

 <p style="text-align: center;"><b>STATE OF ALASKA</b> <b>DEPARTMENT OF TRANSPORTATION</b> <b>AND PUBLIC FACILITIES</b></p> <p style="text-align: center;"><b>Policy and Procedure</b></p>	POLICY AND PROCEDURE NUMBER <b>09.01.090</b>	PAGE  1 of 4
	EFFECTIVE DATE  June 09, 2017	
SUBJECT  <b>Match Credits for Federal-aid Highway Early Right-of-Way Acquisition</b>		SUPERSEDES  <b>New</b>
DATED		
CHAPTER  <b>Planning, Budget and Research</b>	SECTION  <b>Capital Budget</b>	APPROVED BY  <b>Signature on File</b>

## PURPOSE

This formalizes the policy and procedure (P&P) of the Department of Transportation and Public Facilities (DOT&PF) for the early acquisition of real property interests for a proposed transportation project to be used as credit toward the non-federal share of the proposed transportation project's total construction costs under 23 CFR 710.501.

This P&P specifically addresses 23 CFR 710.501(c) *State-funded early acquisition eligible for future credit, which* allows for the early acquisition<sup>1</sup> project costs incurred by a state agency, at its own expense and prior to completion of the environmental review process for a proposed federal-aid eligible transportation project, to be applied as credit toward the non-federal share of the total project costs.

The following set of guidelines and standards are established to ensure regulatory compliance and create a basis for control and accountability of the efficient and effective investment of state funds for the purpose of early acquisition of real property to be used as credit toward the non-federal share of the total project costs.

## POLICY

It is the policy of the DOT&PF that early acquisition of real property interests with state funds for match credit toward the non-federal share of the construction phase of the project is utilized to accelerate project delivery and is managed in accordance with the procedures outlined herein.

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<sup>1</sup> Early acquisition is defined in the Alaska Right-of-Way Manual.

## **PROCEDURE**

Prior to requesting state funds for early acquisition activities, the following DOT&PF and Federal Highway Administration (FHWA) eligibility criteria must be met.

### **DOT&PF Eligibility Criteria**

The following eligibility criteria are in addition to those contained within the Alaska Right-of-Way (ROW) Manual:

1. The project must be eligible for federal-aid highway funds;
2. The state funding request must fully fund the ROW Appraisal and Acquisition phase of the project;
3. The state funded early acquisition(s) will accelerate project delivery;
4. The acquisitions will be incorporated into the project;
5. The construction phase of the project will be funded with federal-aid highway funds; and
6. The cumulative total (purchase price) of state funds used for the purchase of the early acquisitions for the project are less than or equal to the estimated state match required for securing federal-aid highway funds for the construction phase of the project.

### **FHWA Eligibility Criteria**

The following eligibility criteria are contained within 23 CFR 710.501(c) for state-funded early acquisitions eligible for future credit:

1. The property was lawfully obtained by the state agency;
2. The property was not land described in 23 U.S.C. 138;
3. The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;
4. The state agency complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);
5. The state agency determined, and FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:
  - a. The decision on need to construct the proposed transportation project;
  - b. The consideration of any alternatives for the proposed transportation project required by applicable law; and
  - c. The selection of the design or location for the proposed transportation project; and
6. The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

### **DOT&PF Approval Process**

Approval of the Director of Program Development and Statewide Planning is required for the programming of state funds for early acquisitions. The availability of state funds

and the advancement of project delivery should be considered when requesting state funding for early acquisitions.

The general format for requesting state funding is via a memorandum from the assistant commissioner, regional director or division director to the Director of Program Development and Statewide Planning.

The request should include the following:

- The state and federal project number and title;
- The scope and purpose of the project;
- Documentation of the project's federal funding eligibility;
- Documentation that the state funded early acquisition(s) are less than or equal to the estimated total state match required for the Construction phase of the project;
- Documentation that the state funded early acquisition(s) will accelerate project delivery;
- Current funding estimates for the Right-of-Way and Construction phases of the project, including associated indirect cost allocation plan and construction engineering expenses; and
- The consequences of delaying or disapproval of the request.

### **FHWA Approval Process**

Prior approval (Authority to Proceed [ATP] for ROW Appraisals and Acquisitions) from the FHWA is not required for the early acquisition of real property interests solely funded with state funds.

For projects developed under 23 USC 326 or 23 USC 327 National Environmental Policy Act (NEPA) assignment, following the NEPA decision and prior to the submittal of an ATP to Construction, the DOT&PF Statewide Environmental Program Manager will submit a statement certifying that the early acquisition did not influence the NEPA process to the FHWA, Alaska Division, Environmental Program Manager for concurrence. The certification must include:

1. the decision on need to construct the proposed transportation project;
2. the consideration of any alternatives for the proposed transportation project required by applicable law; and
3. the selection of the design or location for the proposed transportation project.

For all projects where early acquisition was accomplished with state funds, on the ATP to Construction in the Change Requested field, the DOT&PF shall include a statement noting the early acquisition.

On the ATP to Construction, in the Remarks field, DOT&PF shall include the following statement;

**A state-funded ROW acquisition is being used as match for \$\_\_\_\_\_. The acquisition was completed in compliance with 23 CFR 710.501(c) and the match is solely the purchase price (or fair market value if a donation).**

The DOT&PF NEPA certification and documentation of the acquisitions will be kept by the DOT&PF in compliance with applicable records retention policy.

## **AUTHORITY**

AS 44.17.030

## **IMPLEMENTATION RESPONSIBILITY**

Deputy commissioners, regional and division directors, system directors, supervisors and managers.

## **DISTRIBUTION**

All department employees via the DOT&PF website.