

Early Property Acquisition, NEPA and the Uniform Act

December 8, 2022

Federal Transit Administration
Office of Planning and Environment
Office of Program Management

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Housekeeping

Session Details:

Today's session is being recorded

All participants automatically join on mute, with cameras off

Questions for Presenters:

Type questions in the Q&A box

Technical support:

Email Webconferencing@dot.gov

More information:

A copy of the presentation and the webinar recording will be posted to FTA's Environmental Resources Information webpage:
<https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-resources-information>

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

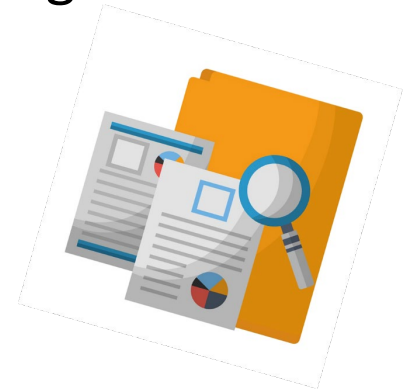


National Environmental Policy Act (NEPA)

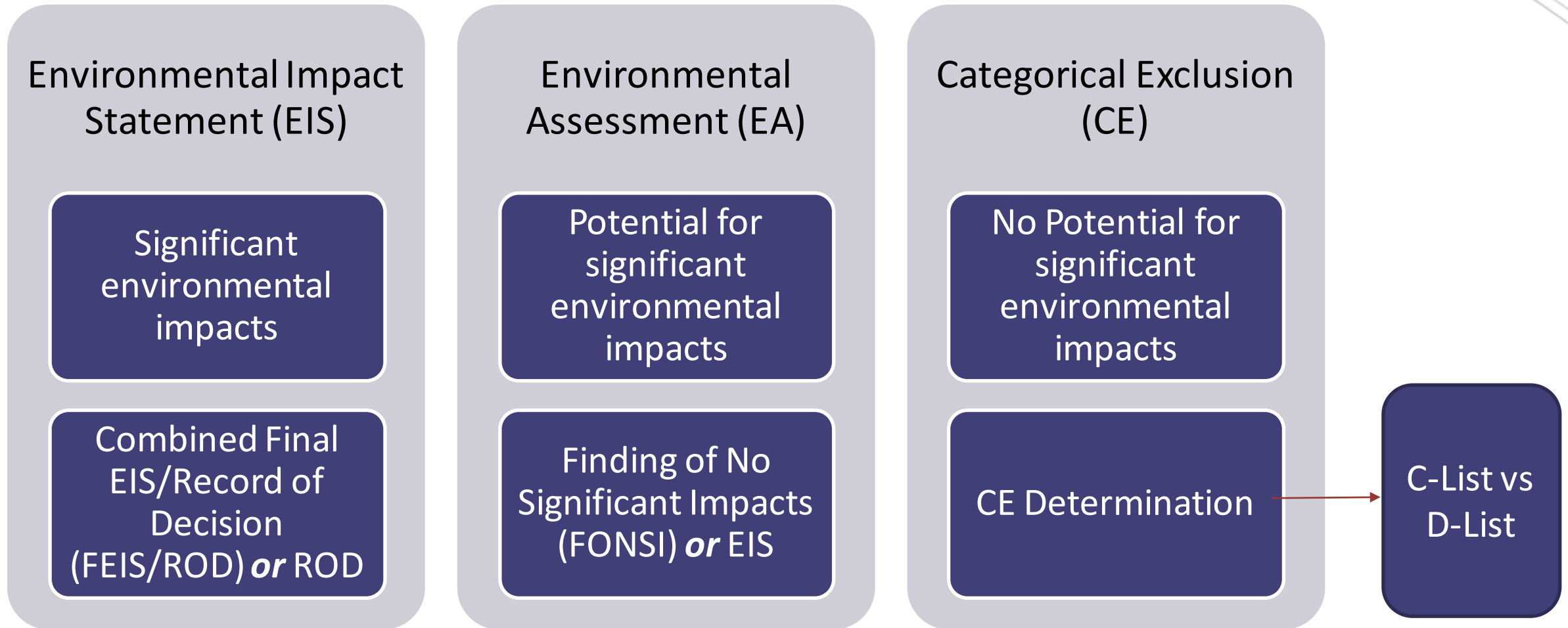
- The primary law governing the environmental review process for all Federal agencies
- Requires a process to consider environmental, social, and economic impacts before carrying out a federal action
- Requires agencies to document the effects of actions likely to have significant environmental impacts

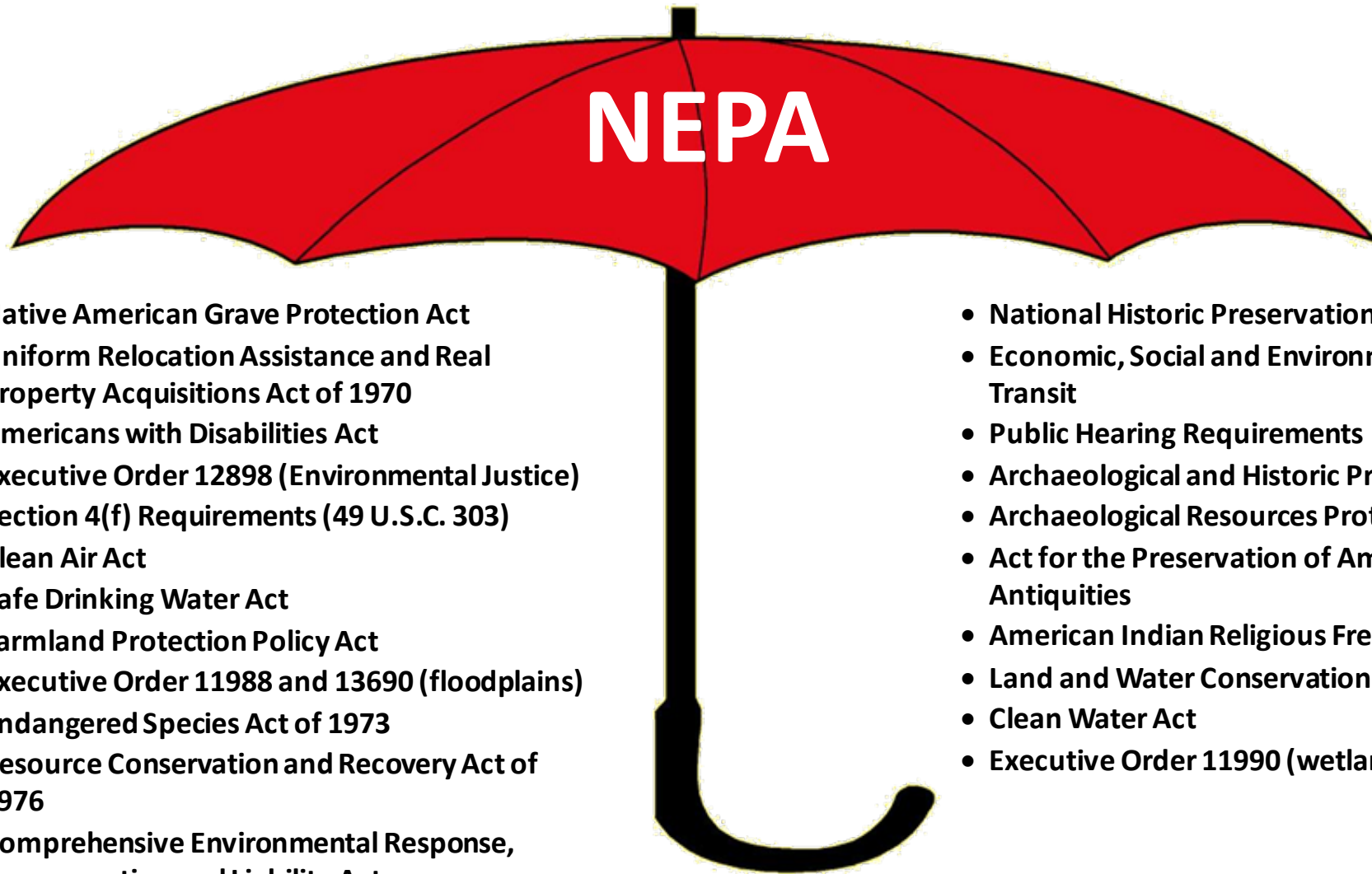
NEPA Regulations:

- 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





- **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)**

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...

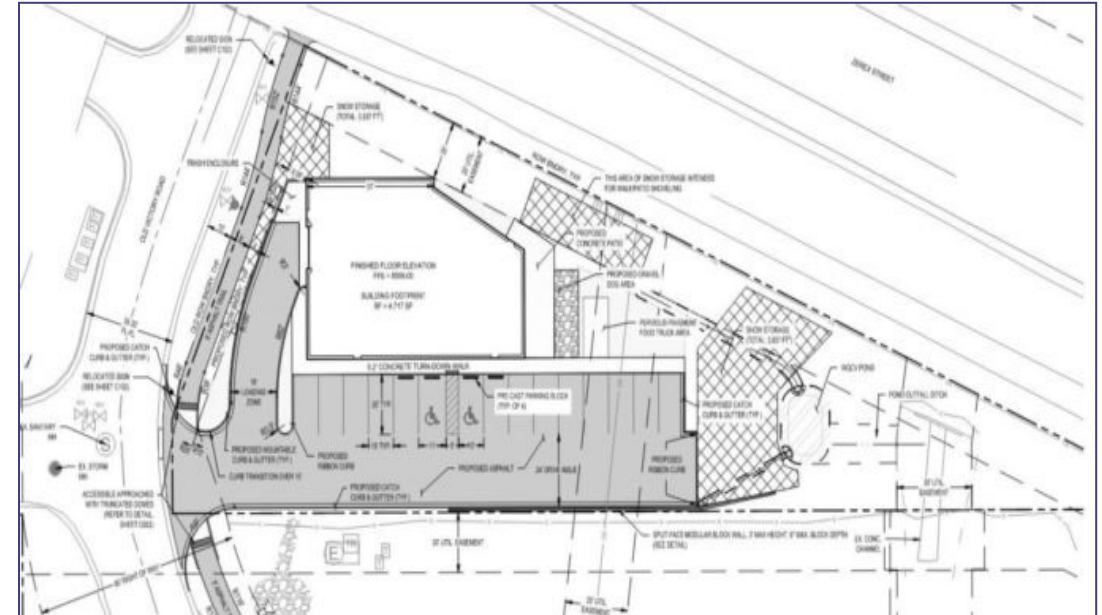
Acquisition of interests in real property necessary to construct, operate, and/or maintain an FTA-funded transit project or facility:

- 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)

(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



(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



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.

The Uniform Act – The Law

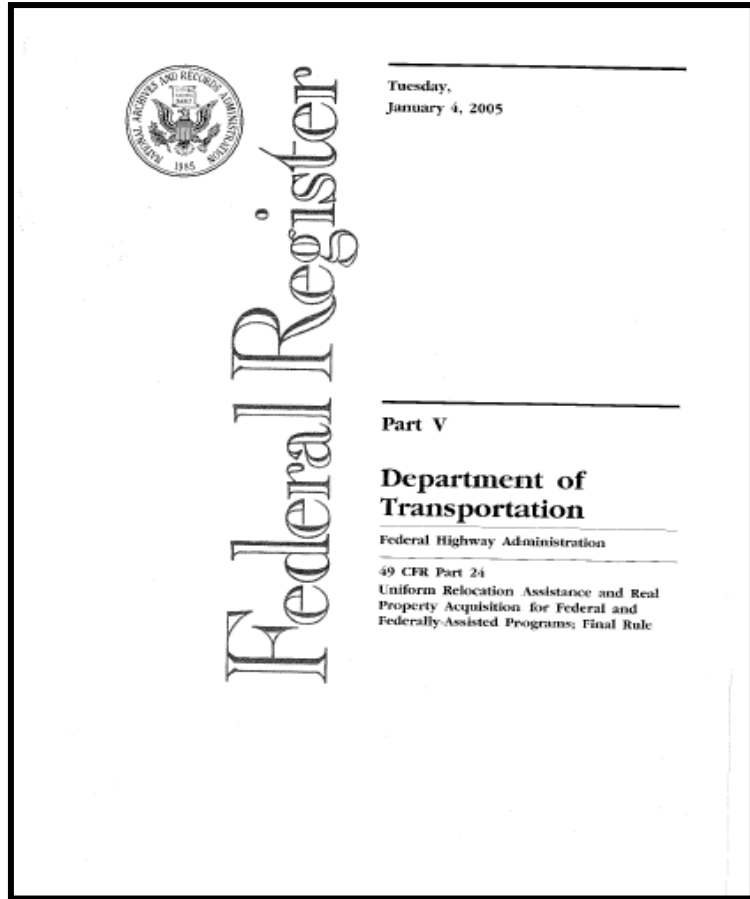


Public Law 91-646

*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

“Uniform Act” 49 CFR part 24 Process
Post-NEPA Completion

NEPA
COMPLETE



(pre-relocation eligibility planning)

PROVIDE
NOTICE

Appraise



Offer



Negotiate



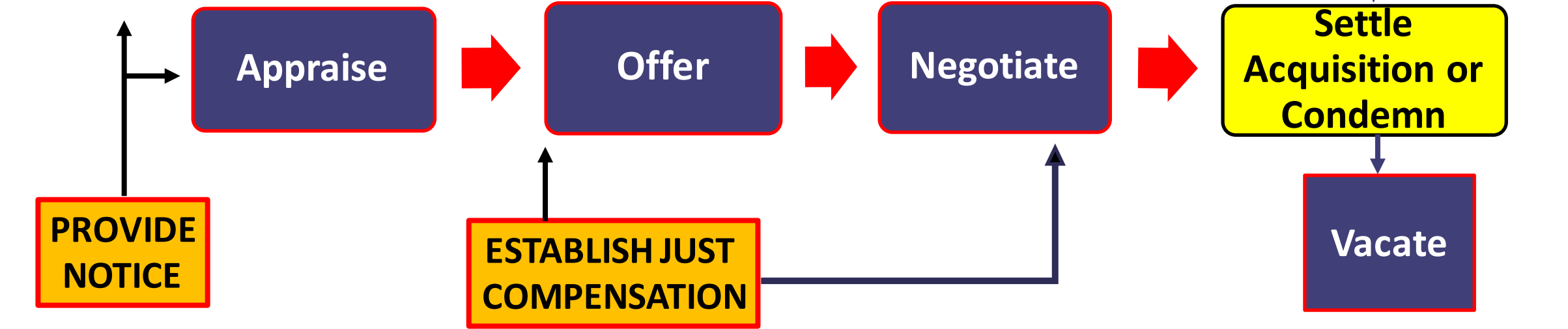
Settle
Acquisition or
Condemn

Vacate

ESTABLISH JUST
COMPENSATION

PAY JUST
COMPENSATION

PROVIDE RELOCATION
ASSISTANCE



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.



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

- Caution is recommended when utilizing these provisions. Voluntary acquisition is often misapplied. A project sponsor may not later choose to condemn if agreement can't be reached.
- Tenants displaced as a result of a voluntary acquisition remain eligible for Uniform Act required relocation assistance benefits.
- Consult your FTA region office for guidance **PRIOR TO** implementing these provisions of the Uniform Act to ensure proper application.



Applying Requirements Thought Process: Easy as 1 – 2 – 3

1

Determine **applicability** of NEPA and Uniform Act Requirements

2

Assess whether NEPA is **complete**

3

Determine whether the acquisition qualifies as a “voluntary” acquisition



Applying Requirements – Step 1 (Applicability)

Will the project include (or can it reasonably be expected to include in the future) federal financial assistance in any part of project costs? (regardless of whether non-federal funds will be used to acquire the real property)

→ YES

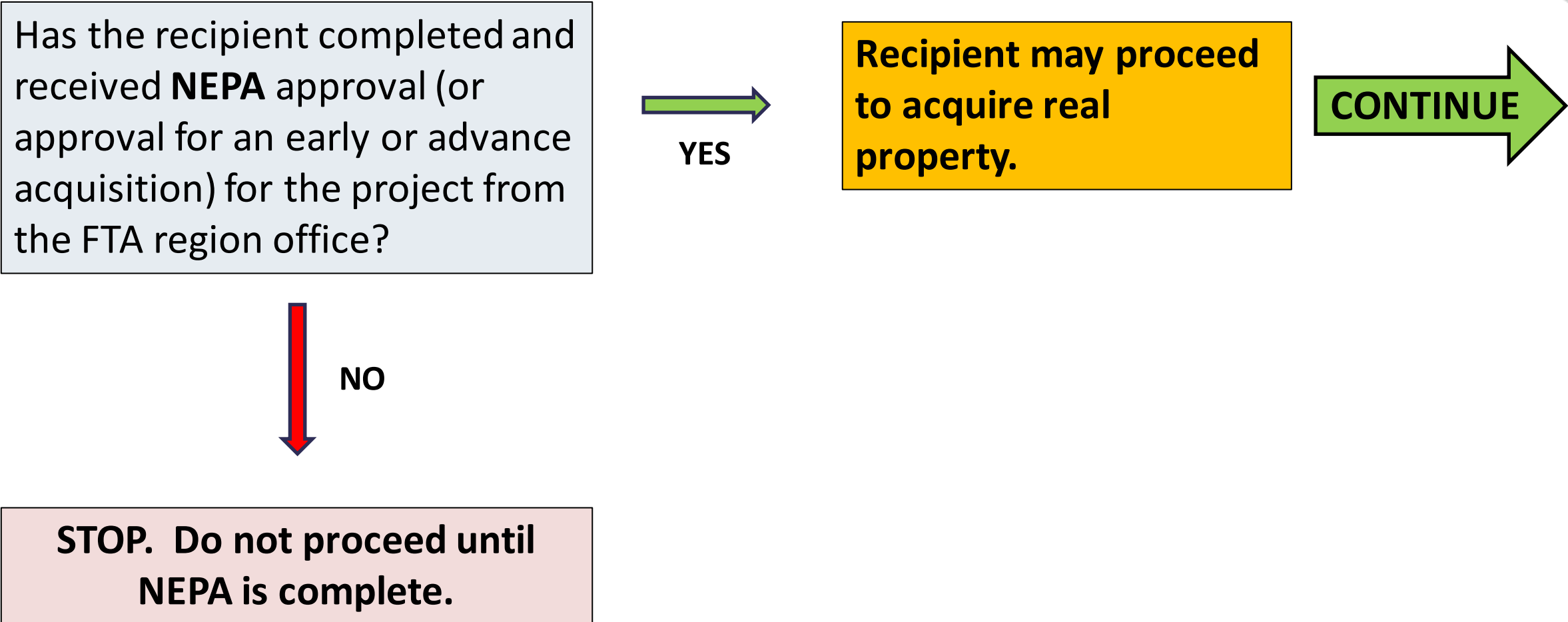
NEPA* and Uniform Act requirements apply.

→ CONTINUE

↓ NO

NEPA* and Uniform Act would not apply. If real property is acquired without documented compliance with NEPA and Uniform Act requirements, the property may not be used in the future for a federally-assisted transit project.

Applying Requirements – Step 2 (Assess NEPA Status)



Applying Requirements – Step 3 (Subpart B)

Does the real property acquisition meet the conditions necessary to qualify as a “voluntary” acquisition per either 49 CFR 24.101(b)(1) or 24.101(b)(2)?

→
YES

The Subpart B-Real Property Acquisition requirements of 49 CFR part 24 do not apply.

↓
NO

The Subpart B-Real Property Acquisition Requirements of 49 CFR part 24 apply.

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.



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.



Resources

- 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](#)

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



SERVICE

Provide reliable, transparent, responsive, and anticipatory services to meet stakeholder needs

INTEGRITY

Commitment to the highest professional and ethical standards

INNOVATION

Foster new ideas, concepts, and solutions for improved outcomes

SUSTAINABILITY

Optimize decisions, resources, and systems to make long-term positive impacts on the environment, infrastructure, and safety

EQUITY

Remove barriers for systemically underserved communities to access all aspects of economic, social, and civic life