2018 AASHTO Committee on Right of Way, Utilities, and Outdoor Advertising Control

AND THE

National Alliance of Highway Beautification Agencies Conference

Sunday, April 22–Thursday, April 26
Sheraton Inner Harbor Hotel
Baltimore, Maryland
Philo Bridge:
Federally Funded Early Acquisition

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Writing the Script

• Review new law
• Develop policy
• Draft new forms
• FHWA concurrence
FROM PHILÓ WITH LOVE

STARRING SEAN CONNERY AS JAMES BOND

1960

2018 CRUO Conference, Baltimore
“TWO STARS!” – ODOT Bridge Inspectors
“I Feel the need... For speed”  – Map 21

- Deteriorating bridge rating
- Nearby bridge also in poor condition
- Good condition bridges much farther away
- Environmental Coordination process
Alternate Endings
Final Cut
On Location

- 9 Acquisition Parcels
  - 6 completed in Early Acquisition
  - 3 completed in Normal Acquisition
- 39 Relocation Parcels
  - 1 Business, 38 Personal Property
Production Schedule

- Early Acquisition Authorized 3/16/2017
- Environmental Document 7/20/2017
- Full RW authorization 8/16/2017
- RW Clear 11/15/2017
Production Schedule

- Traditional Acquisition Schedule
  - 3 months to acquire and relocate
- With Early Acquisition
  - 8 months to acquire and relocate
The Reviews are in...

- Work as a team
- Take ownership
- Ask questions
Questions

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Federally Funded Early Acquisition Project

By: Arnold Feldman
Office of Real Estate Services
FHWA
## Early Acquisition Chart Alternative #4

### Early Acquisition (EA) Alternatives & Requirements

<table>
<thead>
<tr>
<th>Acquiring ROW Alternatives</th>
<th>Require NEPA Decision</th>
<th>Allow All Properties</th>
<th>Start Acquisition</th>
<th>Comply with Federal Law*</th>
<th>Subject to Condemnation</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. State-funded Early Acquisition without Federal Credit or Reimbursement</td>
<td>NO</td>
<td>NO</td>
<td>When appraisal is conducted by State</td>
<td>YES</td>
<td>NO</td>
<td>If State law allows</td>
</tr>
<tr>
<td>2. State-funded Early Acquisition Eligible for Future Reimbursement</td>
<td>NO</td>
<td>NO</td>
<td>When appraisal is conducted by State</td>
<td>YES</td>
<td>YES</td>
<td>If State law allows</td>
</tr>
<tr>
<td>3. State-funded Early Acquisition Eligible for Future Reimbursement</td>
<td>NO</td>
<td>NO</td>
<td>When appraisal is conducted by State</td>
<td>YES</td>
<td>YES</td>
<td>If State law allows</td>
</tr>
</tbody>
</table>

*Federal Law includes federal, state, or local laws, regulations, or policies applicable to the acquisition of real property.

**Revision date: 02/32/2018**

Project Comparison

Early Acquisition Project (EAP)

- **Planning**
  - STIP

- **NEPA**
  - Categorical Exclusion

- **Acquisition**
  - Acquisition

Buy and hold property. The acquired property may be incorporated into a TP that has NEPA approval to use the alignment within 20 years.

Transportation Project (TP)

- **Planning**
  - Planning Studies
  - TIP → STIP

- **NEPA**
  - NEPA Initiation
  - NEPA Analysis

- **Acquisition**
  - Acquisition
  - Final Design
  - Construction

Clear ROW for construction of the Transportation project.
Learning Objectives

1) Explain the Federal requirements for the Early Acquisition Project (EAP)

2) Understand how NEPA on a proposed Transportation Project is not influenced by an Early Acquisition Project; and

3) Understand the EAP process and how to transition to a traditional Transportation project.
What are the Federal requirements?
23 U.S.C. 108(c) and 23 CFR 710.501(e) (3 slides)

State Agency certifies & FHWA concurs to the following conditions:

1) State has authority to acquire under State law.  
   (§710.501(e)(1))

2) The Acquisition ...

   I) Is for a Title 23 eligible project and does not involve 4(f) properties;  
      (§710.501(e)(2)(i))

   II) Will not cause significant adverse environmental impacts because  
       of the EAP or cumulative effects of multiple EAPs carried out in  
       connection with a TP; (§710.501(e)(2)(ii))
State Certification and FHWA Concurrence cont.

• The Acquisition

  iii. Will not limit the choice of reasonable alternatives for a TP or influence FHWA's decision on any approval for a TP; (§710.501(e)(2)(iii))

  iv. Will not prevent FHWA from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed TP; (§710.501(e)(2)(iv))

  v. Is consistent with the State transportation planning process under 23 U.S.C. 135; (§710.501(e)(2)(v))

  vi. Complies with other applicable Federal laws (including regulations); (§710.501(e)(2)(vi))
State Certification and FHWA Concurrence cont.

The Acquisition

vii. Will be acquired through negotiation, without the threat or use of condemnation; and (§710.501(e)(2)(vii))

viii. Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act. (§710.501(e)(2)(viii))

3) The Early Acquisition project is in the applicable Transportation Improvement Program(s); and (§710.501(e)(3))

4) NEPA for the Early Acquisition project is complete and approved by FHWA. (§710.501(e)(4))
Additional Conditions

• **No development** of the property in anticipation of a proposed transportation project. (23 CFR 710.501(f))

• **Reimbursement** of Federal funds if the property is not incorporated in a transportation project within 20 years. (23 U.S.C.108(d)(7) & 23 CFR 710.501(g))

• **Relocation eligibility** begins when a person is required to move as a direct result of a binding written agreement for the purchase of the property. (23 CFR 710.501(h))
How do we ensure that NEPA on a proposed Transportation Project is not influenced by an EAP?

- Placing EAP in the STIP as a stand-alone project,
- Requiring separate NEPA document for EAP,
- Acquiring through negotiations/no eminent domain,
- Buying and holding property up to 20 years,
How do we ensure that NEPA is not influenced by an EAP? cont.

• No development on EAP until NEPA is completed on the TP.

• State Certifies & FHWA concurs that NEPA will not be influenced.

• State’s EAP procedures described in the FHWA-approved State ROW Manual (23 CFR 710.201(c))

• ROW Process Reviews and Spot checks conducted to ensure compliance.
Negotiation Process

Notice to Owner in writing of the State DOTs interest in acquiring their property and the basic protections under law. (49 CFR 24.102(b))

- Describe the EAP (not the traditional Transportation Project.)
- Explain relocation eligibility begins with a signed binding contract.
- Explain the minimum Negotiation period - (49 CFR 102(f) see Appendix A 49 CFR 102(f) for discussion of 30 days as reasonable time period.)
Negotiation Process cont.

• **Explain acquisition is voluntary**, and if unable to reach an agreement, negotiations will end. (49 CFR 24.5 and 23 CFR 710.201(e)(1))

• **No coercive action** – Agent needs to be sensitive to the language used to convey the process and may wish to avoid the terms “eminent domain” and “condemnation”. (49 CFR 24.102 (h))

• **Provide ROW Brochure and Relocation brochures** which may include a section on early acquisition, or the State may develop a brochure specific to Early Acquisition.
Negotiation Process cont.

- The State DOT will make a written offer of an amount the Agency believes is just compensation.
- Allow time to consider the offer and to present additional relevant material. (Minimum Negotiation Period.)
- Relocation eligibility begins upon signing of legal document acquiring property.
- If there is no Agreement- provide written Termination letter. The letter will document and close the file. (49 CFR 24.5 and 23 CFR 710.201(e)(1))
Early Acquisition Transition to the Transportation Project

• All negotiations initiated on the EAP need to run their course. (49 CFR 24.102(f) (see appendix A §24.102(f))

• On the selected alignment, all new Negotiations will be under the TP normal negotiations.

• Demolition may begin on early acquired parcels. (23 CFR 710.501(f))

• New Offer letter
  • Establish Relocation eligibility for TP.
  • Reflect acreage from complete ROW plans.
  • Correct Federal-aid project numbers.
Option to Purchase

- *Option to Purchase* **acquired** during the EAP.
- *Option to Purchase* may be **exercised** during the EAP or TP.
- Provide written notification to property owner of the following:
  - Express desire to exercise or not to exercise the option;
  - Reiterate relocation eligibility as addressed in the option;
  - Inform exercising option starts the 90-day notice for Relocation;
  - Reiterate the price; (just compensation as already agreed to in the option)
  - Outline procedures for closing on property as per State law.
Questions?

Option Contracts Research Report
• https://www.fhwa.dot.gov/real_estate/publications/option_contracts_research_study/fhwahep18024.pdf

Early Acquisition Comparison Chart