

**Early Acquisition (EA)  
Alternatives & Requirements**  
(23 CFR 710.501)

Revision date: 02/12/2018

Acquiring ROW Alternatives	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
<p><b>1) State-funded Early Acquisition without Federal Credit or Reimbursement</b></p> <p>23 CFR 710.501(b) 23 USC 108(c)(1)</p>	NO	No, if the State wishes to maintain Federal eligibility for future Federal assistance on any part of the transportation project.	When legally permissible by State Law.	N/A	Yes, if the transportation project maintains Federal eligibility.	YES, if State law allows	<p>A State may carry out early acquisition entirely at its expense. However, a State may maintain eligibility for future Federal assistance on a transportation project. To maintain eligibility, early acquisition must comply with the following requirements of 23 CFR 710.501(c)(1)-(5):</p> <ul style="list-style-type: none"> <li>• Property lawfully obtained by the State agency;</li> <li>• Not 4F property;</li> <li>• Acquisitions and relocations comply with the Uniform Act;</li> <li>• State agency complies with Title VI of the Civil Rights Act;</li> <li>• FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed transportation project including:                             <ul style="list-style-type: none"> <li>○ The need to construct,</li> <li>○ The consideration of alternatives, or</li> <li>○ The selection of design or location.</li> </ul> </li> </ul>
<p><b>2) State-funded Early Acquisition Eligible for Future Credit</b></p> <p>23 CFR 710.501(c)</p>	NO	NO	When legally permissible by State law.	Request credit for the portion of the property after incorporated in the Federal-aid transportation project	YES	YES, if State law allows	<ul style="list-style-type: none"> <li>• Property lawfully obtained by the State agency;</li> <li>• Not 4F property;</li> <li>• Acquisitions and relocations comply with the Uniform Act;</li> <li>• State agency complies with Title VI of the Civil Rights Act;</li> <li>• FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed transportation project including:                             <ul style="list-style-type: none"> <li>○ The need to construct,</li> <li>○ The consideration of alternatives, or</li> <li>○ The selection of design or location;</li> </ul> </li> <li>• Property is incorporated in the transportation project to which the credit will be applied; and</li> <li>• The amount of the credit may be current fair market value <u>or</u> historic acquisition cost to acquire; however, this credit must be applied consistently within the transportation project subject to the requirements at 23 U.S.C. 323(b).</li> </ul>
<p><b>3) State-funded Early Acquisition Eligible for Future Reimbursement</b></p> <p>23 CFR 710.501(d) 23 USC 108(c)</p>	NO	NO	When legally permissible by State law.	After NEPA is completed and real property interests are incorporated in a Title 23 project and all applicable requirements are met.	YES	YES, if State law allows	<ul style="list-style-type: none"> <li>• Property lawfully obtained by the State agency;</li> <li>• Not 4F property;</li> <li>• Acquisitions and relocations comply with the Uniform Act;</li> <li>• State agency complies with Title VI of the Civil Rights Act;</li> <li>• FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed transportation project including:                             <ul style="list-style-type: none"> <li>○ The need to construct,</li> <li>○ The consideration of alternatives,</li> <li>○ The selection of design or location;</li> </ul> </li> <li>• State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State plans and is consistent with the State transportation planning process under 23 U.S.C. 135;</li> <li>• The State selects the alternative for which the real property interest is acquired pursuant to NEPA;</li> <li>• Prior to approval for Federal participation, NEPA, section 4(f), and all other environmental review/approval requirements are complete (see</li> </ul>

Exhibit R

							<a href="https://www.fhwa.dot.gov/environment/env_sum.cfm">https://www.fhwa.dot.gov/environment/env_sum.cfm</a> and provisions in 771.119(g) and 771.125(a)(1) on reasonable assurances of compliance). <ul style="list-style-type: none"> <li>Reimbursement of acquisition costs is based on the usual costs to acquire—23 CFR 710.203(b)(1).</li> </ul>
<b>4) Federally Funded Early Acquisition (Stand-alone Project)</b>  23 CFR 710.501(e) 23 USC 108(d)	YES, NEPA decision required for the early acquisition, stand-alone project only (separate from NEPA for the transportation project).  (Usually a CE)	NO	After NEPA is complete for the Early Acquisition Project	This is a reimbursable, stand-alone, Federal-aid Project based on FHWA authorization to proceed with the early acquisition	YES	NO	<ul style="list-style-type: none"> <li>State certifies and FHWA concurs that the following requirements have been met:                             <ul style="list-style-type: none"> <li>State has authority to acquire under State law;</li> <li>Is for a Title 23 eligible transportation project and does not involve 4F properties;</li> <li>Will not cause significant adverse environmental impacts because of the EA project or from cumulative effects of multiple EA projects carried out in connection with the transportation project;</li> <li>Will not limit the choice of reasonable alternatives for the transportation project or otherwise influence the decision of FHWA on any approval required of the transportation project;</li> <li>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 transportation project;</li> <li>Is consistent with the State transportation planning process under 23 U.S.C. 135;</li> <li>Complies with other applicable Federal laws (including regulations);</li> <li>Will be acquired through negotiation, without the threat or use of condemnation.</li> <li>Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act;</li> <li>The Early Acquisition project is in the applicable Transportation Improvement Program(s); and</li> <li>NEPA for the Early Acquisition project is complete (including compliance with 23 CFR 710.501(e)(4)), and approved by FHWA.</li> </ul> </li> <li>Real property interests acquired cannot be developed in anticipation of the transportation project until a NEPA decision for that transportation project has been completed. No development activity related to demolition, site preparation, or construction that is not necessary to protect health or safety may be undertaken, and any such work requires prior FHWA approval under 23 CFR 710.501(f).</li> <li>If reimbursement is made and the real property interests are not incorporated in a transportation project within 20 years, pursuant to 23 U.S.C.108(d)(7) FHWA must offset the amount against Federal-aid funds apportioned to the State.</li> <li>Eligibility for Relocation Assistance—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. Except as provided in 23 CFR 710.501(h), options to purchase and similar agreements do not create an immediate commitment and do not create relocation eligibility.</li> </ul> <p><b>Note:</b> The “Option” to purchase the property at a later date allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings.</p>

**Advance Acquisition (AA) Alternatives & Requirements**  
(23 CFR 710.503)

Revision date: 02/12/2018

Acquiring ROW Alternatives	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
<b>1) Protective Buying</b>	**Yes, typically a CE.	Yes, if 4F determination and, if applicable,	Usually during the NEPA process.	After property is incorporated in the Federal-aid	YES	YES, if State law allows	<ul style="list-style-type: none"> <li>Development of the property is imminent and would limit future transportation choices.</li> <li>Acquisition shall not influence the environmental review of the transportation project, including decisions on need to construct the transportation project or selection of an alternative.</li> </ul>

Exhibit R

23 CFR 710.503	See 23 CFR 771.117(d)(12)	procedures of the Advisory Council on Historic Preservation, are completed for the parcel. 710.503(a)(3)-(4)		transportation project.			
<b>2) Hardship Acquisition</b> 23 CFR 710.503	**Yes typically a CE. See 23 CFR 771.117(d)(12)	Yes, if 4F determination and, if applicable, procedures of the Advisory Council on Historic Preservation, are completed for the parcel. 710.503(a)(3)-(4)	Usually during the NEPA process.	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows. See comment →	<ul style="list-style-type: none"> <li>A request for hardship acquisition based on a property owner's written submission that shows (1) remaining in the property poses an undue hardship compared to other property owners because of health, safety, or financial reasons, and (2) the owner has been unable to sell the property at fair market value because of the impending transportation project, within a time period that is typical for properties not impacted by the impending transportation project.</li> <li>Acquisition must not influence the environmental review of the transportation project, including decisions on need to construct the transportation project or selection of an alternative.</li> </ul> <p>Note: While the agency may condemn if a settlement cannot be reached on a hardship acquisition, great care should be taken to ensure that the decision is warranted both for the property owner and the agency.</p>

\* Relevant Federal Law includes the Uniform Act, Title VI Civil Rights Act, and Federal Regulations (primarily, 23 CFR Part 710).

**\*\*Note: Protective Buying and Hardship Acquisitions usually occur during the transportation project's NEPA phase. However, prior to approving an AA, NEPA and section 4(f) clearance is necessary for the AA parcels. This requires the AA parcels to be carved out from the overall transportation project to do NEPA and 4(f) review on those parcels. The NEPA class of action is typically a CE. The AA reviews and decisions are for advanced acquisition, and the AA parcels still will be included in the NEPA and section 4(f) evaluations for the transportation project.**