

than fair market value require a public interest determination and FHWA approval, consistent with that section.

[64 FR 71290, Dec. 21, 1999, as amended at 67 FR 12863, Mar. 20, 2002]

Subpart E—Property Acquisition Alternatives

§ 710.501 Early acquisition.

(a) *Real property acquisition.* The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) *Eligible costs.* Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federal-aid project if the following conditions are met:

- (1) The property was lawfully obtained by the State;
- (2) The property was not land described in 23 U.S.C. 138;
- (3) The property was acquired in accordance with the provisions of 49 CFR part 24;
- (4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4);
- (5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
 - (i) The decision on need to construct the project;
 - (ii) The consideration of alternatives; and
 - (iii) The selection of the design or location; and
- (6) The property will be incorporated into a Federal-aid project.
- (7) The original project agreement covering the project was executed on or after June 9, 1998.

(c) *Reimbursement.* In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with

displacement of owners or tenants, requires the STD to demonstrate that:

(1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and

(2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

§ 710.503 Protective buying and hardship acquisition.

(a) *General conditions.* Prior to the STD obtaining final environmental approval, the STD may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

- (1) The project is included in the currently approved STIP;
- (2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;
- (3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and
- (4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

(b) *Protective buying.* The STD must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) *Hardship acquisitions.* The STD must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

- (1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and
- (2) Documents an inability to sell the property because of the impending