



## 3.2 EARLY AND ADVANCED ACQUISITIONS

### 3.2.1 Introduction

Two processes may be used, under certain circumstances, to acquire right of way in advance of the normal acquisition schedule. Both allow for relocation order approval prior to the completion of the environmental document and the Design Study Report (DSR).

- The early acquisition process can be used on projects or individual parcels on projects where the environmental process has reached a certain stage but the DSR has not yet been approved. This process cannot be used when there are federal funds in the right of way of the project. The project or project parcels must meet the criteria outlined in 3.2.2 below.
- Regional management can utilize the hardship and protective purchase process when issues associated with the project (such as budgetary or resource constraints) require more stringent criteria to early or advanced acquisition requests. As with the early acquisition, these processes are used for the acquisition of a particular parcel or a limited number of particular parcels that must be purchased earlier in the project development process than normal (in advance of the environmental document and DSR approval and the relocation order and plat approval for the entire project). Furthermore, these parcels must meet the additional criteria established to determine the particular hardship to the owner or protective benefit to the state. When there is federal funding involved, the state may receive federal aid reimbursement for hardship and protective purchase acquisitions, provided FHWA has given their prior approval to the purchase and the general policy steps have been completed.
- When Federal funding is desired for a project the region should contact BTS-RE to coordinate FHWA participation and approval.

### 3.2.2. Early Acquisition Process

General policy - Occasionally, a region may need to acquire real estate earlier than normal to allow it to bring a project's Plan, Specifications and Estimate (PS&E) to a stage ready for letting as soon as possible. The completion of the environmental process or other circumstances, however, can sometimes cause delays. Typically, right of way acquisition is not allowed to begin until after the environmental document is complete and the DSR is approved. This process is intended to provide a means for regions to get a headstart on projects (with no federal funds in the right of way) assuming certain criteria have been met.

Criteria - Early acquisition allows for the acquisition of right of way prior to DSR approval or completion of the environmental analysis process provided that all of the following has been met:

1. Advanced acquisition of property(s) did not influence decision relative to need to construct project or selection of alternative.
2. Complies with Title VI of Civil Rights Act of 1964.
3. Complies with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
4. Does not include lands protected by Section 4(f) of the DOT Act. Parcels impacted by Section 4(f) cannot be acquired until an environmental document has been approved.
5. Early acquisitions not being used to circumvent federal laws or regulations.
6. Environmental process initiated and is well on its way to completion.
7. Final project meets all requirements for normal federal aid project, such as compliance with NEPA, Historical Preservation Act, Endangered Species Act, Wetlands Executive Order, etc.
8. No issues, problems or controversy involved in the concept, or alternatives, or parcel.
9. Process follows standard procedures for plats, relocation orders, relocation plans (if required), etc. Under this process, relocation order can be approved prior to DSR.

Approval authority - Regions do not need the WisDOT, Division of Transportation Systems Development (DTSD) concurrence to utilize this procedure, but both the Bureau of Highway Development and Bureau of Technical Services-Real Estate (BTS-RE) should be advised of which projects are being acquired under this process. This can be done by e-mail or by making note of it on the R/W plat and relocation order package that is sent for our files. Reference should be made in the file that the above criteria were considered and met in reaching your decision. Regions are required, however, to secure funding approval from the Division of Transportation Investment Management (DTIM), Bureau of State Highway Programs (BSHP) before committing to an early acquisition. A R/W plat or map and approval of a relocation order are still requirements of this early acquisition process. But, when appropriate, the exceptions to the standard R/W plat as defined in 3.2.3.2 below may be used.

### **3.2.3 Hardship and Protective Purchase Process (advanced acquisition)**

Highway improvement projects require a considerable investment of time (from when the public is made aware of WisDOT real estate needs, until the real estate acquisition stage begins). During this time, the lands located in the selected corridor are subject to market influence that may cause changes. These changes could result in the costly development of needed lands or an undue hardship to individual property owners. For this reason, an advanced acquisition procedure was implemented to help reduce unnecessary costs to the State or hardships to owners whose land will ultimately be needed for the project.

General policy - In certain situations, a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor may be acquired prior to completion of the environmental document and DSR. A right of way plat or map (see 3.2.3.2 below) and the approval of a relocation order are still required. Typically these advanced acquisitions involve the purchase of an entire property or a significant portion of a property. In such situations, the following steps must first be completed (see 3.2.3.3 below for additional criteria):

1. Programming requirement has been met. Full (or partial) right of way or construction cost has been included in either: 1) six year program; 2) major project enumeration; or, 3) Bureau of State Highway Program's (BSHP) interstate program.
2. Project has been included in approved funding program or an approved transportation plan (one developed by a Regional Planning Commission and adopted and published by its governing body).

- Public has been given official notice that public hearing has been held (or) opportunity for such a hearing has been afforded.

Types of advanced acquisitions - Protective purchases are typically initiated by and for the benefit of WisDOT. A protective purchase is intended to prevent the immediate development or extensive improvement of an essential parcel of proposed right of way when the prevention of such activity is in the public interest. Hardship acquisitions are initiated by and are for the benefit of owners who can show that the marketability of their property has been adversely affected by the proposed project and that a prolonged delay in the acquisition will cause them undue economic hardship. This may occur when a property owner, due to unusual personal circumstances, cannot sell without suffering a great financial loss.

### 3.2.3.1 Use of Condemnation

WisDOT's policy is that approved hardship and protective parcels may be acquired by use of eminent domain in the event that the property owner and the department cannot agree on the purchase price of the real estate and/or land interests. Normal acquisition rules still apply. No person shall be coerced into agreeing to and "signing up" for the agency's offer by having the acquiring agency threaten to stop the acquisition process if the property owner indicates that the offer, in his/her opinion, is insufficient. Regardless of whether or not the property being acquired involves a hardship situation, normal acquisition procedures will be followed.

### 3.2.3.2 R/W Plat and Relocation Order Requirements

Statutes require that a relocation order and "a map or plat showing the old and new locations and the lands and interests required" be approved prior to acquiring a property for transportation purposes. That same requirement holds true for those parcels that are to be acquired *prior* to the project's normal acquisition schedule due to hardship or protective reasons. As a rule, such plats or maps should meet the development standards laid out in the Facilities Development Manual (FDM 12-10).

Exception to standard R/W plat (for total acquisitions) - An exception to that rule is allowable in those advanced acquisition cases where the entire property is acquired for the highway project (partial acquisitions still require a standard R/W plat). In total-take situations, the region may opt to use a simple sketch or map in lieu of the more traditional R/W plat. The map must include the following information:

- Certified survey map or out lot number, if available.
- North arrow.
- Owners name.
- Project ID number.
- Scale.
- Section, town and range.
- Subject's property lines.
- Total acreage or area of subject.
- Township, village, city or county name.
- Type of interest required (i.e., fee, easement, etc.).

A county plat book map, certified survey map (CSM), tax map or subdivision plat may be used as the basis, when appropriate. In such cases, regions only need to add such things as: project ID, type of interest, etc. that are not already indicated on the map being used. The subject property area should be highlighted or outlined. A copy of an appropriate exhibit showing selected highway or project location and its relationship to the property, and a statement describing location or alignment selection decision (i.e., alternative chosen, when, by whom, etc.) should also be included with request. It must be understood that hardship/protective purchase acquisition maps are only an interim tool to allow for early purchase of property. These parcel maps must eventually be incorporated into the project's final R/W plat that will be filed with the county clerk or recorded at Register of Deeds.

### 3.2.3.3 Advanced Acquisition Criteria

Hardship acquisitions - A written request for hardship acquisition must be received from property owner or his designated representative.

1. WisDOT has determined entire parcel or a significant portion will be needed for highway project.
2. Owner must show valid need to sell property in advance of normal acquisition schedule for a hardship request to be considered. The following are typical factors that may be considered in evaluating hardship applications. One "major or significant" factor may be sufficient to justify hardship in some cases. Typically, however, a combination of factors is more compelling.
  - Advanced age of property owner(s).
  - Ambulatory defects or diseases.
  - Change in family size.
  - Death in family that may affect living arrangements.
  - Excessive rehabilitation costs (not initiated by owner).
  - Inability to develop vacant land.
  - Loss of employment and/or financial distress involving personal or business circumstances.
  - Medical disability or disease (e.g., severe asthmatic/respiratory condition, ambulatory defects/diseases,
  - Other factors affecting economic or medical well-being.
  - Owner made reasonable effort to sell property at fair market value without success.
  - Owner's written opinion from reputable real estate broker that property will not sell because of pending project.
  - Pending foreclosure, tax sale, etc.
  - Pending lawsuits.
  - Pending retirement (e.g., owner is relocating to another state).
  - Settling of an estate.
  - Transfer of job (e.g., owner is required to relocate).
3. Owner's convenience is not a factor in considering hardship acquisitions. The burden of proof for justification is with the property owner.

Protective purchases - When the department has determined that the parcel will be needed for the highway project, a protective purchase may be considered if one or more of the following criteria apply:

1. Department determined parcel will be needed for project.
2. Field observation made of pending or ongoing development or extensive improvement to property within a project corridor.
3. Initial request may come to acquiring agency indirectly; example, local municipality requests to take action on proposed development.
4. Owner/developer has advised region of proposed development or extensive improvement of property in question and requests an advanced acquisition. Owner/developer must document zoning will allow development and proposed improvement is pending (i.e., blue prints, site development plan, request for building permit, etc.).
5. Region must be able to support that it is in public's best interest to prevent proposed development on a site by expenditure of public funds at an early time. A mere claim by property owner that he/she will develop site if not purchased, is insufficient. Burden of proof to protect public interest will be on region.

#### **3.2.3.4 Procedure for Hardships or Protective Purchases**

Once the region has determined a parcel meets at least one of the above criteria for consideration as a hardship or protective purchase, it should proceed as follows. If it does not meet the criteria, the region may go directly to a denial of hardship request.

1. Submit written request to BTS-RE acquisition facilitator. If a consultant is acting as acquiring agency on behalf of WisDOT, submittal should be transmitted to appropriate regional office. They will review, comment and transmit to BTS-RE acquisition facilitator. That request should include:
  - Comments from regional design on project development and need for property.
  - Comments regarding estimated acquisition cost.
  - Indication of federal funds in R/W.
  - Number of other potential advanced acquisitions or relocations on project.
  - Owner's letter requesting advanced acquisition.
  - Region's recommendation.
  - Sketch showing relationship between property under consideration and proposed highway.
  - Statement as to if relocation is involved (include estimated costs).
  - Status of any hazardous waste, historical, or archeological considerations/investigations.
  - Status of Finding of No Significant Impact (FONSI).
  - Summary of parcel and region's rationale for request, based on established criteria.
2. DTSD/Bureaus of Highway Development and BTS-RE will review request for project need and compliance with appropriate established criteria and inform region by e-mail of its decision. (If request does not meet criteria outlined in 3.2.3.3 above and if not approved by DTSD, region should follow steps outlined in denial of hardship request.)
3. Once request has DTSD approval for project need and criteria compliance, region will work with Bureau of State Highway Programs (BSHP) to ensure funding is available. Region should provide BSHP with DTSD approval memo as defined in step 2 above and indicate if advanced acquisition is a hardship or protective purchase. Once approvals and funding have been secured, regions proceed to steps 4 through 7 below, as applicable. If relocation is involved, these additional steps must be taken:

- An individual acquisition stage relocation plan must be developed in accordance with Section 5.2.3 of this manual. Plan will discuss individual needs of affected displacee. If more than one hardship request, an individual relocation plan for each displacee must be prepared. Note: If acquisition will not displace an individual, family, or business, include a statement to that effect in submittal request.
  - Relocation agent will review eligibility requirements with owner/occupant or tenant occupant to determine future relocation needs.
5. If federal funds are involved, WisDOT may request and FHWA may approve federal participation in acquisition of a hardship or protective parcel prior to completion of processing of final environmental impact statement. May only occur after public hearing or an opportunity for such a hearing has been afforded. Written authorization must be received from FHWA before acquisition process can begin.
  6. Right of way plat or map must be developed according to 3.2.3.2 above. When federal R/W funds are involved, copy of plat or map must be sent to FHWA with authorization request.
  7. Relocation order for proposed parcel(s) must be approved. If acquiring agency is an agent of WisDOT, acquiring agency will issue relocation order under its proper legal authority.

### **3.2.3.5 Denial of Hardship Request**

The region should advise applicant in writing if request is denied, to include reason(s) and their right to provide additional documentation and have the decision reconsidered. If denial is based on reason(s) beyond control of the individual, such as lack of project development or lack of funds, the acquiring agency shall notify the individual concerned when the problem ceases to exist. The owner should be given an opportunity to request a continuation of the application. If the individual feels the denial is not justified, they may request that the acquiring agency reconsider the case. In such an instance, the individual must submit a written request for reconsideration in which they must state the facts of the case and the reasons why they believe reconsideration is warranted. Upon receipt of such a request, the region or local acquiring agency will review the rationale behind the initial denial along with any new information or data that might have been presented. If the new information shows merit for reconsideration, the request will be resubmitted to the BTS-RE acquisition facilitator who will forward it to DTSD management for a second review and consideration.