(4) Property management. The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) Payroll-related expenses and technical guidance. Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A–87 (available at http://www.whitehouse.gov/omb/circulars). This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.

(6) Property not incorporated into a project funded under title 23 of the United States Code. The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(i) General. Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.

(ii) Easements not incorporated into the right-of-way. The cost of acquiring easements outside the right-of-way for permanent or temporary use.

(7) Uneconomic remnants. The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(8) Access rights. Payment for full or partial control of access on an existing highway (i.e., not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) Utility and railroad property. (i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an STD for a highway project, as provided in 23 CFR part 646, Subpart B, Railroad-Highway Projects.

(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

(c) Withholding payment. The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the State fails to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

(d) Indirect costs. Indirect costs may be claimed under the provisions of OMB Circular A–87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA.

Subpart C—Project Development

§ 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process are provided in this subpart.

§ 710.303 Planning.

State and local governments conduct metropolitan and statewide planning to develop coordinated, financially constrained system plans to meet transportation needs for local and statewide systems, under FHWA’s planning regulations contained in 23 CFR part 450. In addition, air quality non-attainment areas must meet the requirements of the U.S. EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to be eligible for Federal-aid funding.

§ 710.305 Environmental analysis.

The National Environmental Policy Act (NEPA) process, as described in FHWA’s NEPA regulations in 23 CFR part 771, normally must be conducted and concluded with a record of decision (ROD) or equivalent before Federal funds can be placed under agreement for acquisition of right-of-way. Where
applicable, a State also must complete
Clean Air Act (42 U.S.C. 7401 et seq.)
project level conformity analysis. In
areas in which the Clean Air Act con-
formity determination has lapsed, ac-
quiring agencies must coordinate with
Federal Highway Administration for
special instructions prior to initiating
new projects or continuing activity on
existing projects. At the time of proc-
essing an environmental document, a
State may request reimbursement of
costs incurred for early acquisition,
provided conditions prescribed in 23
U.S.C. 108(c) and 23 CFR 710.501, are
satisfied.

§ 710.307 Project agreement.
As a condition of Federal-aid, the
STD shall obtain FHWA authorization
in writing or electronically before pro-
ceeding with any real property acquisi-
tions, including hardship acquisition
and protective buying (see 23 CFR
710.503). The STD must prepare a
project agreement in accordance with
23 CFR part 630, subpart C. The agree-
ment shall be based on an acceptable
estimate for the cost of acquisition. On
projects where the initial project
agreement was executed after June 9,
1998, a State may request credit toward
the non-Federal share, for early acqui-
sitions, donations, or other contribu-
tions applied to the project provided
conditions in 23 U.S.C. 323 and 23 CFR
710.501, are satisfied.

§ 710.309 Acquisition.
The process of acquiring real prop-
erty includes appraisal, appraisal re-
view, establishing just compensation,
negotiations, administrative and legal
settlements, and condemnation. The
State shall conduct acquisition and re-
lated relocation activities in accord-
ance with 49 CFR part 24.

§ 710.311 Construction advertising.
The State must manage real property
acquired for a project until it is re-
quired for construction. Clearance of
improvements can be scheduled during
the acquisition phase of the project
using sale/removal agreements, sepa-
rate demolition contracts, or be in-
cluded as a work item in the construct-
ion contract. On Interstate projects,
prior to advertising for construction,
the State shall develop ROW avail-
ability statements and certifications
related to project acquisitions as re-
quired by 23 CFR 635.309. For non-Inter-
state projects, the oversight agreement
must specify responsibility for the re-
view and approval of the ROW avail-
ability statements and certifications.
Generally, for non-NHS projects, the
State has full responsibility for deter-
miming that right-of-way is available
for construction.

§ 710.313 Design-build projects.
(a) In the case of a design-build
project, right-of-way must be acquired
and cleared in accordance with the
Uniform Relocation Assistance and
Real Property Acquisition Policies Act
of 1970, as amended, and STD right-of-
way procedures. The STD shall submit
a right-of-way certification in accord-
ance with 23 CFR 635.309(p) when re-
questing FHWA’s authorization. If the
right-of-way services are included in
the Request for Proposal document,
the STD shall ensure that right-of-way
is available prior to the start of phys-
ical construction on individual prop-
erties.

(b) The decision to advance a right-
of-way segment to the construction
stage shall not impair the safety or in
anyway be coercive in the context of 49
CFR 24.102(h) with respect to
unacquired or occupied properties on
the same or adjacent segments of
project right-of-way.

(c) Certain right-of-way acquisition
and clearance services may be incor-
porated into the design-build contract
if allowed under State law. The con-
tract may include language that pro-
vides that construction will not com-
mence until all property is acquired
and relocations have been completed;
or, the construction could be phased or
segmented to allow right-of-way activi-
ties to be completed on individual
properties or a group of properties,
thereby allowing certification in a
manner satisfactory to the STD for
each phase or segment.

(d) If the STD elects to include right-
of-way services in the design-build con-
tact, the following provisions must be
addressed in the request for proposals
document: