

*Texas Department of Transportation
Environmental Affairs Division*

Standards of Uniformity for Projects Without Federal Highway Administration Involvement

A Guide to Projects without FHWA Involvement

Early Right-of-Way Acquisitions

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This SOU applies to Non-Federal Categorical Exclusions (NFCEs) prepared for approval of early acquisition of right-of-way, in accordance with [43 TAC §2.17](#). State laws and department manuals cited provide similar guidelines to the federal requirements. FHWA guidance is recommended for more detailed information on how to comply with state requirements.

YES	NO	N/A	Description of Item Sufficiency	References/Guidance
Early Right-of-Way Acquisition				
1			The document justifies the need for the early purchase of right of way. It includes the estimated date for the normal authorization of right of way acquisition.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act 43 TAC §2.17 43 TAC 202.111 – 114 TxDOT ROW Manual Vol. 2, Chapter 3
2			The document includes a description of the type of property that is to be acquired.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
3			The document discusses the reasons for and advantages of requesting approval for early right-of-way acquisition.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
4			The document clearly states that the other avenues of early right-of-way acquisition and/or the normal process of right-of-way purchase are not appropriate to the current circumstances.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
5			The document substantiates the determination that acquisition of the subject property will not limit the evaluation of alternatives for the transportation project.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act 43 TAC §2.17
6			The document includes the amount of acreage in the property to be acquired.	FHWA Guidance on Early Acquisitions and Compliance with NEPA

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				and the Uniform Act
7			The document includes the appropriate section of the USGS topographic map, showing the preferred project alignment and the property to be acquired.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
8			The document includes the segment of the schematic or right-of-way map that shows the property involved and the extent of the acquisition.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
9			The document describes the current land use of the parcel to be acquired.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
10			The document reports the current status of the development of the NEPA document for the project.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
11			The document reports the current status of any environmental investigations performed onsite, along with a brief description of the field work and/or research performed to determine the existence or absence of major environmental concerns or hazardous materials contamination of the property.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act 43 TAC §2.17
12			The document includes sufficient documentation to confirm that the displacement of residences and businesses (if any) has been given careful consideration and does not appear to involve either disproportionate impacts to a minority or low income population or substantial economic, community resource, or neighborhood impacts. Supporting documentation must include information on whether or not any displaced business provides a "critical service" (i.e., the sole local grocery store, health clinic, church, community meeting	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act

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			center, or similar establishment within walking distance) for the environmental justice population.	
13			For any business displacement, the document describes the type of business and the impacts on the community if the business is not able to relocate within its current service area.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
14			For any residential displacement, the document discusses the market availability of comparable decent, safe, and sanitary (DS&S) housing, and includes a statement that all displaced persons will be relocated to DS&S housing within their financial means.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
15			The document includes photographs of the properties to be acquired.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
16			The documentation must confirm that the "Uniform Act" will be followed in regards to appraisal, acquisition, and any required relocation assistance on all parcels.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
17			The document describes the status of any resource/regulatory agency coordination, and the result of such coordination.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
18			The document describes the public and resource agency support for, or opposition to, the project. This should include a discussion of public involvement to date, including any opportunities for individuals with Limited English Proficiency to participate in the project development process.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
19			The document clearly states that the required records and complete documentation of the acquired property	FHWA Guidance on Early Acquisitions and Compliance with NEPA

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			and any associated relocations will be available for inspection by FHWA.	and the Uniform Act
20			The document clearly states that the early acquisition is subject to the risk that environmental and/or public concerns could necessitate a change in alignment or the cancellation of a project after the parcels of right of way have already been acquired.	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
21			<p>The NFCE document must demonstrate that acquisition of the right of way, and construction of the preferred alternative, will result in no effect to all endangered species and endangered species habitat. The research necessary to support this conclusion includes:</p> <ol style="list-style-type: none"> 1. Coordination with the U.S. Fish and Wildlife Service to determine the existence of federally-listed threatened or endangered species, their habitats, and any other sensitive natural communities within the project vicinity may be necessary. Refer to the Biological Resources SOU for ESA guidance. 2. Coordination with the Texas Parks and Wildlife Department, including a search of the Natural Diversity Database. 3. Onsite presence/absence surveys of the proposed acquisition for endangered species, if right-of-entry is not denied. 4. Application of predictive modeling to assess the likelihood of protected species occurrence, if available. 	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
22			The document should adhere to approved TxDOT Standards of Uniformity (SOU) for cultural resources (including Historical Resources and Archeological Resources , and comply with both federal and state	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act First Amended

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			requirements, including the First Amended Programmatic Agreement Regarding the Implementation of Transportation Undertakings (PA-TU) .	Programmatic Agreement Regarding the Implementation of Transportation Undertakings (PA-TU)
23			<p>The investigation for archeological issues shall, at minimum, comprise a background study. This study should follow the SOU for Background Studies, developed by ENV's Archeological Studies Branch. If the study determines that field investigations are necessary to complete evaluation of the project's effects on important archeological sites, these investigations shall follow the appropriate SOU(s) for the additional work, which are also available from the Archeological Studies Branch.</p> <p>Early ROW acquisitions by themselves generally do not require field investigations, although such field investigations may be required later for the associated construction project.</p>	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act
24			<p>Before a NFCE document is written and submitted to ENV for approval, the District or toll authority must contact ENV's Cultural Resources Management (CRM) for assistance to determine the appropriate area of potential effects (APE) and scope of activities that may be necessary to comply with appropriate historic preservation laws and regulations.</p> <p>All historic resources review and consultation requirements must be completed prior to the finalization of the NFCE document.</p>	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act 43 TAC §2.17
25			The document must include an assessment of contamination existing within the proposed area to determine whether such contamination may impact the project. If impacts are anticipated,	FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act

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			<p>special provisions may be required in order to develop the project.</p> <p>The supporting documentation should include an initial site assessment, including a visual inspection and a search of all appropriate land use records (such as federal Environmental Protection Agency and Texas Commission on Environmental Quality records) to determine whether hazardous materials contamination exists or is likely to exist on the property.</p> <p>In many cases, obtaining site access will be critical to verify the presence and location of suspected contamination, since such confirmation may require the collection and analysis of soil and/or groundwater samples.</p> <p>For additional information regarding ROW acquisition involving hazardous materials, refer to Section 1, ROW Vol. 6 – Miscellaneous of TxDOT online manuals.</p>	
26			<p>The document must demonstrate that the parcel(s) proposed for early acquisition do not include any resources that involve the taking of designated public land, or public or private historic sites.</p>	<p>FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act 43 TAC §2.17</p>
27			<p>The document must reflect careful evaluation of community and environmental justice issues. The document should conform to the approved SOU for Socioeconomic Resources.</p>	<p>FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act</p>
28			<p>If a project has substantial public opposition, early project right of way acquisition cannot be approved -- even if all other conditions are met.</p> <p>The document must therefore describe</p>	<p>FHWA Guidance on Early Acquisitions and Compliance with NEPA and the Uniform Act</p>

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			the level of support for the project from local governments, planning authorities, and the public. Failure to understand and explain the support for/opposition to the project will render a project ineligible for further consideration as a candidate for early project right of way acquisition.	