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Realty Digest - Summer/Fall 2023

Director's Message

Nic Thornton, HEPR Office Director

Hello all and happy summer!

Since the last edition of the newsletter, there have been several exciting developments.

In late April, several members of the Office of Real Estate Services (HEPR) attended the AASHTO Committee on Right of Way, Utilities and Outdoor Advertising (CRUO) Annual Meeting in Burlington, Vermont. It was a great conference and a wonderful opportunity to interact with our partners in the ROW community. We delivered an "FHWA Update Session" where we provided updates on several topics of interest and participated in several other sessions. This year, a greater number of folks from FHWA were able to attend, including several Division Office realty specialists, and based on the positive reaction from the conference organizers and attendees, I plan to continue that level of involvement in the future.

As I write this, several members of HEPR are in Denver attending the International Right of Way Association (IRWA) International Education Conference. This year, we worked with IRWA's executive team to bring back the "Federal Agency Update" portion of the conference and based on the attendance numbers and the enthusiasm of other Federal agencies, this is another great opportunity to interact with key stakeholders.

It's a personal priority of mine for the office to be more visible and available to stakeholders, and our active involvement in both conferences is part of that effort. In addition, as we plan for the new fiscal year, in addition to our more traditional program areas, HEPR is focused on three "emerging areas":

1. equity and ROW;
2. early ROW involvement in project development and decision-making; and

3. technology and automation (including GIS, ROW cost calculators, and screening tools).

We're having internal discussions about how to best align our resources around these topics, and they'll be more to come on those efforts!

As I mentioned last time, if you have topics that you'd like to see covered in future editions of this newsletter, or if you're interested in writing an article as a guest contributor, please don't hesitate to reach out to Carolyn James at Carolyn.James@dot.gov.

And as always, please reach out if I can be of any assistance!

Nic Thornton

Nic can be reached at Nicholas.Thornton@dot.gov.

Focus on Headquarters

Updated National Electric Vehicle (EV) Infrastructure (NEVI) Formula Program Guidance

On June 2, 2023, the Federal Highway Administration (FHWA) released updated NEVI Formula Program Guidance with an updated accompanying State Plan Template (which can be downloaded from FHWA's NEVI webpage) and updated Questions and Answers (Q&As). The NEVI Formula Program provides dedicated funding to States to strategically deploy EV charging infrastructure towards establishing an interconnected network to facilitate data collection, access, and reliability. The Program Guidance details that each State will be required to submit an annual update to their EV Infrastructure Deployment Plan that describes how the State intends to use its apportioned NEVI Formula Program funds in accordance with the guidance. The next round of updates to State Plans must be submitted to the Joint Office of Energy and Transportation no later than August 1, 2023. Among other updates, the updated Q&As address how North American Charging Standard (NACS) connectors can be appropriately incorporated into electric vehicle charging infrastructure. For more information, visit the [FHWA's NEVI webpage](#) or contact Diane Turchetta at Diane.Turchetta@dot.gov, William Stein at William.Stein@dot.gov, or Suraiya Motsinger at Suraiya.Motsinger@dot.gov.

Early Utility Relocation Prior to Transportation Project Environmental Review and Section 11315 of the Bipartisan Infrastructure Law

The Federal Highway Administration (FHWA) Office of Infrastructure issued a

memorandum on Early Utility Relocation in March 2023. The memorandum provides guidance regarding the implementation of provisions contained in the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law” (BIL)) that allow for early utility relocation prior to a transportation project environmental review.

Section 11315 of the BIL amends section 123 of title 23, United States Code (U.S.C.), to prescribe the conditions under which a State may carry out and be reimbursed for the costs of an early utility relocation project. Subject to the requirements in 23 U.S.C. 123, funds apportioned under title 23, U.S.C., may now be used to reimburse the State for costs incurred by the State, including subrecipient costs, for an early utility relocation project. To carry out an early utility relocation project, a State must comply with general requirements applicable to all utility relocation projects. The guidance document explains that to be eligible for reimbursement for early utility relocation project costs, the requirements set out in 23 U.S.C. 123(b)(4)(B) must be satisfied.

The guidance document further explains that utility relocations are typically processed as Categorical Exclusions (CE) under 23 CFR 771.117(c)(2). See also 23 CFR 771.117(a). However, it is important to note that CEs that involve unusual circumstances will require FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Examples of these unusual circumstances may be found at 23 CFR 771.117(b). It is anticipated that this guidance document will help clarify the requirements set out in Section 11315 of the BIL and ensure that early utility relocation activities comply with existing law.

For more information, contact Julie Johnston at Julie.Johnston@dot.gov. The memorandum can be found on [FHWA’s website](#).

Focus on the Field

Federal Highway Administration Realty Discipline Awards

The Federal Highway Administration's (FHWA) Office of Real Estate Services (HEPR) is participating in the Realty Discipline Recognition Program. The program features Realty Recognition Awards which are intended to:

- Acknowledge the excellence of staff within the Federal Highway Administration (FHWA) Real Estate discipline program areas.
- Support the accomplishments and innovative work of realty discipline members and their realty partners.
- Promote the realty discipline program and its relevance to the transportation project and program delivery process.

There are 3 categories for the Realty Awards that individuals can be nominated to, 1) Peer to Peer Award 2) Partnership Award and 3) Specialist of the Year Award.

The Realty Peer-to-Peer Award enables FHWA Realty Discipline members to recognize the leadership and dedication they've witnessed among individuals within the FHWA Realty Discipline Group. The Partnership Award is meant to recognize Realty and Federal Highway Administration staff, as well as Industry partners that strengthen the Transportation Realty Program Area. The Realty Specialist of the Year Award is given to an individual whose work efforts reflect activities which are accomplished above and beyond their daily responsibilities.

The 2023 Realty Discipline Awards period opened on June 1st and nominations are due by July 28th. Realty Discipline Award winners will be announced in November 2023. All Realty Discipline Award nominations should be submitted via the nomination site link in [SharePoint](#).

For more information on the Realty Discipline Awards please contact Carolyn James at Carolyn.James@dot.gov.

Research on Waiver Valuations and On-Premise Signs

FHWA's Office of Real Estate Services (HEPR) develops and implements programs and activities to advance the fair, equitable and consistent acquisition and management of real property. The Office's research activities focus on:

- Support for updating the Federal regulations for acquiring and managing real property interests, and developing improved methodology, technology, and systems for use by agencies administering federally funded projects.
- Advancing technological innovations and research that streamlines real property acquisition and management processes.

The Office's research goals include:

- Streamlining current acquisition and property management processes.
- Fostering and encouraging innovative processes, practices, and policies.
- Developing automation and tools that save time, cut administrative costs, and help ensure timely assistance for public transportation agencies at the state and local levels.

Below are two examples of HEPR's ongoing research projects on waiver valuations and on-premise signs.

An Analysis of the Use of Waiver Valuations

The Office of Real Estate Services (HEPR) has conducted an analysis on the use of waiver valuations, which will form the basis of a future report on the current state

of the waiver valuation process nationwide. A waiver valuation is a streamlined process that enables an agency to estimate the value of real property. 49 CFR 24.102(c)(2) sets out the requirements to determine when use of waiver valuation is permitted.

Under 49 CFR 24.102(c)(2), an appraisal is not required if:

- (i) The owner is donating the property and releases the Agency from its obligation to appraise the property; or
- (ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.
 - (A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation.
 - (B) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.
 - (C) The Federal Agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (See appendix A, [§ 24.102\(c\)\(2\)](#).)

A key benefit of the waiver valuation process is that it provides Agencies a tool to avoid the costs and time delay associated with obtaining appraisals, and appraisal reviews for low value, uncomplicated acquisitions where it is apparent that there are no damages to the remaining property. Performing appraisals when a waiver valuation would be sufficient can result in unnecessary delay, increase cost to an acquisition, and deliver no appreciable benefit to the property owner.

The forthcoming report will identify the current state of the program at the Federal and State level. The data that formed the basis of that report provides support for many of the changes Federal Highway Administration (FHWA) published in the notice of proposed rulemaking (NPRM) in December 2019 to update the waiver valuation sections of 49 CFR part 24. The comment period for that NPRM ended in March 2020 and the FHWA has been working diligently to be responsive to comments received while respecting the need to protect the rights of property owners impacted by Federal and Federal-aid programs for land acquisition.

For more information, contact Arnold Feldman at Arnold.Feldman@dot.gov or Richard (Kevin) O'Grady at Richard.O'Grady@dot.gov. More information on the project can be found on [FHWA's website](#).

On-Premise Signs Legal Research Study

In May 2021, Federal Highway Administration (FHWA) requested that the Federal Research Division (FRD) of the Library of Congress conduct a study on changes to State laws governing highway-adjacent signage. At that time, several U.S. Courts of Appeal had decided cases involving First Amendment challenges to State Outdoor Advertising Control (OAC) laws relating to exemptions for "on-premise" signs. These State laws were modeled after the Federal Highway Beautification Act (HBA), which contains a similar exemption for on-premises (or on property) signs. In several of these cases, courts found State OAC laws to be unconstitutional restrictions on free speech. In 2020, the United States Supreme Court denied Tennessee's request to review the Sixth Circuit decision against the State.

The result of these decisions is that State statutes have differing approaches to handling on-premise signs, resulting in inconsistencies across the nation.

FHWA and FRD targeted seven States that had already enacted such laws: Colorado, Iowa, Kentucky, Ohio, Oregon, Tennessee, and Texas. FHWA and FRD are analyzing each State's statute, amendments, administrative code text, and projected costs and financial impacts associated with legislative action. FRD's analysis of on-premise signs also includes a summary of relevant case law that has addressed the issue in recent years.

For more information, contact Jennifer Janik at Jennifer.R.Janik@dot.gov. More information on the project can be found on FHWA's website.

Future Newsletters

If you have ideas or topics of interest that you would like to see featured in an upcoming edition of the Realty Digest contact Carolyn James at Carolyn.James@dot.gov.