

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****[Docket Number: FTA-2013-0019]****Notice of Availability of Draft Guidance on the Application of United States Code to Corridor Preservation and Request for Comment****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of availability; request for comment.

**SUMMARY:** The Federal Transit Administration (FTA) announces the availability of draft guidance on the application of a new provision of the Moving Ahead for Progress in the 21st Century Act (MAP-21) regarding corridor preservation for future transit projects. MAP-21 amended Federal transit law by amending a previously existing provision such that FTA can now, under certain conditions, assist in the acquisition of right-of-way (ROW) for corridor preservation before the environmental review process for any transit project that eventually will use that ROW and permit corridor preservation with local funds, under certain conditions, for a transit project that could later receive FTA financial assistance. The draft guidance defines the form of ROW to which this MAP-21 provision applies and explains the conditions and requirements pertaining to its application. FTA requests comments on this draft guidance, which is available in the docket and on the FTA Web site.

**DATES:** Comments must be received by January 10, 2014.**ADDRESSES:** You may submit comments to Docket No. FTA-2013-0019 by any of the following methods:

*Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for submitting comments.

*Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

*Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. eastern time, Monday through Friday, except Federal holidays.

*Fax:* (202) 493-2251.

*Instructions:* You must include the agency name (Federal Transit Administration) and the Docket Number of this notice (FTA-2013-0019) at the beginning of your comments. You

should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

*Docket:* For access to the docket to read the draft guidance document and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The draft guidance itself is also available on the FTA Web site at [www.fta.dot.gov](http://www.fta.dot.gov) under "MAP-21."

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher S. Van Wyk, Office of Planning and Environment, (202) 366-1733, or email to [christopher.vanwyk@dot.gov](mailto:christopher.vanwyk@dot.gov); or Ms. Dana Nifosi, Office of Chief Counsel, (202) 366-4011, or email to [dana.nifosi@dot.gov](mailto:dana.nifosi@dot.gov). Both are located at the Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Section 20016 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) amended Federal transit law by revising a pre-existing provision and moving it to 49 U.S.C. 5323(q) such that FTA can now, under certain conditions, assist in the acquisition of right-of-way (ROW) before the environmental review process for any transit project that will eventually use that ROW and permit corridor preservation with local funds, under certain conditions, for a transit project that would later receive FTA financial assistance. The "environmental review process" is defined in 23 U.S.C. 139(a)(3). The new provision of MAP-21, which became effective on October 1, 2012, states:

(q) **CORRIDOR PRESERVATION.**—

(1) **IN GENERAL.**—*The Secretary may assist a recipient in acquiring right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.*

(2) **ENVIRONMENTAL REVIEWS.**—*Right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.*

Prior to October 1, 2012, FTA allowed this form of corridor preservation only for pre-existing railroad ROW to be used in a future transit project, pursuant to the former provision of Federal transit law that was modified and moved by MAP-21. MAP-21 removed the word "railroad" from the provision formerly in 49 U.S.C. 5324(c) and moved it to 49 U.S.C. 5323(q).

In accordance with the clause in the statute that allows the Secretary to establish restrictions as necessary and appropriate, FTA has developed draft guidance to facilitate the use of this ROW provision. The draft guidance states that FTA considers the acquisition of ROW under this provision to be a separate action from the future transit project that will ultimately be built on that ROW. As a separate action, the ROW acquisition itself, if financially assisted by FTA, is subject to FTA's requirements for planning, environmental review, relocation of residents and businesses, and acquisition of the real property or real property rights. The later transit project built on that ROW, if financially assisted by FTA, would also be subject to these FTA requirements as a separate project. Under the draft guidance, FTA would not permit the acquisition of any property interests once the NEPA process has been initiated for a project that will use that real property for an alternative under review unless justified by hardship or protective proposes as defined in the FTA environmental regulation at 23 CFR 771.118(d).

FTA requests comments on the draft guidance, which is available in the docket and in the MAP-21 section of FTA's Web site at [www.fta.dot.gov](http://www.fta.dot.gov). FTA will respond to comments received on this notice in a second **Federal Register** notice to be published after the close of the comment period. The second notice will announce the availability of final guidance that reflects any changes implemented as a result of comments received.

Dated: December 4, 2013.

**Peter Rogoff,**

Administrator, Federal Transit Administration.

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