



23 CFR 710

*Subpart E – Property Acquisition Alternatives*

# SUBPART E

## LEARNING OUTCOMES

### Early Acquisition

- State funded without Federal credit or reimbursement
- State Funded eligible for future credit
- State funded eligible for future reimbursement
- Federally funded

### Advance Acquisition

- Hardship
- Protective buying



## § 710.501(a)

### Early Acquisition General Requirements

- Early Acquisition authorities **apply** not only to SDOTS, but also **to other State and local governmental agencies;**
- Requires **compliance with all requirements** for acquisition of real property interest for federally assisted transportation projects;



## § 710.501(a)

### Early Acquisition General Requirements(cont.)

- State agency may **initiate acquisition** of real property interests at **any time it has legal authority** to do so;
- State agency may fund early acquisition entirely with State funds but may **seek title 23 credits or reimbursement** when the property is incorporated into the project eligible for Federal funds; and
- State agency **may use** a Federal-aid project agreement and **reimbursement processes** to fund Early Acquisition Project.



## § 710.501(b)

State-funded early acquisition without Federal credit or reimbursement.

### Early Acquisition Option 1 in Chapter 25 of the LAG

In order to **maintain eligibility** for future Federal assistance on a project, State funded early acquisition must comply with the requirements of § 710.501(c) (1) through (5).

1. Property lawfully obtained
2. Not land described in 23 U.S.C. 138
3. Acquisition/Relocation in accordance with the Uniform Act
4. Title VI compliance
5. State determined, FHWA concurred - early acquisition did not influence the environmental review process including:
  - i. Decision on need to construct
  - ii. Consideration of alternatives
  - iii. Selection of design or location
6. Property incorporated into the project receiving surface transportation program funds



## § 710.501(c)

State-funded early acquisition eligible for future credit.

### Early Acquisition Option 2 in Chapter 25 of the LAG

Early acquisition costs incurred by a State agency at its own expense prior to completion of environment review for **transportation project** are eligible for a credit toward the nonfederal share of the total project cost.

If the following conditions are met...



## § 710.501(c)

### State-funded early acquisition eligible for future credit. (cont,)

Conditions to be met:

1. Property lawfully obtained
2. Not land described in 23 U.S.C. 138
3. Acquisition/Relocation in accordance with the Uniform Act
4. Title VI compliance
5. State determined, FHWA concurred - early acquisition did not influence the environmental review process including:
  - i. Decision on need to construct
  - ii. Consideration of alternatives
  - iii. Selection of design or location
6. Property incorporated into the project receiving surface transportation program funds



## § 710.501(d)

State-funded early acquisition eligible for future reimbursement.

**NEW- Will be Early Acquisition Option 3 in Chapter 25 of the LAG**

Costs incurred by a State Agency **prior to completion of environment review** for a transportation project are eligible for reimbursement, once the real property interests are incorporated in the transportation project **if all the following applicable requirements have been met...**



**NEW!**



## § 710.501(d)

State funded early acquisition eligible for future reimbursement (cont.):

1. Complies with the **Uniform Act**;
2. Complies with **Title VI** of the Civil Rights Act;
3. State has **mandatory, comprehensive and coordinated land use, environment, and transportation planning process under state law** and **the acquisition was determined in advance by the Governor as consistent with the State transportation planning process**;
4. **Acquisition determined in advance by Governor to be consistent with state transportation planning process (23 U.S.C. 135)**





## § 710.501(d)

**State funded early acquisition eligible for future reimbursement (cont.):**

5. **Alternative** for which the real property interest is acquired is **selected** by the State pursuant to NEPA;
6. Prior to approval for Federal participation, **NEPA is completed;**
  - **Compliance with Endangered Species Act**
  - **Compliance with all other applicable environmental laws**
7. Prior to approval for Federal participation, determination that acquisition did not influence the environmental assessment
  - i. Decision on need to construct
  - ii. Selection of design or location





## § 710.501(e)

### Federally Funded Early Acquisition

#### Early Acquisition Option 4 in Chapter 25 of the LAG

**State agency certifies** and **FHWA concurs** the following requirements have been met:

1. State has authority to acquire under State law;
2. The acquisition of the real property interest—
  - i. Is for a transportation project or program eligible for title 23 funding that will not require FHWA approval under 23 CFR 774.3
  - ii. Will not cause significant adverse environmental impacts either as a result of the early acquisition project or cumulative effects from multiple early acquisition projects
  - iii. Will not limit the choice of reasonable alternatives or otherwise influence the FHWA decision



## § 710.501(e)

### **Federally Funded Early Acquisition (Cont.)**

**State agency certifies** and **FHWA concurs** the following requirements have been met:

2. The acquisition of the real property interest—
  - iv. Will not prevent the lead Agency from making impartial decision on whether to accept an alternative being considered
  - v. Consistent with the State planning process (23 U.S.C. 135)
  - vi. Compliance with other applicable laws/regulations
  - vii. Will be acquired through acquisition without threat or use of condemnation
  - viii. Will not result in reduction of benefits required by the Uniform Act and Title VI



## § 710.501(e)

### **Federally Funded Early Acquisition (Cont.)**

**State agency certifies** and **FHWA concurs** the following requirements have been met:

3. The Early acquisition project is included as a **project in an applicable transportation improvement plan**
4. **Environmental review approved** for “early acquisition project”.



## § 710.501(f)

### Prohibited Activities.

- Real property interests acquired **cannot** be **developed** in **anticipation** of the “**transportation project**” until a NEPA decision for Transportation project has been completed.
- No** development activity related to **demolition, site preparation, or construction** that is not necessary to protect health or safety.
- With prior approval, State Agency **may** carry out **limited activities** such as limited clearing and demolition activity if necessary to protect public health and safety and activities are considered during NEPA.



## § 710.501

**(g) Reimbursement** – if reimbursement is made and the real property interests are **not incorporated in the project** within **20 years**, FHWA must off **set** the amount **against funds apportioned** to the state.

**(h) Relocation Assistance Eligibility** – A person is considered **displaced** when required to move from the real property as a direct result of a **binding written agreement** for the purchase of the real property interest. **Options to purchase** and similar agreements do not create an immediate commitment and **do not create eligibility**.



## § 710.503(a)

### Protective Buying and Hardship Acquisition

#### Option 5 in Chapter 25 of the LAG

#### General conditions

Prior to final environmental approval of a transportation Project, grantee may request FHWA agreement for reimbursement for Protective Buying or Hardship Acquisition provided the following conditions are met:

1. Transportation project is in current approved STIP
2. Compliance with public involvement (23 CFR 450 and 771)
3. Not 4f (23 U.S.C 138)
4. Procedures for Historic properties complete (54 U.S.C. 306108)



## § 710.503(b)

### Protective Buying

- Clearly demonstrate development of the property is imminent and would limit future transportation.
- Significant cost increases may be considered





## § 710.503(c)

### **Hardship Acquisition**

Grantee must accept and concur in an owner's request based on property owner's written submission that:

1. Supports request that, based on health, safety or financial reasons, remaining on the property poses an undue hardship compared to other property owners
2. Documents inability to sell at FMV within a typical time period for properties not impacted by an impending project.





## § 710.503(d)

### **Environmental decisions**

Acquisition under this section is subject to environmental review under part 771 of this chapter.





# SUBPART E REVIEW

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## What options are available under Early Acquisition?

- State funded **without** Federal credit or reimbursement
- State Funded **eligible** for future **credit**
- State funded **eligible** for future **reimbursement**
- Federally funded

## Advance Acquisition

- Hardship
- Protective buying





# EARLY & ADVANCED ACQUISITIONS

