



AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
FACT SHEET
REAL PROPERTY ACQUISITION
June 2, 2023

Issue

Many transit agencies have faced difficulties in purchasing real property for operations and maintenance facilities. This is because Federal Transit Administration (FTA) policies restrict the purchase of real property where federal funds will be, or are anticipated to be, used for the purchase or development of that property. In most cases, such real property acquisition cannot be made until National Environmental Policy Act (NEPA) processes have been completed.

Expanded flexibility for early real property acquisition for public transportation projects is needed to reduce delays and associated costs of projects, uncertainty in property rights, preservation for future use, and to harmonize federal regulations for surface transportation modes.

APTA Recommendation

Urge Congress to authorize advance acquisition of real property prior to the NEPA process being completed by amending 49 U.S.C. § 5323(q) to insert “real property interests” after “right-of-way” in the title and each place it appears.

This legislative adjustment would make FTA’s policy consistent with the Federal Highway Administration’s (FHWA) regulations.

Background

On July 11, 2022, the FTA sent a Dear Colleague letter to remind project sponsors that the purchase of real property outside of existing transit corridors cannot proceed until the NEPA process is completed or until FTA has either determined that the project is exempt as a Categorical Exclusion (CE) (i.e., corridor preservation or there will be no substantial changes); issued a decision that there is “Finding of No Significant Impact”; or issued a combined or separate final Environmental Impact Statement and or Record of Decision, ultimately clearing the project.

On March 9, 2023, President Joe Biden released his Budget Request for Fiscal Year 2024, including a legislative proposal to add flexibility to FTA’s policy on land acquisition prior to NEPA by amending 49 U.S.C. § 5323(q) to include “real property interests” to existing authority allowing the purchase of right-of-way for “corridor preservation.”

APTA supports the Biden FY 2024 Budget Request proposal to bring FTA’s programs into parity with FHWA property acquisition authority.