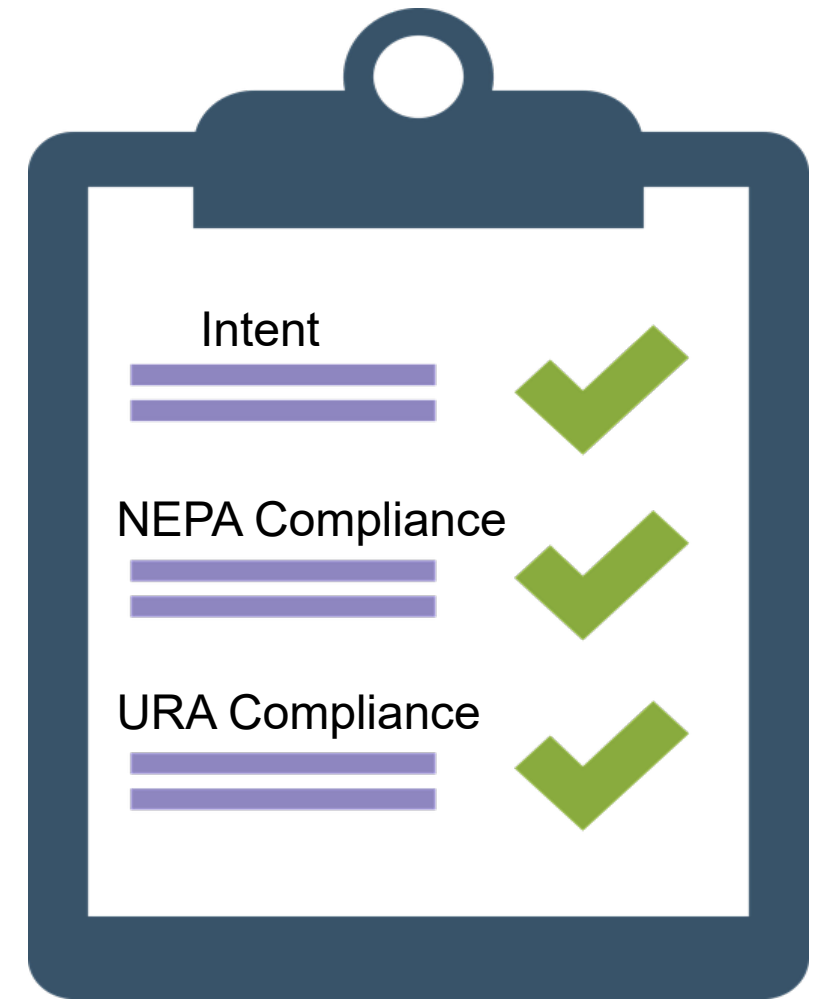


An Agency must maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance.



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.

Quiz - Is the project eligible for FTA funds?

- Yes. Because the original intent of the acquisition was for a locally funded municipal project and not an FTA funded project. (Correct)
- No. The City used local funds-- what were they thinking?



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.

Quiz - Does the acquisition need to comply with the Uniform Act?

- Yes
- No



Resources

- FTA's Environmental Resources Information [webpage](#)
- FTA's Real Estate Resources Information [Real Estate Information | FTA \(dot.gov\)](#)
- Uniform Act Courses [National Transit Institute | \(ntionline.com\)](#)
- FTA [Dear Colleague Letter](#): Real Estate and NEPA (July 2022)
- FTA Real Property Acquisition and NEPA [FAQs](#) (2021)
- FTA Final Guidance on the Application of 49 U.S.C. 5323(q) to [Corridor Preservation](#) for a Transit Project (2014)
- FTA [Regional Offices](#)
- [International Right of Way Association](#) – resource for finding relocation consultants and property acquisition consultants
- [Appraisal Institute](#) – provides training and has a directory of appraisers
- State DOTs can also be a good resource for finding consultants

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

<i>Service</i>	Provide reliable, transparent, responsive, and anticipatory services to meet stakeholder needs
<i>Integrity</i>	Commitment to the highest professional and ethical standards
<i>Innovation</i>	Foster new ideas, concepts, and solutions for improved outcomes
<i>Sustainability</i>	Optimize decisions, resources, and systems to make long-term positive impacts on the environment, infrastructure, and safety
<i>Equity</i>	Remove barriers for systemically underserved communities to access all aspects of economic, social, and civic life

Thank you!



More
Information



U.S. Department of Transportation
Federal Transit Administration

Upcoming Events



Rural Transit Resources: Building Capacity & Resilience in Rural/Tribal Communities

May 2, 2024, 2:00-3:00 PM ET



Introducing the Tribal Sections of the Transit Manager's Toolkit

May 7, 2024, 2:00-3:00 PM ET

Learn to Use the New National RTAP Library - Resource Share 2.0

June 11, 2024, 2:00-3:00 PM ET

State RTAP Manager Peer Roundtable

July 10, 2024, 2:00-3:00 PM ET



Rural Transit Day Chat

July 16, 2024, 2:00-3:00 PM ET

Books in Transit Group - Buses Are a Comin'

August 6, 2024, 2:00-3:00 PM ET

Transportation Technical Assistance Coordination Library



<http://transportation-tacl.org>

The Transportation Technical Assistance Coordination Library (TACL) provides a sustainable methodology and platform to access rural and tribal transportation coordination resources across a diverse range of transportation technical assistance centers and the [Federal Transit Administration \(FTA\)](#).

The FTA-funded technical assistance centers participating in this ongoing work with links to their coordination resources are:

- [National Aging and Disability Transportation Center \(NADTC\)](#)
- [National Center for Applied Transit Technology \(N-CATT\)](#)
- [National Center for Mobility Management \(NCMM\)](#)
- [National Rural Transit Assistance Program \(National RTAP\)](#)
- [Shared-Use Mobility Center \(SUMC\)](#)

Thank You!



Welcome to
**National
RTAP**

Rural Transit Assistance Program

Creating rural and tribal transit solutions through technical assistance, collaboration and free training and transit industry materials

What can National RTAP do for you?



Training

Utilize our free training materials, eLearning courses, webinars, and other technical assistance products.



Resource Center

Tap into our comprehensive collection of resources on rural and tribal transit and get answers to your questions.



Peer Networking

Connect with your peers through our online forums, roundtables and chats, and conferences.



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