

APPENDIX A – EARLY ACQUISITION OPTIONS

Early Acquisition (EA) (revised for Oregon Use) Options							
Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimburse- ment/Credits	Comply w/ Federal Law*	Subject to Condem- nation	Requirements
1) State-funded early Acquisition without Federal Credit or Reimbursement 23 CFR 710.501(b) 23 USC 108(c)(1)	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 project maintains Federal eligibility for other phases of the project (i.e. construction)	YES, if State law allows use of condemnation	A State may carry out early acquisition entirely at its expense. However, a State may maintain eligibility for future Federal assistance on a project. To maintain eligibility, early acquisition must comply with the following requirements of 23 CFR 710.501(c)(1)-(5): <ul style="list-style-type: none"> Property lawfully obtained by the State agency; Not 4F property; (unless Sec. 4F determination has been made by FHWA) Acquisitions and relocations comply with the Uniform Act; State agency complies with Title VI of the Civil Rights Act; FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including: <ul style="list-style-type: none"> The need to construct, The consideration of alternatives, or The selection of design or location.
2) State-funded Early acquisition eligible for future credit 23 CFR 710.501(c)	NO	NO	When legally permissible by State law.	Request credit for the portion of the property incorporated in the Federal-aid project. FHWA Division office must approve request.	YES	YES, if State law allows use of condemnation	<ul style="list-style-type: none"> Property lawfully obtained by the State agency; Not 4F property; (unless Sec. 4F determination has been made by FHWA) Acquisitions and relocations comply with the Uniform Act; State agency complies with Title VI of the Civil Rights Act; FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including: <ul style="list-style-type: none"> The need to construct, The consideration of alternatives, or The selection of design or location; Property is incorporated in the project to which the credit will be applied; and The amount of the credit may be current fair market value or historic acquisition cost to acquire; however, this credit must be applied consistently within the project. 23 U.S.C. 323(b)(2).
3) State-funded Early Acquisition Eligible for future reimbursement 23 CFR 710.501(d) 23 USC 108(c)	NO	NO	When legally permissible by State law. And Proper paperwork is submitted to ODOT ROW HQ and FHWA authorizes the early acquisitions.	After NEPA is completed and real property interests are incorporated into the federal aid project, and all applicable requirements are met.	YES	YES, if State law allows use of condemnation	<ul style="list-style-type: none"> Property lawfully obtained by the State agency; Not 4F property; (unless Sec. 4F determination has been made by FHWA) Acquisitions and relocations comply with the Uniform Act; State agency complies with Title VI of the Civil Rights Act; FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed project including: <ul style="list-style-type: none"> The need to construct, The consideration of alternatives, The selection of design or location; 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 transportation planning process; The State actually selects the alternative for which the real property interest is acquired pursuant to NEPA; Prior to approval for Federal participation, NEPA is completed; and Reimbursement is based on the usual costs to acquire—23 CFR 710.203(b)(1).

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4) Federally funded Early Acquisition (Stand-alone project)	YES, NEPA decision required for the early acquisition, stand-alone project only (not the transportation project).	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 acquisition	YES	NO	State certifies and FHWA concurs that the following requirements have been met: <ul style="list-style-type: none"> State has authority to acquire under State law; Is for a Title 23 eligible transportation project and does not involve 4F properties; Will not cause significant adverse environmental impacts as a result of the EA project or from cumulative effects of multiple EA projects; Will not limit the choice or otherwise influence the NEPA decision of FHWA; Will not prevent the lead agency from making an impartial decision as to alternatives; Is consistent with the State transportation planning process under 23 U.S.C. 135; Complies with other applicable Federal laws (including regulations); Will be acquired through negotiation, without the threat or use of condemnation. Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act; The Early Acquisition project is in the Transportation Improvement Plan; and NEPA for the Early Acquisition project is complete and approved by FHWA. <ul style="list-style-type: none"> 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. If reimbursement is made and the real property interests are not incorporated in a project within 20 years, FHWA must offset the amount against Federal-aid funds apportioned to the State. 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. Options to purchase and similar agreements do not create an immediate commitment and do not create eligibility. <p>Note: The "Option" to purchase the property at a later day allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings.</p>
23 CFR 710.501(e) 23 USC 108(d)	Rarely applicable to ODOT project development. Consult ODOT ROW HQ and Division office for guidance on use of this method.		Rarely applicable to ODOT project development. Consult ODOT ROW HQ and Division office for guidance on use of this method.		Rarely applicable to ODOT project development. Consult ODOT ROW HQ and Division office for guidance on use of this method.		

Advance Acquisition (AA) Options & Requirements (23 CFR 710.503)

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
1) Protective Buying 23 CFR 710.503	***Yes typically a CE. See 23 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F.	Usually during the NEPA process. FHWA Division office must give prior approval	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows	Development of the property is imminent.
2) Hardship Acquisition 23 CFR 710.503	***Yes typically a CE. See 23 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F.	Usually during the NEPA process. FHWA Division office must give prior approval	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows. See comment	A request for hardship acquisition based on a property owner's written submission. 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.

* 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 clearance is necessary for the AA parcels. This requires the AA parcels to be carved out from the overall project so that NEPA clearance provided on those parcels, typically in the form of a CE.