Early Acquisition: Statewide Land Use, Environment and Transportation Planning Requirements

Examining Reimbursable State-Funded Early Acquisition under 23 U.S.C. 108(c)(3)(C)

FINAL REPORT
August 2018

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Ordinarily, the acquisition of properties or real property interests for federally-assisted projects does not begin before the completion of the environmental review process that the National Environmental Policy Act (NEPA) requires. In some situations, however, an agency may acquire property in advance of NEPA or other environmental determinations through a process called early acquisition. This report describes how State Department of Transportation have interpreted and implemented 23 U.S.C. 108(c)(3)(C), which requires "a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition." The report builds upon stakeholder input to describe how States could most effectively and efficiently meet the comprehensive and coordinated planning requirement.

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ABBREVIATIONS AND ACRONYMS

1956 Act	Federal-Aid Highway Act of 1956
Caltrans	California Department of Transportation
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CIB	California Interregional Blueprint
DLCD	[Oregon] Department of Land Conservation & Development
DOT	Department of Transportation
ETDM	Efficient Transportation Decision Making Process
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
GIS	Geographic Information System
HEPP	Federal Highway Administration's Office of Planning
HEPR	Federal Highway Administration's Office of Real Estate Services
ISTEA	Intermodal Surface Efficiency Act of 1991
LPA	Local Public Agencies
LRTP	Long Range Transportation Plan
MAP-21	Moving Ahead for Progress in the 21st Century
MnDOT	Minnesota Department of Transportation
MPO	Metropolitan Planning Organization
MTP	Metropolitan Transportation Plan
NCHRP	National Cooperative Highway Research Program
NDOR	Nebraska Department of Roads
NEPA	National Environmental Policy Act
NPRM	Notice of Proposed Rulemaking
ODOT	Oregon DOT
ORS	Oregon Revised Statute
PEL	Planning and Environment Linkages
RAMP	Regional Advance Mitigation Planning
ROW	Right-of-Way
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SAMI	Statewide Advance Mitigation Initiative
SCS	Sustainable Communities Strategy
SEPA	State Environmental Protection Act
STIP	Statewide Transportation Improvement Program
TEA-21	Transportation Equity Act for the 21st Century
TIP	Transportation Improvement Program
TRB	Transportation Research Board
TxDOT	Texas Department of Transportation
Uniform Act	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
UPWP	Unified Planning Work Program
U.S.C.	United States Code
UDOT	Utah Department of Transportation
Volpe Center	John A. Volpe National Transportation Systems Center

EXECUTIVE SUMMARY

Ordinarily, the acquisition of properties or real property interests for federally-assisted projects does not begin before the completion of the environmental review process that the National Environmental Policy Act (NEPA) requires. In some situations, however, an agency may acquire property in advance of NEPA or other environmental determinations through a process called early acquisition. The enactment of Moving Ahead for Progress in the 21st Century (MAP-21, Subtitle C, Sec. 1302) [1] provided new and revised methods for early acquisition, enhancing the options for State Departments of Transportation (State DOTs) to seek reimbursement for eligible acquisition costs from title 23 apportioned funds.

Among the MAP-21 amendments was the revision of the 23 U.S.C. 108(c) process under which a State DOT can obtain Federal-aid reimbursement for the costs of early acquisitions carried out by the State DOT at its own expense. Among the terms and conditions for Federal reimbursement, section 108(c)(3)(C) requires a State must have:

> *a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition.*

This language first appeared in section 108(c) in 1991, as a result of the enactment of section 1017 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240) (ISTEA). The ISTEA Conference Report included a summary that described the purpose of the language as "...allow[ing] states that have rigorous planning and environmental impact analysis requirements to purchase right-of-ways prior to obtaining Federal approval or authorization... if certain conditions are satisfied." 102 Congress, Report 102-404 at 375 (November 27, 1991).

This report describes how State DOTs have interpreted and implemented 23 U.S.C. 108(c)(3)(C), and builds upon stakeholder input to describe how States could most effectively and efficiently meet the comprehensive and coordinated planning requirement. In particular:

- State DOTs have interpreted the "mandatory comprehensive and coordinated land use, environment, and transportation planning process" in different ways. Some were concerned the language referred to one planning process, while others have viewed the language as referring to the integration of three separate plans into one overarching process.

- Within the parameters of the statute, the Federal Highway Administration (FHWA) accords States discretion to use a single process or a combination of multiple processes to satisfy the requirements in 23 U.S.C. 108(c)(3)(C). Some interviewees believed that the environmental aspect of the plan could be considered a statewide environmental assessment. Others questioned what might constitute the environmental assessment.

[1] P.L. 112-141 available at https://www.gpo.gov/fdsys/pkg/PLAW-112publ141/html/PLAW-112publ141.htm

- Some State DOTs have requested and obtained the Governor's certification of the comprehensive and coordinated planning process with no issues. In other States, the Governor's authority to certify the planning process has been delegated to other State officials, such as the State Secretary of Transportation. Others still have been unsure whether the legislation allows for delegation, or how to make such delegation workable under State law. Consistent with FHWA's interpretation of similar language in the planning statutes (23 U.S.C. 134-135), FHWA allows a Governor to delegate to another State official the authority to issue the planning process certification required under 23 U.S.C. 108(c)(3)(C).

- A majority of stakeholders indicated that their respective States were interested in taking advantage of Federal reimbursement for State-funded early acquisition in the future. This reflects general feedback that FHWA has collected from State DOTs. States have indicated to FHWA that they believe the reimbursement option may present an opportunity to save time and costs since they are able to acquire needed land early without compromising their ability to comply with planning and environmental requirements.

1. INTRODUCTION

The FHWA sponsored this research to learn more about how State DOTs have reported meeting the statutory criteria under 23 U.S.C. 108(c)(3)(C). The report offers an analysis of how State DOTs have interpreted or implemented the requirement for "mandatory comprehensive and coordinated land use, environment, and transportation planning processes;" challenges they have met in doing so; and opportunities that exist to further clarify the section 108(c)(3)(C)'s requirements.

- Section 2, *Background*, describes the purpose of this report, and gives overviews of the land use, environment, and transportation planning processes.

- Section 3, *Legislative History*, provides an overview of 23 U.S.C. 108(c)(3)(C) and includes a brief history of the provision.

- Section 4, *Research Outreach*, presents a summary of responses to a questionnaire regarding State-level land use, environment, and transportation planning processes. The project team that prepared this report distributed the survey to FHWA Division Offices. It also describes the project team's process for conducting follow-up telephone discussions with select questionnaire respondents.

- Section 5, *Land Use, Environment, and Transportation Planning Processes*, provides background information on the types of land use, environment, and/or transportation planning processes that may exist in different States. This section also includes specific examples of how States coordinate land use, environment, and transportation planning processes.

- Section 6, *Observations and Findings*, describes the key insights that stakeholders provided, including different interpretations and approaches to complying with 23 U.S.C. 108(c)(3)(C). The section conveys barriers to implementation that some States have experienced.

- Section 7, *Conclusions*, suggests areas where further clarification and guidance would likely help States in moving forward with State-funded early acquisition eligible for Federal reimbursement and the benefits of early acquisition.

- Appendix A includes contact information for stakeholders who participated in interviews.

- Appendix B provides a glossary of terms.

- Appendix C provides an annotated bibliography of relevant resources.

- Appendix D provides a summary of Federal statutory and regulatory requirements for State funded Early Acquisition eligible for Federal reimbursement.

- Appendix E provides effective practices for determining whether the State has a mandatory, comprehensive and coordinated land use, environment and transportation planning process.

2. BACKGROUND

Relative to the terms used at 23 U.S.C. 108(c)(3)(C), the term "land use" refers to the process by which some local governments manage and regulate the development of land within their jurisdictions; the term "environmental" refers to the process of assessing the potential impacts of land use, transportation and other actions on the human and natural environment for the purpose of making informed decisions about land use and other actions that could affect the environment; the term "transportation planning" refers to a cooperative process designed to foster involvement among transportation system users to identify and propose transportation improvements. This section describes these processes and elaborates on how they are linked to early acquisition options.

A State agency may initiate acquisition of real property interests for proposed transportation projects at any time it has the legal authority to do so. (23 CFR 710.501(a)). Ordinarily, the acquisition of properties for federally-assisted projects does not begin before the completion of the environmental review process, including NEPA. However, in some instances, agencies may acquire property prior to the completion of the NEPA process, and remain eligible for Federal-aid funding. Such "early acquisitions" provide States with an option to acquire property for corridor preservation, access management, or other purposes, before any FHWA project authorization or agreement is obtained. There are four options for early acquisition under 23 U.S.C. 108 and 323:

1. State-funded Early Acquisition without Federal Credit or Reimbursement,
2. State-funded Early Acquisition Eligible for Future Credit, [2]
3. *State-funded Early Acquisition Eligible for Future Reimbursement,* and
4. Federally Funded Early Acquisition Project.

In each case, the State must determine, and FHWA must concur, that the early acquisition did not influence the environmental review process for the proposed transportation project, including the decision on the need to construct, the consideration of alternatives, or the selection of the design or location. (23 CFR 710.501). In order to maintain eligibility for future Federal-aid reimbursement on the project, all early acquisition activities funded entirely with State funds must comply with the requirements of 23 CFR 710.501(d)).[3]

Accordingly, a State agency may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the State agency receives Federal-aid reimbursement if the State agency demonstrates, and the FHWA concurs, that the early acquisition is carried out in compliance with all applicable Federal requirements.

Under 23 U.S.C. 108(c), early acquisition project costs incurred by a State agency are eligible for reimbursement from title 23 funds apportioned to the State if the real property interests are

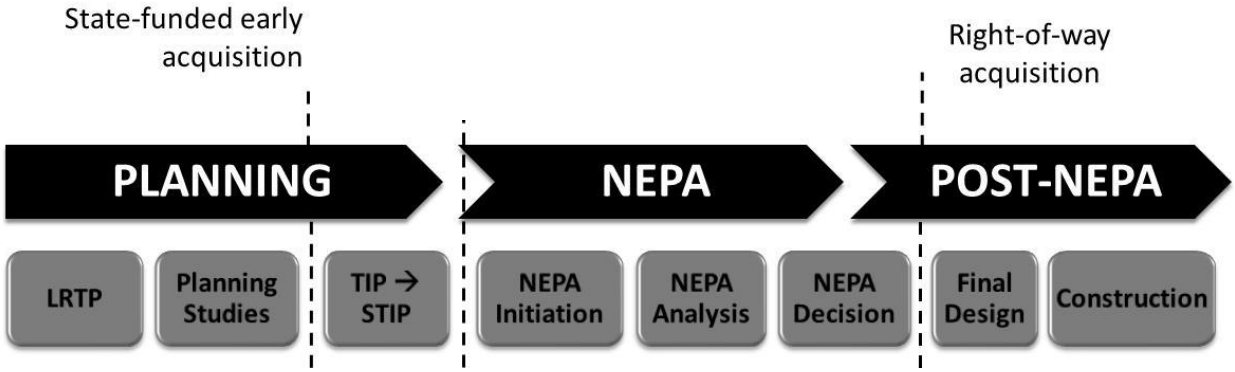
[2] Authority for the credit is found in 23 U.S.C. 323(b).
[3] The requirements of 23 CFR 710.203(b) (direct eligible costs) also apply.

subsequently incorporated into a project eligible for surface transportation block grant program funds. This type of reimbursement for eligible State acquisition costs can occur only if the terms and conditions in section 108(c)(3) are satisfied.[4] The focus of this report is on the requirement at 23 U.S.C. 108(c)(3)(C), which requires a finding by the Secretary that:

> *the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition.*

This report considers several State DOTs' thoughts on and approaches to State-funded early acquisition eligible for future reimbursement, offering insights into how the planning criteria of 23 U.S.C. 108(c)(3)(C) have been interpreted and applied.

Figure 1: Where State-funded early acquisition eligible for future reimbursement typically fits within the transportation decision-making process



2.1 Land Use Planning

The statutes and regulations for the Federal-aid Highway Program do not include any land use planning requirements. However, land use is a consideration in the transportation planning process applicable to the program.

In the 1920s, the U.S. Department of Commerce published two model laws: The Standard State Zoning Enabling Act and the Standard City Planning Enabling Act. Although some procedural and substantive components have changed, the "Standard Acts," as the model laws are known, established a basic foundation for land use planning and zoning in the U.S. that still stands today. States have since passed legislation enabling local governments to conduct land use planning and to implement zoning, but do not usually require that they do so.

2.2 Transportation Planning

Transportation planning recognizes the critical links between transportation and other

[4] *See also* implementing regulations in 23 CFR 710.501(d).

community goals. States often have transportation planning requirements embedded in their laws. The State requirements are independent of the transportation planning requirements under 23 U.S.C. 134-135 that apply when States accept Federal-aid Highway Program funds.

At the Federal level, the steps involved in transportation planning include:

- Monitoring existing conditions;
- Forecasting future population and employment growth, including assessing projected land uses in the region and identifying major growth corridors;
- Identifying current and projected future transportation problems and needs and analyzing, through detailed planning studies, various transportation improvement strategies to address those needs;
- Developing long-range plans (LRTPs) and short-range programs of alternative capital improvement and operational strategies for moving people and goods (Transportation Improvement Programs, or TIPs, at the MPO level; Statewide Transportation Improvement Programs, or STIPs, at the State level);
- Estimating the impact of recommended future improvements to the transportation system on the human and natural environment, including air quality; and
- Developing a financial plan for securing sufficient revenues to cover the costs of implementing strategies.

(23 U.S.C. 134-135). Under the Federal transportation planning requirements, State DOTs, Metropolitan Planning Organizations (MPOs)[5] and Regional Planning Organizations carry out transportation planning responsibilities in coordination with the general public, Tribal and local agencies and others. Their roles and level of involvement in land use decision-making vary according to State and local law and policies. However, State DOTs and MPOs are responsible for consultation with State and local agencies responsible for land use management, comparing transportation planning efforts with land use plans, maps and inventories, and using current land use estimates and assumptions when updating planning products.

Together, the Federal metropolitan and statewide transportation planning processes are designed to promote consistency between transportation improvements and State and local planned growth and economic development patterns.

2.3 Environment

States, like the Federal government, have adopted a variety of environmental laws to protect the human and natural environments, and to ensure informed decision making about development and other activities. The scope of State environmental requirements, and the means for administering those requirement, vary.

At the Federal level, FHWA promotes the use of a planning tool available for Transportation agencies to use to integrate consideration of planning and environmental issues. Using a

[5] MPOs are transportation policy-making bodies composed of representatives from local government and transportation agencies in metropolitan areas.

Planning and Environmental Linkages (PEL) study allows consideration of the environment at the same time transportation planning issues are evaluated.[6] A PEL study is any type of transportation planning study conducted at the corridor or subarea level. When applicable procedures are followed, the resulting information, analyses, and decisions resulting from this approach can be incorporated into and relied upon later during the NEPA analysis. The PEL approach may also help identify early acquisition opportunities and impacts early in the transportation planning process.

Section 108(c)(3)(C) Determinations

The following items, as well as Appendix E, may be useful in evaluating whether a State has a mandatory, comprehensive and coordinated land use, environment, and transportation planning process that meets 23 U.S.C. 108(c)(3)(C) requirements. Relevant factors may include whether the State's statutes or regulations require the development of plans or other documents that individually, or collectively, establish how the State will:

- Increase the accessibility and mobility of people and freight.
- Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns.
- Coordinate planning activities with regional and local planning organizations, local governments, and Tribes.
- Coordinate planning activities with statewide trade and economic development planning activities and related multistate planning efforts.
- Develop long range statewide plans in consultation with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.
- Discuss, at policy, program, or strategic planning levels, potential environmental mitigation activities and potential areas to carry out these activities.

[6] Available at https://www.fhwa.dot.gov/innovation/everydaycounts/edc-1/PEL-quest-faqs.cfm

Early Acquisitions and Corridor Preservation

The term "corridor preservation" refers to techniques that state and local governments use to protect existing or planned transportation corridors from inconsistent development, in an effort to minimize negative environmental, social, or economic impacts. As researchers (Fiol *et al.* 2012) have pointed out, given limited financial resources and other limitations, State agencies have become increasingly creative in their corridor preservation and ROW acquisition methods. Their report offers an overview of the state of the practice in using early acquisition for corridor preservation, including Utah where the legislature created a Corridor Preservation Revolving Fund. Utah's fund emphasizes the need to preempt commercial and industrial development on bare land in order to establish an open and transparent process to prevent hardship situations. See the report for more information and advance acquisition right-of-way examples, from Minnesota, Utah and North Carolina.

Programs for Sustainability and Preservation

Transportation agencies have developed several alternative programs to support sustainability initiatives as a part of corridor preservation activities. The programs have addressed blight and improved livability and economic development. For example, Pennsylvania DOT developed the Pennsylvania Community Transportation Initiative to link transportation investments with land use planning and decision-making within communities. Similarly, Oregon DOT has developed a Flex Funds Program to support sustainable non-highway transportation projects, programs, and services that positively affect modal connectivity, mobility and access, livability, energy use, and the overall operation of the transportation system.

For more information on these programs see Fiol *et al* at
http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP20-68A_10-01.pdf

3. LEGISLATIVE HISTORY OF 23 U.S.C. 108(c)(3)(C)

The following section summarizes the legislative history of 23 U.S.C. 108(c)(3)(C).

Section 108(c) of Title 23, United Stated Code sets the conditions under which States that carry out early acquisitions entirely with State funds may later seek Federal-aid reimbursement for the eligible costs of those acquisitions. Section 108(c)(3)(C) stipulates that in order for a State to maintain eligibility to later receive Federal reimbursement for the costs of the project acquisition, the State must have "a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law" and the acquisition must be "certified by the Governor as consistent with the State plans before the acquisition." The following subsections describe the origin of section 108(c)(3)(C).

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

In ISTEA, Congress enacted provisions to improve the transportation planning process at both the Metropolitan and State levels. That 1991 reauthorization of the Federal-aid Highway Program marked a shift in national transportation policy by emphasizing a more comprehensive planning approach and supporting the consensus view that "transportation planning needed to be prioritized, strengthened, integrated, focused, made more uniform, and given tools for better management of decision-making."[7] As such, the bill placed greater importance on decision-making in the context of a coordinated, comprehensive planning process, taking into consideration the entire transportation system of the impacted area or State.

ISTEA 1017(c) required States and MPOs to consider preservation of ROW for future transportation projects, including the identification of future corridors as part of the statewide planning process. In section 1017(b) of ISTEA, Congress amended 23 U.S.C. 108 to allow States to acquire ROW in advance of Federal approval or authorization and to receive reimbursement with Federal funds if certain conditions were satisfied. The provision was codified originally as 23 U.S.C. 108(d), but later redesignated as 23 U.S.C. 108(c) (hereinafter referred to by its current designation, section 108(c)). One of the conditions in the 1991 statute, now set forth in 23 U.S.C. 108(c)(3)(C),[8] was that the State have a "mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition."

As part of the discussion of this early acquisition provision in the Congressional Record (137 Cong. Rec. p. 35619), it was noted that this new provision for advance acquisition and reimbursement would allow States to be better able to identify and preserve corridors with the express intent of protecting environmentally sensitive areas. This amendment expanded opportunities for conducting early acquisition and allowed for a more streamlined acquisition process. As noted in the ISTEA Conference Report, the provision was contained in the Senate version of reauthorization, but there was no equivalent in the House version. The Senate

[7] Legislative History of the Intermodal Surface Efficiency Act of 1991 Public Law 102-240 25, pp. 25-28
[8] Originally codified as 23 U.S.C. 108(c)(2)(C).

language was included in the final legislation.[9] The ISTEA Conference Report set forth the Senate's summary of the provision. The parts of the summary relevant to the planning requirements that today appear in 23 U.S.C. 108(c)(3)(C) state:

> This amendment will allow states that have rigorous planning and environmental impact analysis requirements to purchase right-of-ways prior to obtaining Federal approval or authorization and to use Federal funds to reimburse the costs of early acquisition if certain conditions are satisfied. As a result, States will be better able to identify and preserve corridors with the express intent of protecting environmentally sensitive areas.
>
> To take advantage of the authority provided in this section, the State must satisfy a number of conditions, including demonstrating to the Secretary that... (3) the state has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under state law; (4) the acquisition is certified by the Governor as being consistent with the state planning process....[10]

Transportation Equity Act for the 21st Century (TEA-21 Sec. 1301)

Enacted in 1998, TEA-21, Sec. 1301 redesignated section 108(d) as section 108(c). The legislation made no changes to the planning provision that now appears in 23 U.S.C. 108(c)(3)(C).

Moving Ahead for Progress in the 21st Century Act (MAP-21 Sec. 1302)

Section 108(c) was not substantially amended until July 2012, with the passage of MAP-21.[11] MAP-21's changes to 23 U.S.C. 108 aimed to provide greater clarification and direction regarding early acquisition of real property interests, including federally-funded early acquisitions.[12] Section 1302(b) of MAP-21 added a new paragraph (1) to section 108(c), which confirms States may carry out State-funded early acquisitions prior to completion of NEPA. To accommodate the introduction of the new paragraph (1), Congress redesignated the existing paragraphs, so that section 108(c)(2)(C) became 23 U.S.C. 108(c)(3)(C). The legislation made no changes to the planning provision that now appears in 23 U.S.C. 108(c)(3)(C).

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[9] H. Report No. 102-404, at 375-376 (1991).
[10] *Id*.
[11] Additional information on amendments to 23 U.S.C. 108 are available at http://uscode.house.gov/.
[12] Questions and Answers on Early Acquisition and the Uniform Act as a result of MAP-21 are available at www.fhwa.dot.gov/map21/qandas/qauniformact.cfm.

4. RESEARCH OUTREACH

This section outlines the questionnaire and telephone interview methods used to collect information on States' experiences regarding land use, environment, and transportation planning processes, as well as early acquisition. A table of responses at the end of the section summarizes the current state of the practice among contributing States.

4.1 Questionnaire

From November 2013 to January 2014, the project team surveyed all FHWA Division Offices as to whether their counterpart State DOTs conduct early acquisitions. One key question asked whether States had determined or believed that they had a comprehensive and coordinated land use, environment, and transportation planning process as described in 23 U.S.C. 108(c)(3)(C). This question was used to help gauge the rationale as to why States may or may not believe they have met this requirement. It was also used to help the project team identify States for more detailed follow-up telephone interviews.

4.2 Interviews

Based on questionnaire responses, follow-up telephone interviews were conducted from December 2013 through March of 2014 with representatives from Division Offices in seven States. The States were selected in order to represent the variety of information on 23 U.S.C. 108(c)(3)(C) interpretations, applications, and barriers to implementation collected. Participants from the FHWA Division Offices included realty specialists, environmental protection specialists, and planners; for two of the interviews, State DOT counterparts also participated.[13]

Interviewees were asked to expand upon their questionnaire answers. The FHWA Division Offices that responded "yes" to having met the statewide planning requirement were asked a series of questions related to interpretation, documentation, and application of the requirement. These States were also asked about the impact of this requirement as well as challenges, barriers, and any further clarifications in meeting the requirement. The FHWA Division Offices that responded "no" were asked to discuss the reasons why their States believed they did not meet the 23 U.S.C. 108(c)(3)(C) requirements and whether there were plans to try to do so.

4.3 Response Synthesis

Of the thirteen FHWA Division Offices that responded to the survey, six indicated that the DOTs in their States currently conduct State-funded early, or "at risk," acquisitions of real property, with one additional Division Office indicating that the DOT in its State has proposed to do so (See Table 1.) Of these seven respondents, four indicated that their State DOTs currently conduct State-funded early acquisitions that are eligible for reimbursement out of funds apportioned to the State, again with one additional State having proposed to do so. Additionally, eight FHWA Division Offices responded that their States had determined that they have a

[13] See Appendix A for a list of stakeholders who were interviewed.

comprehensive and coordinated land use, environment, and transportation planning process under State law.

Table 1. Summary of Questionnaire and Interview Responses

	State-funded early acquisitions of real property currently conducted?	Determination made that State has a comprehensive and coordinated land use, environment, and transportation planning process under State law?	State-funded early acquisitions of real property eligible for reimbursement out of funds apportioned to the State currently conducted?
California	Yes	Yes	Yes
Maryland	Yes	Yes	Yes
Nevada[14]	Yes	Yes	Yes
Oregon	Yes	Yes	Yes
Kentucky	Proposed	Yes	Proposed
Florida	Yes	Yes	Not Yet
Missouri	Yes	No	No
Delaware	No	Yes	No
Massachusetts	No	Yes	No
Nebraska	No	No	No
Alaska	No	No	No
North Dakota	No	No	No
Wyoming	No	No	No

Participating FHWA Division Offices represented States falling into three general groups:

1) States that had determined that they had a comprehensive and coordinated land use, environment, and transportation planning process under State law, and that subsequently conduct State-funded early acquisitions eligible for Federal reimbursement.

2) States that did not believe they had a comprehensive and coordinated land use, environment, and transportation planning process under State law, and thus do not conduct State-funded early acquisitions eligible for Federal reimbursement.

3) States that had determined that they had a comprehensive and coordinated land use, environment, and transportation planning process under State law, but did not currently conduct State-funded early acquisitions eligible for Federal reimbursement.

How these different positions have affected States' consideration of Federal reimbursement of State-funded early acquisition is discussed in more depth in the next section.

[14] As of the time of this study, the FHWA Division Office realty officer for Nevada also served as the realty officer for Utah. During the interviewed scheduled to discuss early acquisition in Nevada, information about Utah was also provided to the research team. Although Utah was not included as a case study state, relevant information about Utah is included in sections below.

5. LAND USE, ENVIRONMENT, AND TRANSPORTATION PLANNING PROCESSES

This section provides background information on the types of land use, environment, and/or transportation planning processes that may exist in different States. This section also includes specific examples of how States coordinate land use, environment, and transportation planning processes. Descriptions of State and local legal requirements are provided for illustrative purposes only. The descriptions were derived from secondary sources, and do not constitute legal interpretations or advice from FHWA.

5.1 Examples of Coordinated Land Use, Environment, and Transportation Planning Processes

The examples highlighted below illustrate how the interviewed States are coordinating land use, environment, and transportation planning processes. They represent a selection of the wide variety of approaches that States are taking to synchronize these processes.

5.1.1 California

There are currently 533 incorporated cities and counties in California. Each of these jurisdictions adopt "a comprehensive, long-term general plan for [its] physical development."[15] This general plan is the official city or county policy regarding the location of housing, business, industry, roads, parks, and other land uses, protection of the public from noise and other environmental hazards, and conservation of natural resources. The California Government Code (Sections 65000 et seq.) contains many of the laws pertaining to the regulation of land uses by local governments including: the general plan, specific plans, subdivisions, and zoning.[16]

The statute provides that the elements and parts of the General Plan comprise an integrated, internally consistent (i.e. coordinated) and compatible statement of policies.
General Plan consistency is looked at in two ways – (1) internal consistency; and (2) vertical consistency. Government Code section 65300.5 requires a General Plan to be "integrated and internally consistent and compatible state of policies…" In terms of vertical consistency, the Legislature intended for all local programs, regulatory actions, and fiscal decisions – including those relating to land use, transportation, and the environment -- be consistent and done in coordination with the General Plan (Government Code section 65860(a)).

Coordination between land use, transportation, and environment also occurs through the long-range transportation process at the regional level. Pursuant to the Sustainable Communities and Climate Protection Act of 2008 (Senate Bill 375), California's MPOs developed an integrated

[15] California Planning and Zoning Law 65300. Plan required. www.opr.ca.gov/docs/complete_pzd_2011.pdf
[16] Adapted from the California Governor's Office of Planning and Research's "A Citizen's Guide to Planning" at www.civilliberties.org/htdocs/citizenguidetoplanning.pdf;

transportation, land use, and housing plan known as a Sustainable Communities Strategy (SCS).[17] An SCS must document how the long-range planning process will reduce per capita regional greenhouse gas emissions associated with passenger vehicles. In terms of environment, the statewide California Environmental Quality Act (CEQA) requires that LRTPs undergo environmental review. Similar to NEPA for Federal actions, CEQA requires State and local agencies to identify and disclose the significant environmental impacts of their actions and to avoid or mitigate those impacts.[18]

While the SCS represents a regional vision for transportation, housing, and land use, the California Interregional Blueprint (CIB) developed by the California Department of Transportation (Caltrans) determines how an SCS impacts the statewide multimodal transportation system. The CIB presents the State's approach to deliver an integrated, multimodal interregional transportation system, while complementing regional transportation plans and land use visions. The CIB provides the foundation for the California Transportation Plan.[19]

The Caltrans is also pioneering advance mitigation efforts through Regional Advance Mitigation Planning (RAMP). RAMP brings together State and Federal agencies to identify strategies for anticipated mitigation needs and allows for natural resources to be protected or restored in advance of constructing infrastructure projects. While working on RAMP, Caltrans found the need to identify available mitigation solutions that could meet different types and scales of mitigation needs on a statewide basis. As a result, Caltrans created the Statewide Advance Mitigation Initiative (SAMI), which provides a diverse, strategic portfolio of mitigation solutions, such as wetland restoration projects and mitigation and conservation banks. With SAMI, Caltrans can leverage funds for timely mitigation acquisitions early in the planning stages to satisfy requirements for State infrastructure projects, including those identified through RAMP.[20]

5.1.2 Florida

Florida has a long history of growth management, including local government comprehensive plans with a minimum 10-year planning horizon.[21] The purpose of the provisions of the Local Government Comprehensive Planning and Land Development Regulation Act is to protect human, environmental, social and economic resources; and to maintain the character and stability of present and future land use. (Florida Title XI 163.3161(7)). The Florida Growth Management Act requires that every city and county in Florida prepare a comprehensive plan of land use, together with controls that implement the plan. The adopted comprehensive plan has a

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[17] California's Sustainable Communities and Climate Protection Act of 2008: www.arb.ca.gov/cc/sb375/sb375.htm.
[18] See www.ceqanet.ca.gov/ for more information on CEQA. California guidance on integrating NEPA and CEQA reviews is available at http://energy.gov/sites/prod/files/NEPA_CEQA_Draft_Handbook_March_2013_0.pdf.
[19] California's Transportation Plan is available at: http://www.dot.ca.gov/dist11/departments/planning/planningpages/ctp.htm
[20] Information on RAMP is available at:https://rampcalifornia.water.ca.gov/documents/18/dfe8a475-27cc-4985-8fce-5d42f2423ca6
[21] Florida's Growth Policy; County and Municipal Planning; Land Development Regulation is available at: www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0163/0163PartIIContentsIndex.html&StatuteYear=2010&Title=-%3E2010-%3EChapter%20163-%3EPart%20II.

"Transportation Element," and human and natural environmental elements which must be consistent with the State transportation plan, the MPO's LRTP, and identifies the necessary roadway system improvements to best accommodate both present and future land uses (Florida Title XI 163.3177(6)(c), (d), (e), (g), and (j)). The State transportation plan and MPOs' LRTPs, in turn, are developed in consultation with State and/or local resource agencies and incorporate environmental and land use considerations. At the State level, Florida DOT (FDOT) is responsible for adopting and implementing a five-year Work Program consistent with the adopted local government comprehensive plans.[22] Consistency reviews take place at multiple levels of government to ensure all of these planning processes are well coordinated.

5.1.3 Maryland

The State of Maryland entrusts local jurisdictions with land use planning authority to guide growth and development through the Land Use Article of the Maryland Annotated Code.[23] The Land Use Article delegates planning and land use regulatory authority to all non-charter counties and all incorporated municipalities, except for Montgomery and Prince George's counties and some of their jurisdictions.

In 2009, Maryland passed its "Smart, Green and Growing" legislation, which includes the creation of 12 planning "visions" to advance more sustainable growth.[24] The visions include quality of life and sustainability, transportation, environmental protection, resource conservation, and stewardship. As part of local comprehensive plans, local jurisdictions must include the visions and showcase how they plan to advance the visions through zoning regulations and ordinances. Additionally, comprehensive plans are reviewed at the State level to ensure consistency with the State's growth management laws. In 2011, the State published "PlanMaryland," which was its first long-range plan for sustainable growth.[25] This plan provides for State coordination and implementation of guidelines for a Sustainable Transportation/Land Use System as well as for water and natural resources protection, among others.

5.1.4 Oregon

Oregon has a robust, well-established land use planning process, which was first implemented in 1973. The Oregon State Legislature maintains and publishes the Oregon State Statutes, including those on land conservation and development.[26] At the statewide level, Oregon develops 19 different goals ranging from land use planning to environment to transportation.[27] The State Department of Land Conservation & Development (DLCD) is in charge of controlling and

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[22] FDOT Work Program Instructions. Part II – Chapter 3 A. www.fdot.gov/workprogram/Development/PDFInstructions/WorkProgramInstructions.pdf

[23] The Land Use Article of the Maryland Annotated Code is available at: www.mdp.state.md.us/OurWork/localplanning.shtml

[24] Maryland's Smart, Green and Growing legislation can be found at: https://lawoftheland.wordpress.com/2009/07/11/one-maryland-smart-green-and-growing-legislative-package-enacted/

[25] Plan Maryland is available at http://www.adaptationclearinghouse.org/resources/planmaryland-md-2011-executive-order-01-01-2011-22.html

[26] The Oregon State Statutes on Land Conservation and Development are available at: www.oregon.gov/LCD/Pages/state_statutes.aspx.

[27] Additional information on Oregon's 19 statewide planning goals is at: www.oregon.gov/LCD/Pages/goals.aspx.

maintaining the goals. Each political subdivision (e.g., city, county, agricultural district, and the regional government for the Portland area) has a comprehensive land use plan in place (Oregon Revised Statutes (ORS) Chapter 197). They each identify local goals for the protected resources in the 19 statewide goals and then define how those local goals/resources are going to be preserved. If a proposed activity deviates from the plan, the relevant agency must seek a "goal exception," which requires several layers of approval up through the DLCD (ORS 197). After DLCD approves the plans, all other local activities, including planned transportation projects (and the federally-mandated 20-year State Transportation Plan) must align with that local plan. In the transportation context, each city or county will identify corridors that they plan to develop and what actions they plan to take. Thus, the State's environmental planning objectives are embedded in the statewide land use plan; in turn, transportation projects must be consistent in scope and application with the land use plan.

Statewide Planning Goal 12 is "Transportation." It forms the basis for Oregon's Transportation Planning Rule[28] and ODOT's State Agency Coordination Rules.[29] The Transportation Planning Rule guides local Transportation System Plan development while the State Agency Coordination rule establishes how ODOT produces a unified planning program that makes up the state Transportation System Plan. State facilities and systems plans are coordinated with local government Transportation System Plans. Environmental analysis and integration becomes more detailed as the plan detail increases. The Oregon Transportation Plan addresses general recognition of environmental stewardship through goal and policy statements while facility plans can address environmental issues with more detail at the conceptual design level. Additional information is available in Oregon DOT's Planning and Environment Linkages (PEL) guidance.

5.1.5 Utah

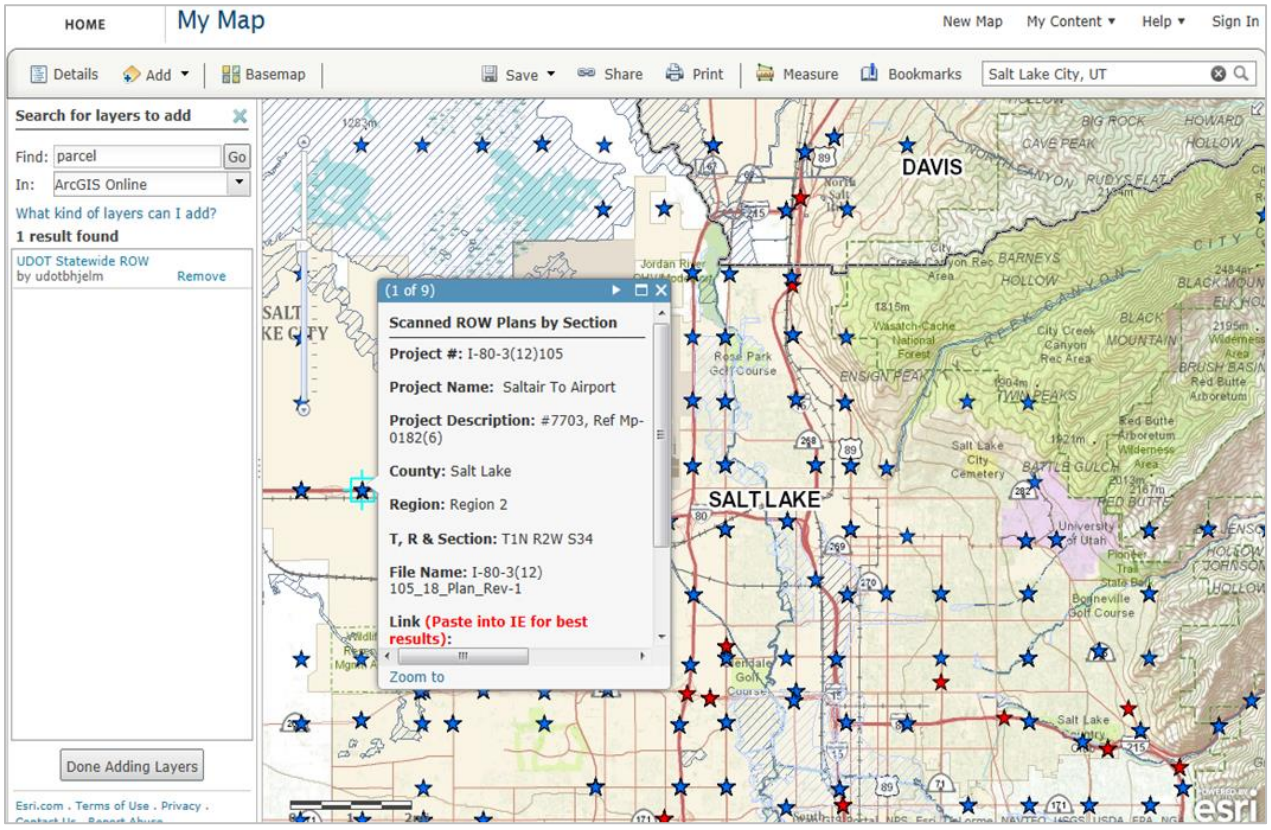
In 1991, the Utah State Legislature mandated that each city and each county "shall prepare and adopt a comprehensive general plan" to deal with the growth occurring within its boundaries.[30] The role of the general, or comprehensive, plan in Utah is to plan for the physical development of the community. Typically, a general plan forecasts the development of a community to a future point in time or future point in the community's growth. This particular plan may provide for, among other things, transportation opportunities, the reduction of waste of resources, the protection of air quality, and energy conservation.[31]

UDOT has developed UPlan, a cloud-based, interactive GIS mapping tool, to compile, integrate, and display a wide range of transportation, land use, and environmental data from numerous public and private sources (Figure 2). Initially developed in 2007 as a resource to support transportation planning, UPlan has evolved to address multiple goals over time. The tool currently functions as an information clearinghouse, a platform to support geospatial analysis of transportation projects, and as a mechanism to improve collaboration within UDOT and between the agency and its stakeholders. UPlan has helped UDOT to strengthen its partnerships with

[28] The Transportation Planning Rule is available at www.oregon.gov/LCD/Pages/Rulemaking_TPR_2011.aspx.
[29] Oregon Administrative Rules 731-015-0005
[30] Utah Code Title 17-27a-201
[31] See https://le.utah.gov/xcode/Title10/Chapter9A/C10-9a-P4_1800010118000101.pdf

natural resource agencies to improve project delivery by accelerating the review process. UPlan is an example of a tool a State might utilize to ensure land use and environmental considerations are taken into account for transportation planning and decision-making.[32]

Figure 2. Screenshot of UPlan showing a customized topographic base map, with environment and parcel data added.



[32] UPlan is accessible at: http://uplan.maps.arcgis.com/home/.

6. OBSERVATIONS AND FINDINGS

This section provides an in-depth review of input from interviewed States. It synthesizes overarching observations and findings, providing insight into how States are interpreting and applying 23 U.S.C. 108(c)(3)(C), as well as barriers to implementation.

6.1 Interpretation of Comprehensive and Coordinated Land Use, Environment, and Transportation Planning Process Requirement

6.1.1 Flexibility in interpretation of 23 U.S.C. 108(c)(3)(C) has facilitated greater interest in using the Federal reimbursement of State-funded early acquisition option

Interviewees discussed their varying interpretations of what constitutes a mandatory comprehensive and coordinated land use, environment, and transportation planning process. Several interviewees indicated that they were interpreting the statewide planning requirement to not be one overarching planning process, but rather a combination of environment, land use, and transportation planning processes that are consistent and coordinated. They also indicated that these processes do not necessarily need to be supported at the statewide level by three separate plans or policies, but could instead be integrated and embedded as part of different types of plans at the State, regional, or local level. This flexible interpretation has allowed multiple States to move forward with obtaining the Governor's (or his or her designee) certification of the process.

Interviewees noted the major factor in determining whether a State had met the requirement was whether the State could demonstrate to FHWA that under State law there is an established and cohesive process or processes for taking land use, environmental, and transportation factors into consideration. For example, California pointed to its long-range transportation planning process at the MPO level and how it takes into account land use and environmental elements. This integrated process ensures early coordination and collaboration on transportation programming and planning decisions.

6.1.2 States with well-established land use planning process have successfully met the requirements in 23 U.S.C. 108(c)(3)(C)

Three interviewees expressed that their States' long-standing land use planning processes had enabled them to satisfy the comprehensive and coordinated planning process requirement. Florida responded that local governments are required to adopt comprehensive plans with a minimum 10-year planning horizon. The adopted comprehensive plan must have a "Transportation Element" that is consistent with the State transportation plan and the MPO LRTP, and identifies the necessary roadway system improvements to best accommodate both present and future land uses. Florida's transportation plan and the MPOs' LRTPs are then developed in consultation with State and/or local resource agencies and incorporate environmental and land use considerations. FDOT is responsible for adopting and implementing a five-year Work Program that must be consistent with the adopted local government comprehensive plans. Consistency reviews at multiple levels of government ensure that these processes are well coordinated, and in FDOT's view, consistent with 23 U.S.C. 108(c)(3)(C). For

similar reasons, Maryland and Oregon—the other two States that said they had well-established land use planning processes— have also assured FHWA that they have the required mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law.

6.2 Approval and Outcomes of the Coordinated Planning Process and Reimbursable State-funded Early Acquisitions

6.2.1 Use of State-funded early acquisitions eligible for Federal reimbursement has been limited to date

A majority of States interviewed said that they would likely take advantage of State-funded early acquisitions eligible for Federal reimbursement, if possible. However, most States have been cautious moving forward with these types of acquisitions. Currently, only two States that were interviewed are planning to use Federal reimbursement for State-funded early acquisition in the near term.[33] Given the varied interpretations of the "mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law" language, some States are waiting on further direction and clarification before using the option. Other States are either waiting on Governor approval/delegation or attempting to refine their procedures on how to best document and allow for these types of early acquisitions to occur.

6.2.2 The overarching effects of the comprehensive and coordinated land use, environment, and transportation planning process on environmental and transportation outcomes are difficult to measure

Based on the limited application of State-funded early acquisitions eligible for Federal reimbursement, it is difficult to evaluate the overall effects, positive or negative, of the requirement for a comprehensive and coordinated land use, environment, and transportation planning process on expediting project delivery. During the interviews, only one State was able to speak in detail as to how the comprehensive planning process, requiring environment and transportation elements, might enhance environmental decision-making and expedite project delivery. This State noted that its experience with coordinating environment and transportation goals had had an overall positive impact. However, this State noted that during the transportation project development process, certain interest groups may focus too closely on aspects of the plan that were only marginally related to the planned project, potentially creating delay or introducing costs that render the project less feasible.

6.3 Barriers to Implementation

6.3.1 State laws may not encourage early acquisition

Separate from the planning requirements of 23 U.S.C. 108(c)(3)(C), some interviewees indicated that laws in their States may deter the State DOT's interest in pursuing advance acquisition

[33] States were asked to provide information regarding how they currently program or plan to program advance acquisition projects in their STIPs. See Appendix E for more information.

flexibilities. For example, a high risk of business damages in a State might cause that State to view the total holding cost of the advance acquisition as a financially unworkable option.

6.3.2 Statewide land use planning is not always common

Some State DOTs have not exercised the advance acquisition option under 23 U.S.C. 108(c)(3)(C) because they do not believe their States' planning processes qualify as "mandatory comprehensive and coordinated land use, environment, and transportation planning process(es)," especially regarding the land use component.

Several States mentioned that they did not have an agency responsible for land use planning at the statewide level. Instead, comprehensive planning and zoning, if they are done at all, are delegated to and/or optional for municipalities with minimal or no involvement from the State. According to some interviewees, local governments that occasionally conduct corridor studies may touch on land use issues in the studies, but do so in a project-specific manner that lacks a comprehensive, statewide focus. Additionally, one State DOT contended that the quality of planning and zoning outcomes can vary substantially from one area to another. In all cases, these States were doubtful that the Governor or his or her designee would sign off on the land use planning activities of local jurisdictions as being "mandatory," "coordinated," or "comprehensive" since there was no overarching statewide element.

6.3.3 Some State DOTs question whether they have a statewide environmental plan

Interviewees expressed concern about what might constitute the statewide "environmental plan" under 23 U.S.C. 108(c)(3)(C). With no definition of that term, some interviewed State DOTs speculated that the limited environmental aspects of the plans that select local agencies *did* develop would be insufficient to be considered a statewide environmental plan or planning process. One State DOT mentioned that explaining to the public the possible environmental impacts of projects that are described in plans is also a challenge in implementing a comprehensive and coordinated land use, environment, and transportation planning process.

6.3.4 The requirement for the Governor to certify that a comprehensive and coordinated land use, environment, and transportation planning process exists in his/her State has caused apprehension among State DOTs

A majority of the interviewed and surveyed States expressed some degree of concern about securing the Governor's approval for the statewide comprehensive and coordinated land use, environment, and transportation planning process. Both the States that had already acquired the Governor's approval and those that were trying to do so noted this as a challenge. One State indicated that this was the only challenge it anticipated in meeting statutory requirements for advance acquisition; this State had questions as to whether signature authority could be and how it might be delegated down to a State DOT official. Another State asserted that even if it was certain that it did have the planning process described in 23 U.S.C. 108(c)(3)(C), it would not approach the Governor to request certification or delegation. That State assumed that the likelihood of a lengthy timeline for receiving the Governor's buy-in would more than negate any project development time savings that might result from using federally-reimbursed, State-

funded advance acquisition.

One of the States that was interviewed mentioned that getting the Governor's signature was straightforward. This State's letter to the Governor, which was modeled after a letter that a counterpart State delivered to its Governor, was signed in less than one week. The State believed that the relative ease it had in obtaining Governor sign-off was due to its long history of having a robust planning process. The State surmised that recommending certification by the Governor would be easy.

6.3.5 Limited funding can limit interest in advance acquisition

One State noted that States experiencing funding shortfalls may not have funds available to make early acquisitions, regardless of whether they have a comprehensive and coordinated land use, environment, and transportation planning process. If the State DOT does not have funds to purchase property early, then the planned acquisition(s) may not be possible.

7. CONCLUSIONS

This section presents general conclusions about current practices drawn from stakeholder input describing how those States believe they effectively and efficiently meet the requirements of 23 U.S.C. 108(c)(3)(C).

7.1 Comprehensive and Coordinated Planning Process Described in 23 U.S.C. 108(c)(3)(C)

State DOTs have interpreted the "mandatory comprehensive and coordinated land use, environment, and transportation planning process" required under 23 U.S.C. 108(c)(3)(C) in different ways. Some have interpreted this language as referring to one planning process, while others have viewed the language as referring to the coordination of the three separate planning processes that exist under State law for transportation, environmental, and land use. The latter group has then documented how individual projects align with existing statewide plans in each subject area. Also, both 23 U.S.C. 134 and 23 U.S.C. 135 require coordination by States and MPOs with relevant local governments regarding development of transportation plans for inclusion of local planned growth and environmental considerations.

The FHWA accords States the flexibility to use a single process or a combination of multiple processes to satisfy the section 108(c)(3)(C) requirements.

7.2 State Environmental Planning

Some interviewees believed that the environmental aspects of the plans that were developed could be considered a statewide environmental plan or planning process. Others questioned what might constitute the environmental plan. As highlighted in Sections 5 and 6 of this report, a number of States have developed environmental plans that they believe meet the requirement to have a statewide environmental planning process in place. In California, State law requires each jurisdiction to adopt a comprehensive, long-term general plan that includes consideration of the protection of the public from environmental hazards and conservation of environmental resources. In addition, State law requires a regional-level long-range transportation planning process that addresses environmental issues, as well as transportation and land use. Alternatively, in Oregon, the State's "environmental plans" are rooted in the statewide land use plan. Other States may wish to consider these practices when deciding how they might meet the environmental component of the required comprehensive and coordinated statewide plan.

7.3 Certifying a State's Comprehensive and Coordinated Planning Process

Some State DOTs have requested and obtained the Governor's certification of the consistency of the proposed acquisition(s) with the comprehensive and coordinated planning process with no issues. In other States, the Governor's authority to certify consistency with the State's comprehensive and coordinated planning process under 23 U.S.C. 108(c)(3)(C) has been

delegated to other State officials, such as the State Secretary of Transportation. Two States, Oregon and Nevada, indicated that their views that their delegation authority already existed prior to and separate from MAP-21. For example, Nevada discussed how approval delegation had been instituted as part of a business practice following ISTEA. This State, which must certify its coordinated plan every two years, requested that the Governor grant delegation authority to the Executive Director of the State DOT in a letter. Other States remain unsure whether the law allows for delegation, or how to make such delegation workable under State law. Consistent with FHWA's interpretation of similar language in the planning statutes (23 U.S.C. 134-135), FHWA allows such administrative delegation by the Governor to another authorized State official.

23 U.S.C. 108(c)(3)(C) requires the Governor to certify, before the acquisition, that the acquisition is consistent with the comprehensive and coordinated planning processes required by State law. The FHWA interprets the statute to allow the Governor to delegate this responsibility. Some States believed that if the requirement were interpreted as requiring the Governor's approval for every early acquisition project, the requirement might become onerous to implement.

7.4 Benefits of Early Acquisition

A majority of stakeholders indicated that their respective States were interested in taking advantage of Federal reimbursement for State-funded early acquisition in the future. They believed doing so would allow them to better define corridors and address potential issues with other agencies and the public earlier in the process, enabling streamlined transportation project development and decision-making. One State, Oregon, believed the use of early acquisition helped reduce the project development by approximately four months each time it had been used. Other States speculated that the tool could lead to significant cost savings. As such, interviewees noted that the FHWA could encourage Division Offices to be proactive in promoting early acquisition as a streamlining tool, keeping in mind that State-funded early acquisitions are still at-risk acquisitions whereby reimbursements require FHWA authorization based on the (1) Governor's certification at the time of the acquisition as well as compliance with other requirements in 23 U.S.C. 108(c), and (2) the completed and FHWA-approved NEPA process for the highway project.

Appendix A. Stakeholders

California		
Melani Millard, FHWA California Division		
Suzette Musetti, Caltrans	**Jennifer Heichel** Caltrans	**Garth Hopkins** Caltrans
Florida		
Brian Telfair, FHWA Florida Division		
Derrick Brown Florida DOT	**Xavier Pagan** Florida DOT	**Marjorie Bixby** Florida DOT
Maryland		
Eric Savage, FHWA DelMar Division		
Missouri		
Dawn Perkins, FHWA Missouri Division		
Nebraska		
Justin Luther, FHWA Nebraska Division	**Melissa Maiefski**, FHWA Nebraska Division	
Nevada/Utah		
Hugh Hadsock, FHWA Nevada and Utah Divisions		
Oregon		
Chris Woods, FHWA Oregon Division		

Appendix B. Glossary

Advance (or Early) Acquisition

The acquisition of real property interests prior to the completion of the NEPA process.

Long-Range Transportation Plan

This is a 20-year horizon plan that identifies facilities that should function as an integrated transportation system, and are developed pursuant to titles 23 and 49 of the United States Code. It gives emphasis to those facilities that serve important national and regional transportation functions, and includes a financial plan that demonstrates how the long-range plan can be implemented. Both the State LRSTP and Metropolitan TP are examples of long-range plans.

Long-Range Statewide Transportation Plan

Long-range Statewide Transportation Plan means the official, statewide, multimodal, transportation plan covering a period of no less than 20 years developed through the statewide transportation planning process.

Metropolitan Planning Organization

The organizational entity designated under Federal law with lead responsibility for developing transportation plans and programs for urbanized areas of 50,000 or more in population.

Metropolitan Transportation Plan

This is the official multimodal transportation plan addressing no less than a 20-year planning horizon that is developed, adopted, and updated by the MPO through the metropolitan transportation planning process.

NEPA and NEPA Process

NEPA (42 U.S.C. § 4321 et seq.) requires Federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. There are three NEPA classes of action: categorical exclusions (CEs), which may apply if an action meets established criteria and has no significant environmental impacts individually or cumulatively; environmental impact statements (EISs), which are required for actions with significant environmental impacts; and environmental assessments (EAs), which are used to evaluate an action when the significance of environmental impacts is not certain. An EA may result in a finding of no significant impact if analysis shows there are no significant environmental impacts or the action includes mitigation for potentially significant impacts, or an EA may result in the preparation of an EIS.

Regional Transportation Plan

Some states refer to their MTP as RTP. They are the same document.

Statewide Transportation Improvement Program

This is a statewide prioritized listing/program of transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under title 23 and Chapter 53 of title 49 of the United States Code.

Transportation Improvement Program

Also known as a transportation program, a TIP is a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as transportation plan, and required for Projects to be eligible for funding under title 23 and Chapter 53 of title 49 of the United States Code.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

On January 2, 1971, Public Law 91-646, the Uniform Act was signed into law, providing important protections and assistance for people affected by federally-funded projects. Congress enacted the law to ensure that people whose real property is acquired, or who move as a result of projects receiving Federal funds, will be treated fairly and equitably and will receive assistance in moving from the property they occupy.

Appendix C. Annotated Bibliography of Resources

Aultman, Sara B and Adeel Lari. Report 2009-07: Advanced Acquisition of Right-of-Way: Best Practices and Corridor Case Studies. University of Minnesota. January 28, 2009.
https://conservancy.umn.edu/bitstream/handle/11299/150623/Mn_DOT2009-07.pdf?sequence=1

This report presents an evaluation of MnDOT's advanced acquisition practices and investigates the appreciation rate of parcels adjacent to transportation corridors. It describes the results of a survey of MnDOT district offices about their advanced acquisition practices; a survey of cities statewide about their use of preservation tools to acquire ROW and strategies to improve the ROW process; and an investigation into the claim that parcels adjacent to transportation corridors appreciate at a significantly different rate than the average parcel. The researchers proposed two recommendations to MnDOT: (1) develop guidelines for the use of preservation tools and (2) develop a monitoring program to keep track of subdivisions and land use changes along transportation corridors. MnDOT has a technical summary of the research available at www.lrrb.org/media/reports/200907TS.pdf.

Barnes, Gary and Sarah Watters. The Financial Benefits of Early Acquisition of Transportation Right of Way. University of Minnesota, sponsored by Minnesota DOT. November 15, 2005.
https://conservancy.umn.edu/bitstream/handle/11299/979/1/200535.pdf

MnDOT conducted a study that investigated the financial benefits of early acquisition of land for transportation purposes. The paper develops a theoretical framework for thinking about this issue and describes some results from an analysis at a fairly aggregate geographic level. The researchers found evidence suggesting that early acquisition is not effective for parcels that are already developed, though farmland may be worth acquiring. Purchasing specific parcels is worthwhile if those parcels are likely to be developed to a higher value that would increase the future cost to the transportation agency.

FHWA. Guidance on Early Acquisitions and Compliance with NEPA and Uniform Act. August 24, 2007.
http://environment.transportation.org/pdf/nepa_process/DOT%20Memo.pdf
The purpose of this memorandum is to provide guidance for "at risk" early acquisitions of real property by a State DOT where a State wishes to maintain Federal-aid funding eligibility for the project.

FHWA. Guidance on Hardship Acquisition and Condemnation. November 5, 2004.
https://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/hardacq.cfm

The purpose of this memorandum is to provide guidance for implementing existing policy under 23 CFR 710.503(c), hardship acquisitions.

FHWA. Project Development Guide: Donations, Lands Acquired Early, and Matching Share Credit.

https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/pdg/pdg06.cfm

Title 23 U.S.C. 323 allows State DOTs to credit the non-federal share of project costs with the fair market value of lands donated or lawfully obtained, and/or donated materials, and services that are incorporated into a specific transportation project. This section of FHWA's Project Development Guide describes the regulatory authority for and requirements related to early acquisitions.

FHWA. TEA-21 Provisions for Greater Flexibility in Acquiring and Managing Real Property.
https://www.fhwa.dot.gov/real_estate/uniform_act/acquisition/21final.cfm

Sections 1301 and 1303 of TEA-21, signed into law by President Clinton on June 9, 1998, provided States and local governments greater flexibility in acquiring and managing real property to support transportation systems. This document outlines the amendments that TEA-21 introduced to 23 U.S.C. section 108 (Advance acquisition of real property), among other topics.

Krugler, Paul E., et al. Development of Decision-Making Support Tools for Early Right-of-Way Acquisitions. January 2010.
http://ntl.bts.gov/lib/33000/33100/33101/0-5534-2.pdf

This report documents the work performed during the second of a two-phase research project on asset management in Texas. The second phase included gathering historical Texas Department of Transportation (TxDOT) ROW acquisition information, analyzing statistical information, and then developing simulation and optimization tools for TxDOT ROW sections and budget decision makers. The tools are designed to provide decision support as optimal strategies for use of early ROW acquisition methods are considered at project, district, and State levels. Implementation planning includes cooperative use of the tools with selected districts.

Fiol, Marsha, et al. Best Practices for Risk-Based Forecasts of Land Volatility for Corridor Management And Sustainable Communities. NCHRP Project 20-68A, Scan 10-01. January 2012.
http://onlinepubs.trb.org/onlinepubs/nchrp/docs/nchrp20-68a_10-01.pdf

This report identifies and reviews analytical processes, methods, and tools that MPOs/TPO, DOTs, and other agencies could use to address the following interrelated needs:

- Identifying corridors that may experience capacity issues due to development
- Addressing capacity issues in the development of long-range corridor plans
- Assessing the factors that contribute the most to the risks of undesired land uses related to volatile land use and the potential increased demand on the transportation system
- Forecasting land use changes and the associated demand on the transportation facilities by means of methods, models, and data analyses
- Integrating land use forecasts into transportation planning and capital programming with a multiyear horizon

The team's review of selected existing processes, methods, and tools supports a selection and integration of analytical methods that are appropriate for local conditions. The results will enable planners to compare, prioritize, and benchmark needs for risk management of land development that is adjacent to transportation corridors.

Transportation Research Board. NCHRP Report 574: Guidance for Cost Estimation and Management for Highway Projects During Planning, Programming, and Preconstruction. 2007.
http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_574.pdf

This guidebook presents approaches to cost estimation and management to overcome the root causes of cost escalation and to support the development of consistent and accurate project estimates through all phases of the development process, from long-range planning, through priority programming, and through project design.

Vance, John C. Advance Acquisition of Highway Rights-of-Way. Selected Studies in Highway Law, Vol. 2 pp. 903-935. 1976.
http://trid.trb.org/view.aspx?id=66944
The advantages of advance acquisition of land for future highway use are described, the concept of "public use" is briefly examined, and the substantive principles governing acquisition for future use are discussed and summarized. The report also reviews the Federal acts and regulations and State statutes affecting advance acquisition at the time of publishing.

Appendix D. State-funded Early Acquisition Options: A summary of requirements

State-funded Early Acquisition Eligible for Future Reimbursement Requirements

Revision date: 02/12/2018

(23 CFR 710.501(d) and 23 USC 108(c))

Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimburse-ment	Comply w/ Federal Law*	Subject to Condemnation	Requirements

NO	NO	When legally permissible by State law.	After NEPA is completed and real property interests are incorporated in a Title 23 project and all applicable requirements are met.	YES	YES, if State law allows	• Property lawfully obtained by the State agency;
						• Not 4F property;
						• Acquisitions and relocations comply with the Uniform Act;
						• State agency complies with Title VI of the Civil Rights Act;
						• FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed transportation project including:
						  ○ The need to construct,
						  ○ The consideration of alternatives,
						  ○ The selection of design or location;
						• State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State plans and is consistent with the State transportation planning process under 23 U.S.C. 135;
						• The State selects the alternative for which the real property interest is acquired pursuant to NEPA;
						• Prior to approval for Federal participation, NEPA, section 4(f), and all other environmental review/approval requirements are complete (see https://www.fhwa.dot.gov/environment/env_sum.cfm and provisions in 771.119(g) and 771.125(a)(1) on reasonable assurances of compliance).
						• Reimbursement of acquisition costs is based on the usual costs to acquire—23 CFR 710.203(b)(1).

*** Relevant Federal Law includes the Uniform Act, Title VI Civil Rights Act, and Federal Regulations (primarily, 23 CFR Part 710).**

Appendix E. Effective Practices for Determinations of Statewide Mandatory Comprehensive and Coordinated Land Use, Environment, and Transportation Planning Process

Consider whether the State has statewide mandatory land use, environment, and planning laws by. . .

Reviewing enabling legislation:

- State planning laws
- State environmental laws
- State land use laws

Assess whether land use planning, environmental planning, and transportation planning activities are comprehensive by. . .

Reviewing comprehensiveness vis-à-vis Federal and State requirements:

- Is there a land use process mandated by State law? Is it delegated to local governments?
- Is there State law-mandated consideration of the environment and transportation (this could be as part of the State planning requirements)?
- What are linkage opportunities between the State land use process, the environmental planning process, and the State transportation planning process?
- How can information from planning and planning studies or STIPs/TIPs be used to inform environmental or land use plans and vice versa?

Case Study Examples

California: The Government Code section 65300.5 requires a General Plan to be "integrated and internally consistent and compatible state of policies…" In terms of vertical consistency, the Legislature intended for all local programs, regulatory actions, and fiscal decisions – including those relating to land use, transportation, and the environment -- be consistent and done in coordination with the General Plan (Government Code section 65860(a)). Also, coordination between land use, environment, and transportation occurs through the long-range transportation process at the regional level. Pursuant to the Sustainable Communities and Climate Protection Act of 2008), California's MPOs are each required to develop an integrated transportation, land-use, and housing plan known as a Sustainable Communities Strategy (SCS). An SCS must document how the long-range planning process will reduce regional greenhouse gas emissions associated with passenger vehicles.

Florida: Local governments are required to adopt comprehensive plans with a minimum 10-year planning horizon. The Florida Growth Management Act requires that every city and county prepare a comprehensive plan of land use, together with controls that implement the plan. There, the adopted comprehensive plan is required to have a "Transportation Element," and human and natural environment elements which must be consistent with the State transportation plan, the MPO LRTP, and identify the necessary roadway system improvements to best accommodate both present and future land uses. The State transportation plan and MPOs' LRTPs, in turn, must be developed in consultation with State and/or local resource agencies and incorporate environmental and land use considerations.

Oregon: The State Legislature maintains the Oregon State Statutes on land conservation and development. At the statewide level, Oregon develops 19 different goals ranging from citizen involvement to transportation. The State Department of Land Conservation & Development (DLCD) is in charge of controlling and maintaining the goals. Each political subdivision is required to have a comprehensive land use plan in place. They identify local goals for the protected resources in 19 statewide goal areas and then define how those local resources are going to be preserved. If a proposed activity deviates from the plan, the action agency must seek a "goal exception," which requires several approvals up through the DLCD. Ultimately, the DLCD approves each local plan, and then all other local activities, including transportation plans and projects must align with that local plan.