

NHI Real Solutions Seminar

*Making Every Day Count:
Addressing Uniform Act Requirements
When Implementing
Local Transportation Projects*

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Real Property

- Interests, benefits and rights inherent in ownership of physical real estate
- Often considered the “bundle of rights”
- Includes fee simple, permanent easements and temporary easements



Eminent Domain

The power of any sovereign government to take private property without the consent of the owner.



U. S. Constitutional Limitations on Power of Eminent Domain

5th Amendment

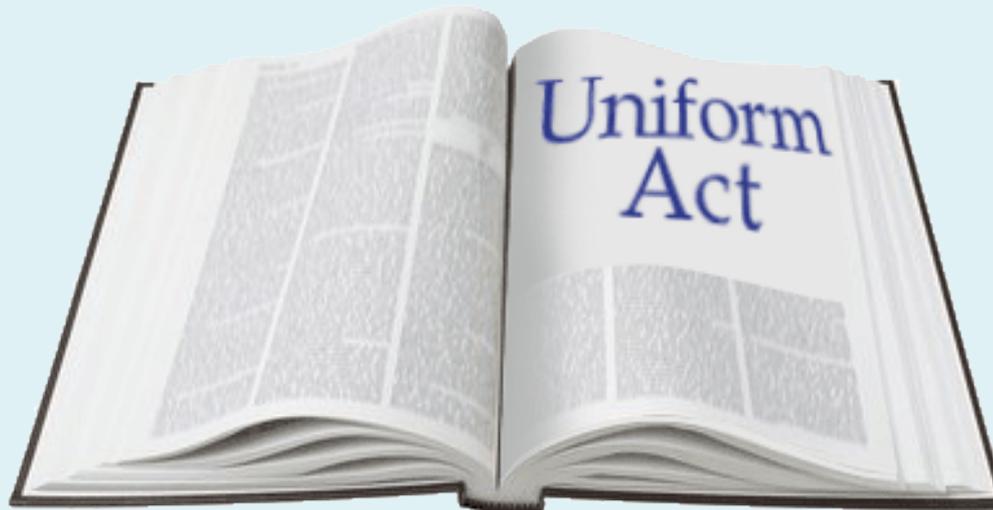
"...nor shall private property be taken for public use without just compensation."

14th Amendment

"...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

Uniform Act

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,
as amended (Public Law 91-646)



Uniform Act: Twofold Purpose

- Provide for uniform and equitable treatment of persons displaced from their homes, businesses or farms by Federal and federally-assisted programs
- Establish uniform and equitable land acquisition policies for Federal and federally-assisted programs

When Must an Agency Follow The Uniform Act ?

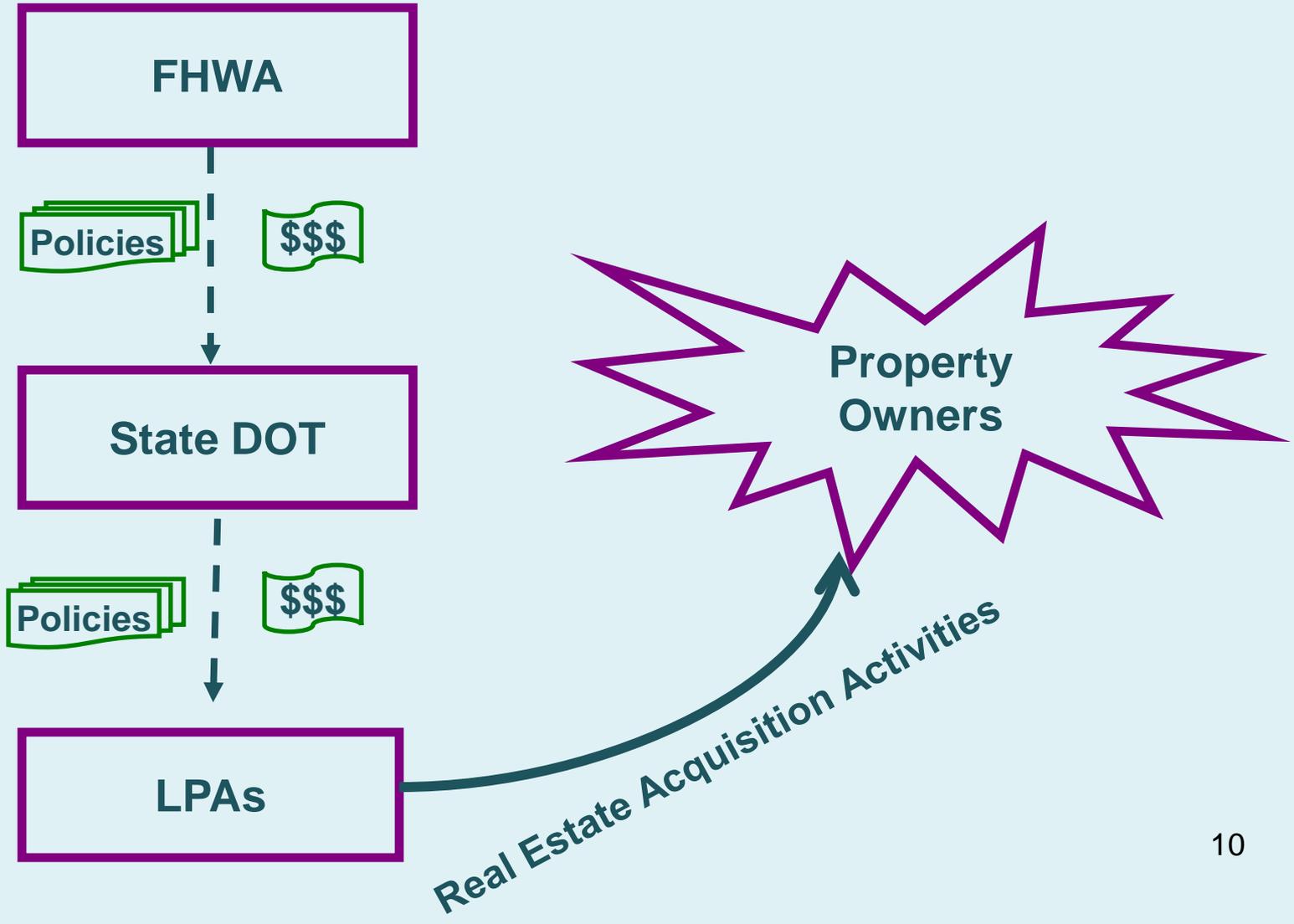
- ✓ When any phase of a project is federally-funded, and:
- ✓ Real property is acquired, and/or
- ✓ Property owners and/or tenants are displaced as a direct result of land acquisition, demolition or property redevelopment

Federal Regulations

- 49 CFR Part 24 – Department of Transportation
- 23 CFR Part 710 - Highways



Real Estate Acquisition Activities



State DOT and LPA Relationship

- State DOT oversees LPA's administration of project
- LPAs should consult State DOT for assistance



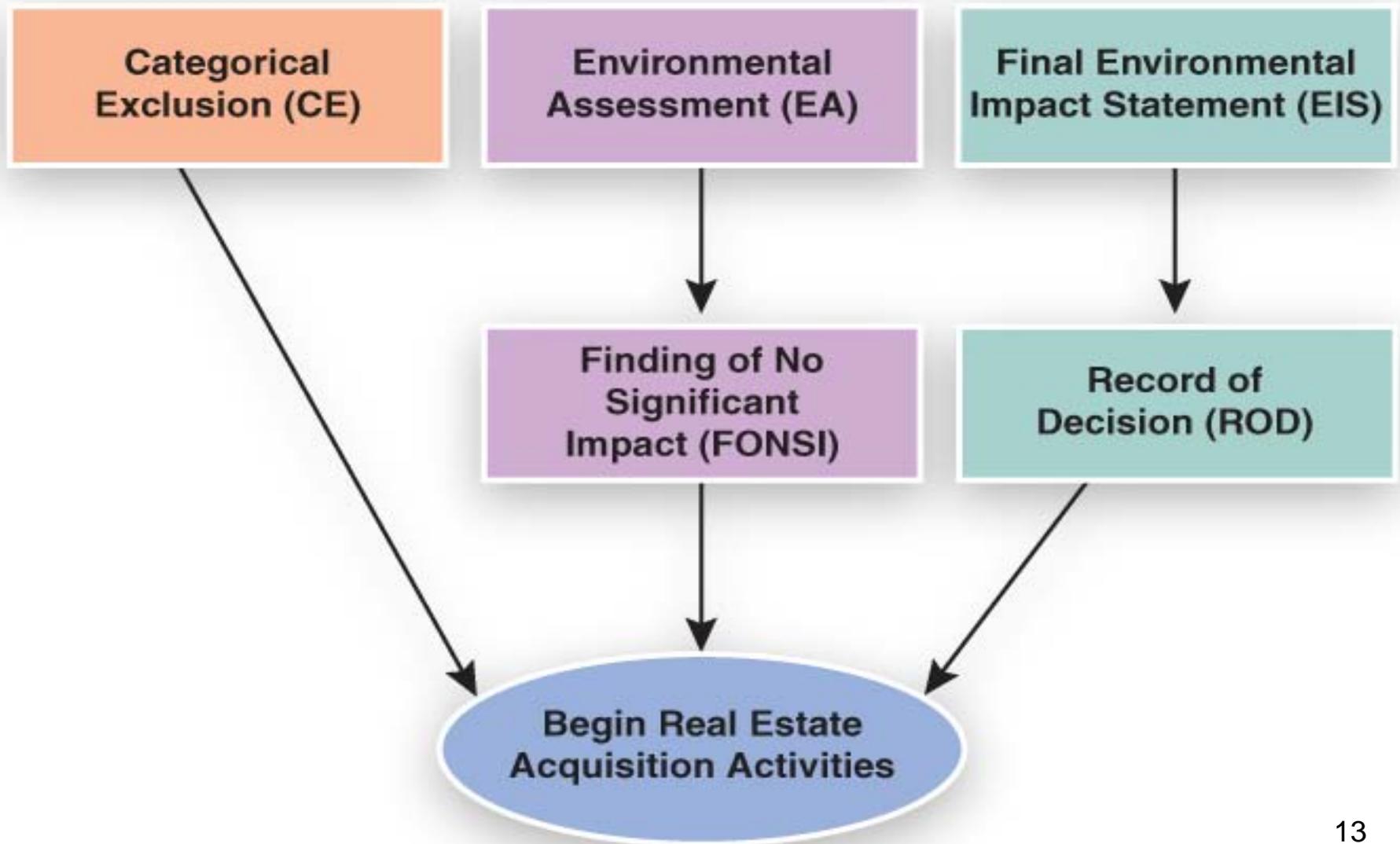
National Environmental Policy Act (NEPA)

Establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment.



P. L. 91-190, as amended

NEPA Environmental Documents



ROW Involvement in Environmental Activities

- Development of the environmental document
 - Analysis of social impacts and relocation impacts
 - Cost estimates
 - Alternate site locations
 - Feasibility and cost of wetland replacement
- Application of agreements arising out of the environmental document
- <http://www.environment.fhwa.dot.gov/guidebook/index.asp>

Project Development Process

Start

End

Planning

- Corridor Selection
- NEPA Process

Project Design

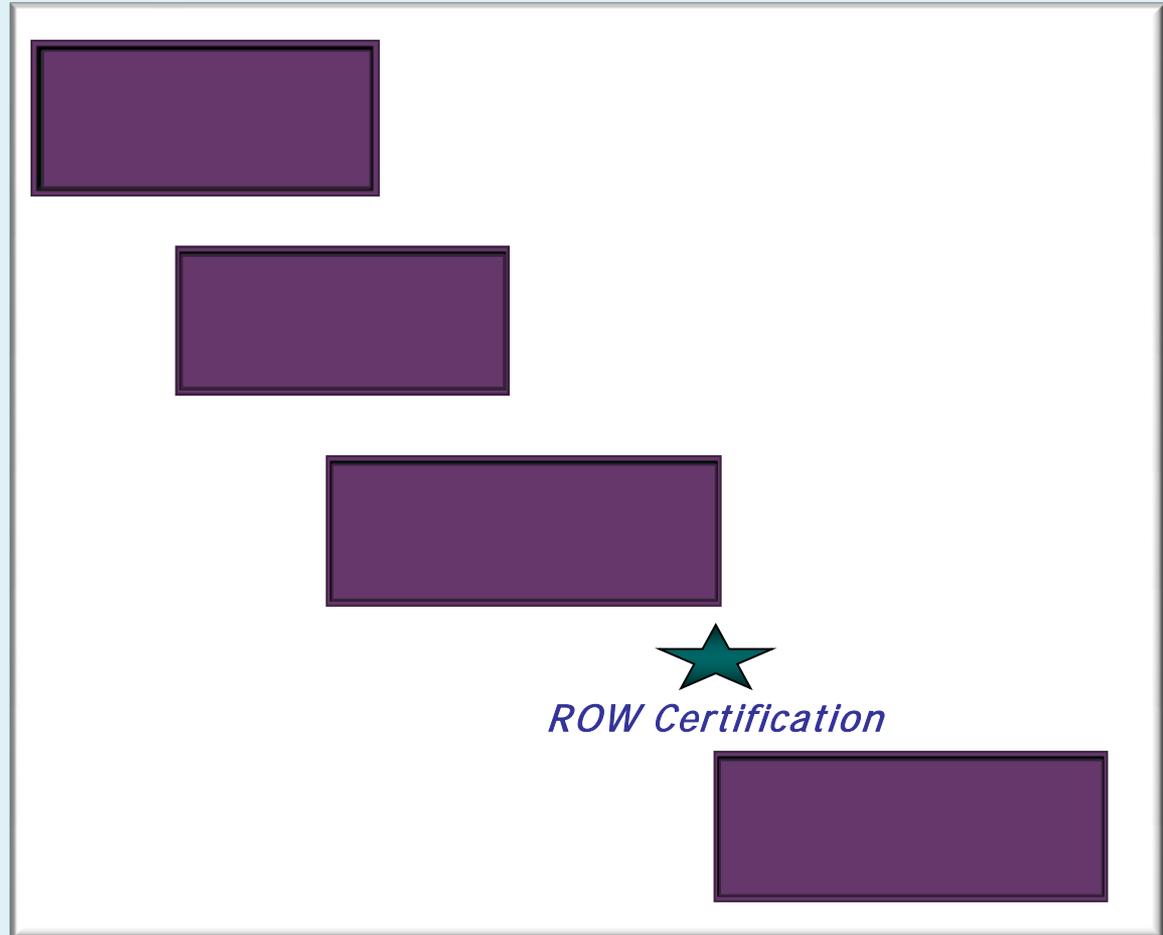
- ROW Cost Estimates
- ROW Plans

Real Estate

- Preliminary ROW Activities
- Appraisal
- Acquisition/Relocation
- Property Management

Construction

- Complete ROW certification exceptions
- Monitor negotiated construction features



When Can You Begin to Purchase ROW for a Federal-Aid ROW Project?

The project:

- Must be identified in the Statewide Transportation Improvement Plan (STIP)
- Must have completed environmental document in compliance with NEPA
- Must have Federal funding authorization

ROW Certification Statement

The Agency certifies:

- All properties needed for construction are obtained
- All properties are free and clear of any structures, businesses or people
- Utility relocation is addressed



23 CFR 635.309

ROW Certification Statement (con.)

The Agency certifies:

- All displacees are appropriately relocated
- Compliance with all State laws, the Uniform Act and implementing regulations



23 CFR 635.309

Risks Associated with Early Acquisition

- Purchasing a listed property without following Uniform Act requirements
- Purchasing property that is ultimately not needed for project - no Federal reimbursement
- Not purchasing enough property and having to negotiate with owner a second time

Before You Advertise Your Project for Construction

You must have:

- Environmental decision
- ROW certification
- Utility agreement

Key Elements of the Valuation Process

Appraisal

Fair Market Value



Review Appraisal



Just Compensation

*P. L. 91-646, as amended
Title III, Section 301*

Preliminary Scope of Work

“The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem.”

49 CFR 24.103(a)(1)

Selecting and Contracting with Appraisers

- Before you hire an appraiser, consult with your State DOT
- Appraisers must meet State DOT qualifications
- Appraisers must be State certified or licensed

49 CFR 24.103(d)(2)



Selecting and Contracting with Appraisers (con.)

- Define the appraisal problem, and select appraiser based on individual project or complexity of parcels identified for acquisition
- Consider appraiser's past eminent domain experience and quality of services provided to other clients

Purpose of an Appraisal Review

“...examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103...”

49 CFR 24.104(a)

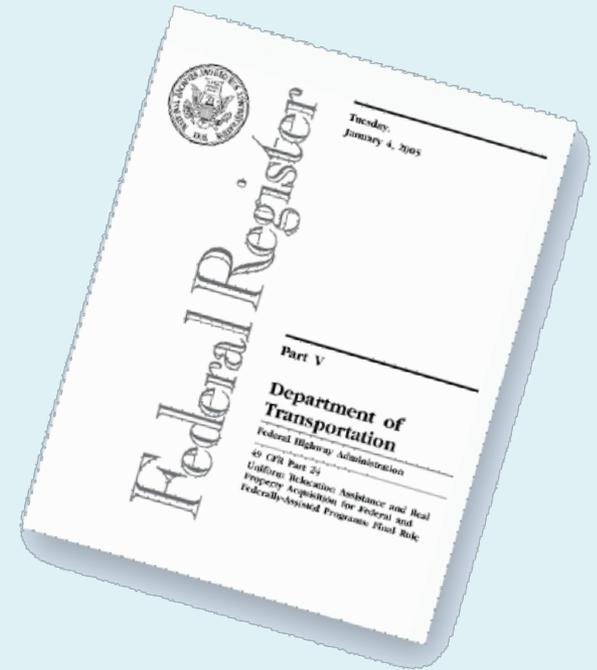
- Critically examines appraisal work prepared by others
- Brings consistency to the project

LPA Appraisal Responsibilities

- Identify and select qualified appraisers
- Establish process for reviewing appraisals
- Ensure appraisals are completed and reviewed appropriately
- Review and approve the final appraisal report
- Establish just compensation

Basic Acquisition Policies

- Expeditious acquisition
- Notice to owner
- Just compensation offer established
- Prompt written offer to purchase with summary statement



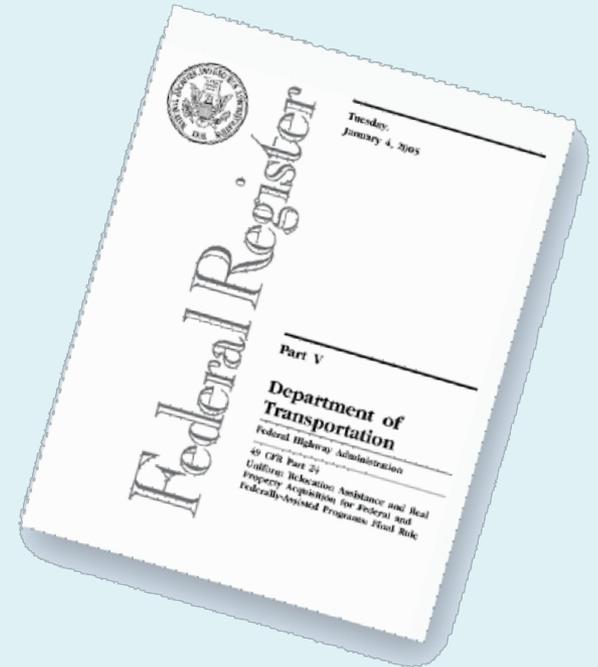
49 CFR 24.102

49 CFR, Appendix A, 24.102

Basic Acquisition Policies

(con.)

- Basic negotiation procedures
- No coercive action
- 90-Day Notice
- Payment before possession
- Conflict of interest
- Documentation of negotiations



49 CFR 24.102

49 CFR, Appendix A, 24.102

Administrative Settlement

- Purchase price for property exceeds amount offered as just compensation
- Agency official approves settlement as reasonable, prudent and in the public interest
- State DOT approval may be required
- Federal-aid participation requires written justification supporting the settlement

Eminent Domain and the Condemnation Process

Eminent Domain

- The *legal doctrine* that government has the power to acquire private property for public purposes
- Governments invoke eminent domain proceedings as a last resort

Condemnation

- *Legal process* to invoke eminent domain
- Conducted in a judicial venue

State laws vary regarding the authority and implementation of eminent domain

Alternative Means to Acquire Property

- Donation
- Donation in exchange for construction features
- Dedication
- Incorporation of LPA-owned land in the project

49 CFR 24.108

23 CFR 710.505 and 507

Cost Sharing

Federally-Funded Projects

- Project cost sharing ratio is dependent on Federal program requirements
- LPA may use Federal assistance for all project phases or for a specific phase
- LPA may reduce cost of matching share by accepting private donations, using LPA owned land for the project or using dedications

Reimbursement of Expenditures

Federal reimbursement of LPA project expenditures is contingent on LPA's compliance with the Uniform Act and other governing Federal and State requirements.



23 CFR 710

Relocation Planning

- Begins early in the development of a project - often part of NEPA process
- Recognizes problems associated with displacement
- Develops solutions to minimize the adverse impacts of displacement

49 CFR 24.205(a)

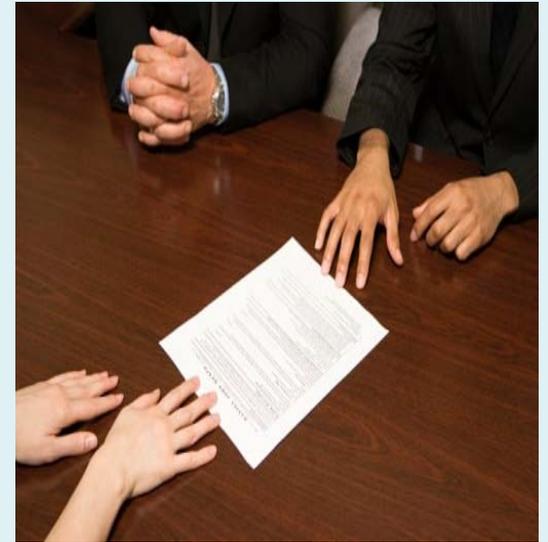
Advisory Services

- Explanation of relocation services and payments
- Explanation of relocation eligibility requirements
- Determination of needs and preferences of persons to be displaced through *personal interview*
- Effort to meet identified needs of displaced persons
- Provision of appropriate services

49 CFR 24.205(c)

Relocation Notices

- General Information Notice
- Notice of Relocation Eligibility
- Ninety-Day Notice



49 CFR 24.203

Relocation Payments and Services

Residential:

Advisory Services

Fixed or Actual
Moving Costs

Replacement Housing
Payments

Nonresidential:

Advisory Services

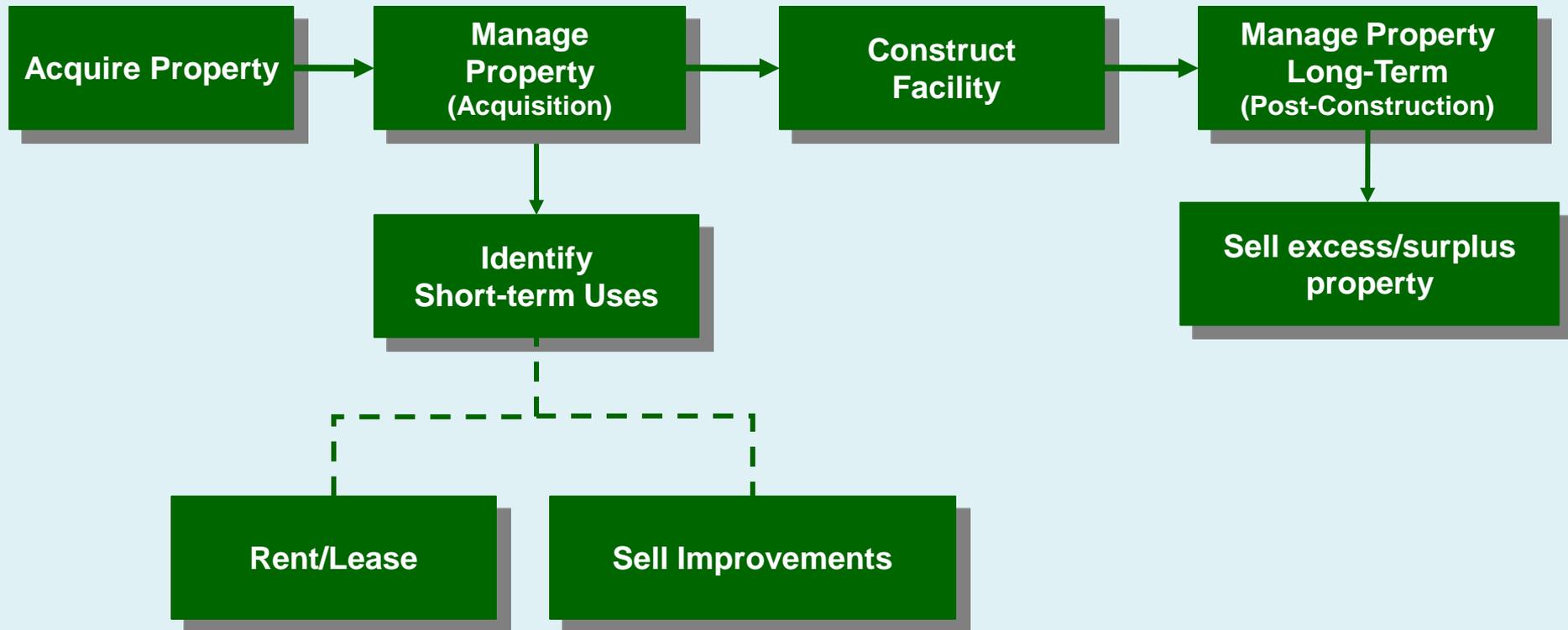
Fixed or Actual
Moving Costs

Business
Reestablishment
Expenses

Related
Nonresidential
Expenses

Note: Persons not lawfully present in the US are not eligible for relocation payments or advisory services. 49 CFR 24.208

Property Management Activities Flowchart



Real Estate Acquisition Guide for Local Public Agencies



<http://www.fhwa.dot.gov/realestate/lpaguide/index.htm>



U. S. Department
of Transportation
**Federal Highway
Administration**

Publication No. FHWA-NHI-10-11G
August 2010

NHI Course No. 141050

Introduction to
**Federal-Aid Right-of-Way
Requirements for
Local Public Agencies**
Instructor Guide



Other NHI Real Estate Courses (ILT)

- NHI 141029 *Basic Relocation under the Uniform Act*
- NHI 141030 *Advanced Relocation under the Uniform Act*
- NHI 141031 *Business Relocation under the Uniform Act*
- NHI 141043 *Appraisal for Federal-Aid Highway Programs*
- NHI 141044 *Appraisal Review for Federal-Aid Highway Programs*

Other NHI Real Estate Courses (WBT)

- NHI 141045 *Real Estate Acquisition under the Uniform Act – an Overview*
- NHI 141047 *Local Public Agency Real Estate Acquisition*
- NHI 141048 *Outdoor Advertising Control : Bonus States*
- NHI 141049 *Outdoor Advertising Control: Non-Bonus States*

Questions Please?