

14.

SPECIALIZED

ACQUISITION FUNCTIONS

16 U.S.C. 470(f)
23 U.S.C. 108
23 U.S.C. 123
42 U.S.C. 4651 & 4652
(Uniform Act, Sections 301 & 302)
49 U.S.C. 303
23 CFR 1.23
23 CFR Part 645, Subpart A
23 CFR 645.111
23 CFR 645.209(i)
23 CFR 710.203
23 CFR 710.405
23 CFR 710 Subpart E
23 CFR 710.601
49 CFR 24.104
49 CFR 24.106
49 CFR 24.307

REFERENCES

governmental agencies. Various activities have been undertaken in support of this goal, and legislative support has most recently been provided in the ISTEA. A number of difficult areas remain to be resolved before widespread use of this concept may be available. For additional information on corridor preservation, look at the special early acquisition authorities set forth in 23 U.S.C. 108, and at the donation options discussed in Section 6 of this manual. In the meantime, the **Hardship and Protective Buying regulations** are available to deal with individual special situations.

23 CFR 710.503 provides that **in extraordinary cases or emergency situations**, an agency may request and the Federal Highway Administration may approve, Federal participation in the acquisition of a particular parcel or a limited number

The Federal Highway Administration, in cooperation with State and local governments, is involved in a number of special programs that are noted in this chapter. Among these is the implementation of our policies on Hardship and Protective Buying of properties on proposed highway locations; Utility Adjustments in cooperation with public utilities; Joint Development and Multiple Use of highway corridors; Functional Replacement of public facilities, and Federal Land Transfers for highway purposes.

14.1. HARDSHIP AND PROTECTIVE BUYING

For a number of years, **Corridor Preservation** for highway projects has been a goal of FHWA and other

of particular parcels within the limits of a proposed highway corridor prior to completion of processing of the final environmental impact statement or adoption of the appropriate environmental document, but **only after**

(a) the agency has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for a proposed highway, **or**

(b) a public hearing has been held or an opportunity for such a hearing has been afforded.

Proper documentation shall be submitted to show that the acquisition is in the public interest and is necessary to

(a) alleviate particular hardship to a property owner, on his request, in contrast to others because of inability to sell his property; **or**

(b) prevent imminent development and increased costs of a parcel which would tend to limit the choice of highway alternatives. See 23 CFR 771.117 (d)(12) for requirements for advance acquisition criteria for hardship and protective buying.

State and local agencies may acquire hardship cases with their own funds, but should be certain that they have complied with Federal law and requirements if Federal financial aid is requested on any subsequent construction project involving those parcels. Hardship acquisition and protective buying procedures do not apply to properties subject to the provisions of 49 U.S.C. 303, commonly referred to as Section 4(f), (Parks, etc.) or 16 U.S.C. 470(f) (historic properties) until the required determinations and the procedures of the Advisory Council on Historic Preservation are completed.

14.2. TENANT-OWNED IMPROVEMENTS

Under the provisions of the Uniform Act, when an acquiring agency acquires any interest in real property, it shall, **to the greatest extent practicable under State law**, also acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property which it requires to be moved from the real property or which will be adversely affected by the use for

Hardship and protective buying may be approved only after the acquiring agency has given official notice to the public that it has selected a particular location for the project alignment, or a public hearing has been held or an opportunity for such hearing has been afforded.

*Acquiring agencies shall, to the greatest extent practicable under State law acquire at least an equal interest in **tenant-owned improvements** when acquiring real property for a project.*

SUMMARY

which the real property is being acquired. (see the Uniform Act (Public Law 91-646), § 302(b)(1) and 49 CFR 24.106)

In many instances, the acquiring agency will discover that the real property has been leased by the owner to a tenant who has erected a building or installed other improvements. The Uniform Act requires that such tenant receive just compensation for any such buildings, structures or improvements. The tenant is due this compensation even if the lease requires the tenant to remove any buildings, structures, or other improvements at the end of the lease term.

Any building, structure, or other improvement which would be considered to be real property if owned by the owner of the real property on which it is located shall be considered to be real property for acquisition purposes.

Normally, acquisition from the tenant-owner shall follow the same general acquisition procedures as for a fee owner.

Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its removal value, whichever is greater. Removal value is considered to be salvage value.

a. The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

In one example, a State and County were to acquire ROW from an abandoned railroad. The railroad company issued vacate notices to their tenants, most of whom had tenant-owned improvements, when the parcels to be acquired by the local public agency (LPA) became known. The act of requiring tenants to vacate by the railroad prior to acquisition was considered to be an attempt to circumvent the rights and entitlements of the tenant-owners under Title III of the Uniform Act.

ATTEMPTED CIRCUMVENTION

b. The **contributory value** consists of:

1. The value in place of a building, structure, or other improvement, the present use of which is the highest and best use of the land to be acquired, for its remaining economic life; or

2. The interim use value of a building, structure, or other improvement, the present use of which is not the projected highest and best use of the land to be acquired, for a specified interim time period longer than the remaining term of the lease (interim use value includes the salvage value of the buildings, structures, or other improvements at the end of the interim time period); or

3. The value in place of a building, structure, or other improvement, the present use of which is not the highest and best use of the land to be acquired, for the remaining term of the lease plus the worth of its salvage value at the end of the lease term.

Tenants are entitled to just compensation for the buildings, structures or improvements that they own.

Entitled to the greater of:

! Salvage value or

! Contributory value -

** Value in place where present use is highest and best use (HBU) or*

** Interim use value where present use is not HBU,*

OR

** Value in place where present use is not HBU*

Payment will be made only if:

! Tenant owner releases and transfers all rights

! Owner of realty disclaims all interest in improvements

! Payment is not duplicated by other compensation

KEY POINTS

No payment shall be made to a tenant-owner for any improvements unless:

a. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the (acquiring) agency all of the tenant-owner's right, title, and interest in the improvement;

b. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

c. The payment does not result in the duplication of any compensation otherwise authorized by law.

This provision shall not be construed to deprive the tenant-owner of any rights to reject payment under this provision and to obtain payment for such property interests in accordance with other applicable law.

If there is a possibility that the improvements being acquired are contaminated with hazardous materials or waste, other limitations may apply. If there is known contamination on the property or improvements, contacts with the local Health Department, Fire Marshall or State Environmental agency become very important. Legal direction may be needed regarding possible retention of these improvements and the potential liability attached thereto.

14.2.1. IMPLEMENTATION OF TENANT-OWNED IMPROVEMENTS POLICIES

This issue has been widely researched throughout the Uniform Act era. Each of the States has developed procedures based on their law, however, if there is uncertainty as to how to proceed, legal assistance should be requested. The following FHWA policy interpretations have been made concerning this section of the Statute.

The Uniform Act requires that if the acquiring agency acquires any interest in real property, then it shall acquire at least an equal interest in all buildings, structures, or improvements located upon the real property acquired which will have to be removed from the real property or which will be adversely affected by the use to which the real property will be put. All owners, whether part-owner, full fee owner, or tenant-owner, are covered under Section 301(2) of the Act if buildings, structures and improvements are involved. If buildings, structures or improvements are not involved, then the obligations to the tenant are a matter only of State law. The following general interpretations have been made by FHWA and are paraphrased for easier reference.

The Uniform Act requires that if an agency acquires any interest in real property, then it shall acquire an equal interest in all buildings and improvements on the property.

All owners (of any interest) are covered under Section 301(2) if improvements are involved, and a separate offer to acquire their interest must be made to them.

KEY POINTS

! Normally, the appraiser has the initial responsibility to determine the existence of and valuation of tenant-owned improvements.

Where the contributory value of the tenant-owned improvements exceeds salvage value, a tenant-owner can elect to retain and be paid the difference between the two values. In this and all other uses, "salvage value" and "value for removal" are considered to be synonymous.

RETENTION VALUE

! The Review Appraiser has the ultimate responsibility to see that the recommended or approved estimate of just compensation has the appropriate allocation of value between the fee and tenant owners.

! A tenant may be paid for improvements acquired that would

revert to the fee owner at the end of the lease. A tenant must have an ownership interest and a disclaimer from the fee owner in accordance with State law .

! Tenant owners are entitled to a summary statement and an offer of just compensation. If a disclaimer is issued by the fee owner, separate summary statements and offers should be tendered to the tenant and fee owners for their respective interests.

! If a disclaimer cannot be obtained, an offer need not be made to the tenant owner, although the program process and his/her rights under state law relative to compensation for tenant-owned improvements should be explained.

! Tenant-owners may bring an action to recover any interest from the fee owner.

! Where agreement cannot be reached with the tenant owner, State procedures may require that any appropriation or condemnation action would also name the tenant as a party of interest.

The key to Federal requirements here is that the tenant must be the owner of structural improvements and waiver of interest therein must be obtained from the fee owner. Other legal obligations of the owner to the tenant such as leasehold interest are not covered by Section 302 but may be subject to the requirements of Section 301 and State Law.

STATE LAW

! **Section 302** pertains only to consideration for tenant-owned buildings and special improvements. Leasehold or other tenant owner interests are properly handled under Section 301 (acquisition practices).

Refusal to make an offer to acquire buildings, structures, or other improvements of a tenant-owner when the fee to the land is being acquired may constitute a coercive action under Section 301(7). Failure to offer to acquire these would be 1) a violation of the law; 2) a coercive act by the acquiring agency; and 3) a potential cause for the filing of an inverse condemnation action. The provisions of Section 301(a) apply to all buildings, structures and the provisions of Section 302(a) apply to all buildings, structures and improvements regardless of their ownership.

14.3. UTILITY ADJUSTMENTS

Historically, it has been in the public interest for public utility facilities to use and occupy the right-of-way of public roads and streets. This is especially the case on local roads and streets that primarily provide a land service function to abutting residents, as well as on conventional highways that serve a combination of local, State, and regional traffic needs. This practice has generally been followed nationwide since the early formulation of utility and highway transportation networks. Over many years, it has proven to offer the most feasible, economic, and reliable solution for transporting people, goods, and public service commodities (water, electricity, communications, gas, oil, etc.), all of which are vital to the general welfare, safety, health, and well being of our citizens. To have done otherwise would have required a tremendous increase in the acquisition of additional right-of-way for utility purposes alone, and could have resulted

in significant added costs to be borne by utility consumers. Under the common practice of jointly-using a common right-of-way, there are **three broad areas of concern to highway and utility officials alike**. First is the cost of relocating, replacing, or adjusting utility facilities that fall in the path of proposed highway improvement projects, commonly referred to as **Utility Relocations and**

Adjustments. Second, is the installation of utility facilities longitudinally within or across highway right-of-way and the manner in which they occupy and jointly use such right-of-way, commonly referred to as the **Accommodation of**

Highway and Utility Facilities: Areas of Common Interest
(23 CFR Part 645, Subpart A; 23 CFR §710.203 and 49 CFR §24.307, etc.)

! *Cost of relocating, replacing or adjusting utility facilities affected by proposed highway projects.*

! *Accommodation of utilities along or across existing highway R/W.*

! *Amendments to the Uniform Act have provided the option of making a relocation payment to a utility displaced by a Federal aid highway project, but the utility is not a "displaced person" under the Uniform Act.*

KEY POINTS

Utilities. Third, the Congress in passing the **Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)**, set forth a series of responsibilities that utilities have in other areas of their activities. (see implementing regulations at 49 CFR §24.307. A major issue here concerns the secondary acquisition and displacement activities that may occur when a utility restores its facilities when displaced by a highway project. In such cases a utility receives compensation for its relocation/adjustment costs, in which FHWA participates pursuant to 23 USC 123, and may include the cost of required replacement utility ROW.

The FHWA has concluded that the secondary acquisition of replacement ROW by a utility compensated for its relocation/ adjustment costs under 23 USC 123 is not subject to the Uniform Act. FHWA considers this reimbursement made to

*Temporary easements are often required for utility work. FHWA policy, as stated in the Utility Program Guide, is "If a State, or political subdivision, acquires replacement right-of-way, the requirements of the Uniform Act apply. If a utility acquires replacement right-of-way, the requirements of the Uniform Act do not apply". In the Uniform Act and 49 CFR Part 24, the meaning of "temporary easement" is somewhat unclear. This term covers a number of types of documents obtaining a number of temporary property rights or licenses, and must be viewed in each case in light of the specific conditions pertaining to the project. This applies to utility as well as other types of projects. Common sense should be applied to minor takings as to whether they are subject to the Uniform Act. Temporary easements may be for: 1) the benefit of the property owner, 2) for mutual benefits to the owner and the acquiring agency, or 3) primarily for the benefit of the acquiring agency. Since frequently there is a taking from the property comprised of a fee simple taking or permanent easement, as well as one or more temporary easements, each element of the taking must be considered separately for application of the Uniform Act. **It is the position of FHWA that the facts related to a temporary taking determine the application or non-application of the Uniform Act and Part 24, rather than the name of the given instrument or the duration of the instrument's effect.** You may need legal assistance on this.*

TEMPORARY EASEMENTS

States pursuant to 23 USC 123 to be a form of compensation to the utility, which is not subject to the requirements of the Uniform Act.

Federal-aid funds may participate in relocating utilities displaced by a proposed highway project when certain conditions have been met. For further details, see 23 CFR Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement. Other references include 23 CFR §710.203 and 49 CFR §24.307.

The first step is to check with the appropriate section of the State DOT or with your FHWA Division Office regarding compliance with the appropriate State or Agency procedures.

When it is determined that the utility is in fact serving the "public", the next step is to determine which of the utility adjustments are potentially eligible for Federal-aid funding. In general, Federal-aid funds may participate in the costs of adjusting utilities where:

- ! the utility has a legally compensable interest in its present location by reason of holding a fee or easement to the real property; or
- ! the State is authorized by statute to pay for the utility adjustment; or

*While not generally applicable to Federal-aid projects, granting needed right-of-way to a cooperative by a member of the cooperative in exchange for the cooperative providing needed service to that member is excluded from application of the Uniform Act. **If the right-of-way required is for reasons other than providing services to the owner who must grant the right-of-way, the provisions of the Uniform Act may apply.** The Uniform Act imposes duties upon the acquiring or displacing agency and these duties cannot be waived by the*

MEMBERSHIP AGREEMENTS

A construction work plan supporting a loan application or similar proposal to the Federal funding agency defines a project. Any right-of-way acquired to effectuate that construction work plan may be subject to the application of the Uniform Act even though the requesting utility may not use Federal funds in the acquisition of the right-of-way. For guidance on other types of projects, see your State or Federal funding agency.

DEFINITION OF A PROJECT

! the utility is owned by a governmental unit, is within public right-of-way, and the governmental unit is not required by law or agreement to relocate its facilities at its expense.

If, after the above is satisfied, it is determined that the new rights-of-way are required for the utility, there are **two options available for obtaining the right-of-way**. First, the utility may obtain the replacement right-of-way and be reimbursed for its costs. The second option is for the highway agency to be the responsible party for obtaining the right-of-way for the utility.

If the highway agency acquires the replacement ROW on behalf of the utility, the Uniform Act applies. The responsibility for acquiring the replacement ROW needs to be covered as part of the utility relocation agreement between the highway agency and the public utility approved by the Federal funding agency.

14.4. JOINT DEVELOPMENT AND MULTIPLE USE

Highway joint development/multiple use projects have been carried out for many purposes, but the basic objectives have been to achieve better compatibility between the highway and its environment, and to obtain maximum benefits from the use of increasingly scarce real estate. This policy was previously issued as PPM 90-5 in Chapter 7 of the Federal-Aid Highway Program Manual, but has been rescinded and not replaced by any other policy statement or regulatory authority.

Joint development/multiple use projects can have a major influence on highway location and design. Non-highway activities such as housing, business activities, parking, and recreation can be located in the airspace above or below the highway or on land adjacent to the highway. The designs for both the highway and the non-highway elements must be developed in close coordination and with a view toward achieving aesthetic harmony, safety, overall economy, and compatibility with the adjoining neighborhood.

The Uniform Act does not require that payment be made to utilities located on highway right-of-way that is displaced by Federal-aid highway projects, but the Uniform Act does apply to acquisitions of replacement right-of-way by a State or local highway agency in dealing with property owners. Where the highway agency is paying the displaced utility for the replacement rights-of-way outside the highway limits, the provisions of the Uniform Act do not apply. Just compensation that is paid for the acquisition of real property for a public project, and relocation assistance payments that are provided by either the Uniform Act or 23 U.S.C. 123 to businesses, utilities, farms or persons are not considered to constitute "Federal financial assistance" as defined in the Uniform Act (grants, loans or contributions) and therefore the recipients of such payments are not required to comply with the requirements of the Uniform Act that are placed upon acquiring or displacing agencies.

FEDERAL FINANCIAL ASSISTANCE UNDER THE UNIFORM ACT

Joint development applies not only to cooperative planning by the highway and the non-highway agencies, but also involves concern for land use beyond the immediate highway right-of-way. The intent is to encourage coordinated planning within a broad highway corridor to identify opportunities which would benefit the adjoining communities while achieving transportation objectives and overall cost effectiveness. This concept is key to the idea of Corridor Preservation discussed previously, and is a philosophical base for a number of other project development activities.

Federal-aid highway funds are available for joint development and multiple use studies and may be available for certain multiple use activities. Eligibility for Federal funding by FHWA and other funding agency projects is established on a case-by-case basis, taking into account factors such as environmental impacts, degree of mitigation the joint development/multiple use may provide, effects on the transportation objectives, and cost effectiveness. In many cases funding for

"Highway Joint Development and Multiple Use" was published in 1979 by FHWA. While not a recent publication, it is still useful in explaining these programs and giving examples of programs around the country. You may be able to view this book in the FHWA Division Office or State Transportation agency library.

Multiple use of ROW takes place when the corridor serves the needs of more than one corridor user. This is most frequently found between the government transportation agency and public utilities. It involves a continual relationship between the agencies. Co-location of utility substations on publicly-owned lands may be one example, particularly if they are excess to roadway needs. Others may involve coordination of other transportation systems (like bus systems) with development of highway facilities, with added features that benefit both systems (and that may also partially pay for the highway investment through other funding sources). 23 U.S.C. 142(f) requires special consideration be granted to transit uses within the corridor.

MULTIPLE USE

A number of States and local agencies have active programs to explore joint development and multiple use possibilities. Various methods can include: city/developer funded parking ramps, pedestrian overpasses that improve access to shopping areas, and mall and beautification projects. Most of these are done at the city or local level, and involve coordination between several City Departments. Usually these are proposed by the private sector and are explored with the City Planning Department or political authorities first. It is important that the Real Estate section become involved early in this process, to protect the substantial transportation investment that the local government has in the roadway facility, and preserve options for future road improvements as well as serving revenue-enhancement joint use purposes in the shorter term.

OPTIONAL METHODS

A typical joint development / multiple use process would include:

- (1) a study to investigate the potential for joint development / multiple use activities for the various highway locations;
- (2) the continuation of that process after the highway location has been selected to identify specific multiple use activities in the highway corridor;
- (3) the economic evaluation of the real estate interests needed by each party and the payments due under the requirements of 23 U.S.C. 142(f) and 156.
- (4) implementation of design and construction of necessary features.

Some examples follow:

È Freeway Park, built over I-5 in downtown Seattle, WA consists of more than five acres of plazas, waterfalls, pathways, lawns, play areas and flower beds. Part of this park is directly over the freeway itself, and part is the top deck of a multi-level parking garage. In complex agreements between several participants, the State Department of Highways built the freeway and the deck that supports the park, the City of Seattle built the garage, private funds built the plaza and a high-rise office building, and the Seattle Park Department assumed responsibility for creating and maintaining the park itself.

È Many states have utilized smaller pieces of excess ROW or areas within interchanges in conjunction with local governments to develop small green spaces and playgrounds. Usually these are leased to the local government on a long-term basis, and involve funding from local sources for provision of equipment and maintenance.

È Multi-modal facilities have been developed to mix the highway use and mass transit needs. Installation of Rapid Transit facilities within the ROW of a highway is one of the more common methods of doing this, as is the joint development of bus or rail stations in conjunction with highway ROW.

È Ride-sharing or carpooling facilities are often used with a mixture of funding sources to accomplish mutually-beneficial goals. DOT's may acquire the land, and other funds may be used for development of the facility and its advertisement.

È Leased parking under highway facilities or on other available ROW space is under the "Airspace Leasing" provisions of 23 CFR. For more information on this, see 12.2 (b) of this document.

SAMPLE PROJECTS

such features comes from a combination of sources, including Federal, State, local governments, and the private sector. (See additional discussion of this subject in Section 12.2.4)

14.5. FUNCTIONAL REPLACEMENT

The Functional Replacement program was developed by the FHWA to provide an alternative method of acquiring and compensating for publicly owned property providing essential public services. Regulation reference is 23 CFR Part 710.509 (Functional Replacement of Real Property in Public Ownership). Ready examples are schools, police and fire stations, and local parks.

Functional replacement is at the option of the acquiring agency and may be utilized if: (1) it is allowed under State law; (2) the owning agency requests functional replacement; (3) the State ROW operating manual incorporates full procedures covering review and oversight that will be applied to each case, and (4) the STD requests functional replacement from the FHWA, and FHWA concurs in the public interest determination. The governmental agency owning the facility may, at its option, choose to accept conventional acquisition and cash compensation based on the appraised fair market value (FMV) of the acquired property. Cash compensation is not to be based on the value of the replacement facility. The Functional Replacement program really amounts to an administrative settlement where recognition is given to the situation where cash compensation may be insufficient to restore the status quo as the result of acquiring a public facility. (In a sense, it is similar to a Last Resort Housing concept as applied to publicly owned properties.)

Functional Replacement: *To provide an alternative method of acquiring publicly owned and operated property providing essential services, the acquiring agency may offer the owning agency the option of paying for the functional replacement of that facility using FHWA funds when:*

- * it is allowed by State law;*
- * the State ROW manual sets forth the process to be used; and*
- * the STD receives FHWA concurrence in the need for the replacement..*

The owning agency has the option of electing to accept cash compensation based on FMV instead of an offer for functional replacement.

KEY POINTS

Upon STD request, Federal funds may participate in functional replacement costs involving:

- 1) cost of the actual facility replacement, plus
- 2) the reasonable costs of acquiring a functionally equivalent substitute site. The appraised fair market value (FMV) of the land to be acquired for highway purposes is used when the owning agency has land on which to relocate the facilities.

Costs of increases in capacity and other betterments or enhancements are not eligible for Federal

participation except where necessary to replace the public facility's utility, unless required by existing codes, laws or zoning regulations, or related to reasonable prevailing standards for the facility being replaced. Where the

FMV of the property to be acquired exceeds the cost of functional replacement, Federal funds may participate in the FMV amount.

Publicly owned land and/or improvements may be functionally replaced with a facility of equivalent functional utility to that acquired for the highway project. As primary coordinators, STD officials should meet early in the process with the owning agency, and develop a mutually acceptable course of action.

At the earliest stage, the STD shall have the property appraised to establish its FMV, and inform the owning agency. FHWA may participate in the cost of specialty appraisals required in establishing FMV. At this point, the owning agency has the option of accepting the amount of compensation based on the FMV determination or accepting functional replacement. The owning agency may waive its opportunity to have an estimate of compensation established by appraisal if it prefers functional replacement.

Where a STD wishes to have the opportunity to offer public agencies in their State the opportunity to have their facilities acquired for transportation purposes through the functional replacement process, the STD will set forth in their ROW operations manual full procedures covering review and oversight which will be applied to each case. These processes will include where FHWA participation in costs is desired, concurrence in the STD determination that functional replacement is in the public interest.

Functional Replacement has been used in a limited number of cases in most States. Typically, functional replacement projects have been replacement of publicly owned land or State/municipal facilities. Replacement of lands may involve parks, recreational areas, wetlands and other publicly-owned areas. Among the most commonly replaced facilities have been police and fire stations, as well as municipal garages or maintenance facilities. Other types of buildings have been libraries and city or county government buildings. Because facilities must meet current codes and standards, a good deal of coordination and agreement between all parties is necessary before such projects can be undertaken. The importance of early coordination cannot be over stressed. If functional replacement will apply to a project, contact the STD or the FHWA as soon as possible to discuss the specifics of the situation.

14.6. FEDERAL LAND TRANSFERS

Title 23 U.S.C., sections 107(d) and 317, provide for the transfer of lands or interests in the lands owned by the United States to an STD or its nominee for highway purposes. The regulations which prescribe the procedures relating to Federal land transfers are found in 23 CFR 710.601.

If lands or interests in lands owned by the United States are needed for highway purposes, the STD or its nominee¹ should first file a land transfer application with FHWA. The exception to this process is when such lands or interests therein are managed or controlled by an agency with independent transfer authority such as the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs. Transfer applications are made directly to these agencies or their land acquisition agent.

Information on the contents of the application, the deed for conveying the lands or interests and other details on the transferring of lands can be found in the "Attorney's Manual for Public Land Transfer and Federal Condemnation²." The "Attorney's Manual" provides the STD or its nominee with step-by-step procedures for transferring federal lands as well as examples of the applications and the conveyance deeds.

Often the STD or its nominee works out the details of a project with the local office of the Federal agency (e.g. National Forest or Park) from whom the land is sought prior to submitting the formal application to FHWA. This eases the application process, and minimizes delays and surprises.

When the need for the lands or interests therein no longer exist, the STD must notify FHWA and the concerned Federal agency. Control of the lands or interests will revert to the Federal agency or its assignee from which they were appropriated (23 U.S.C. 315).

¹ An LPA should apply through the STD to FHWA to assure that additional State requirements are met.

² Environmental Law & Right-of-Way Branch, Office of Chief Counsel, Attorney's Manual For Public Land Transfers and Federal Condemnations (1989), FHWA/USDOT, Pub. No. FHWA-CC-89-006