

## SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

### PART 710—RIGHT-OF-WAY AND REAL ESTATE

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### Subpart A—General

#### § 710.101 Purpose.

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23 of the United States Code in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

#### § 710.103 Applicability.

This part applies whenever Federal assistance under title 23 of the United States Code is used. The part applies to programs administered by the Federal Highway Administration. Where Federal funds are transferred to other Federal agencies to administer, those agencies' procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate services website: <http://www.fhwa.dot.gov/realestate/index.htm>

#### § 710.105 Definitions.

(a) Terms defined in 49 CFR part 24, and 23 CFR part 1 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:

*Access rights* means the right of ingress to and egress from a property that abuts a street or highway.

*Acquiring agency* means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.

*Acquisition* means activities to obtain an interest in, and possession of, real property.

*Air rights* means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

*Airspace* means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

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*Damages* means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

*Disposal* means the sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23 of the United States Code.

*Donation* means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

*Early acquisition* means acquisition of real property by State or local governments in advance of Federal authorization or agreement.

*Easement* means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

*NHS* means the National Highway System as defined in 23 U.S.C. 103(b).

*Oversight agreement* means the project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106(c)(3).

*Real property* means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

*Relinquishment* means the conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

*Right-of-way* means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

*Settlement* means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real

property or an interest therein. This term includes the following:

(1) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(2) A *legal settlement* is a settlement reached by a responsible State legal representative after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action had been filed.

(3) A *court settlement* or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

*State agency* means a department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

*State transportation department (STD)* means the State highway department, transportation department, or other State transportation agency or commission to which title 23 of the United States Code funds are apportioned.

*Uneconomic remnant* means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

*Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), and the implementing regulations at 49 CFR part 24.

### Subpart B—Program Administration

#### § 710.201 State responsibilities.

(a) *Organization*. Each STD shall be adequately staffed, equipped, and organized to discharge its real property-related responsibilities.