



Guidance for Project Land Acquisition For SRF Financed Projects

March 2020

I. Introduction:

If an SRF financed project requires access to or acquisition of privately owned land, the federal regulations under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (49 CFR 24) as amended, in addition to the appropriate state laws and regulations, must be followed. Listed below are the steps which must be followed to comply with the regulatory requirements. Land and easements must be obtained prior to the contract award phase of your project. Along with the construction bid documents, one of the following certifications must be submitted to the SRF Program for all land acquisition:

- A. A certificate signed by the project signatory that applicable requirements of 49 CFR 24 were met. (Sample attached).
- B. An opinion of the municipal attorney that the municipality has obtained clear title to all necessary land and for easements.

Important Note:

Failure to submit these certifications will preclude the issuance of approval to award the construction contract by the SRF Program.

The procedures outlined in Section II will be most applicable to fee simple takings or easements for wastewater system components (such as a new treatment plant site) which will not be used exclusively by the property owner on whose property the component is located.

If your project also involves on-site components serving only the property on which they are located¹, you must obtain both acceptable access to install the components and permanent maintenance access for each component. See Section III.

Reasonable costs of complying with 49 CFR 24 are eligible for funding. SRF Program applications should include a request for funding of the eligible costs of complying with 49 CFR Part 24. Potential SRF Program construction loan recipients who are in the design phase and are beginning the land acquisition process may also request finding for compliance with 49 CFR Part 24. Please contact the SRF Program office for guidance prior to incurring costs. In all cases, the costs must be justified as reasonable and necessary. Actual costs of the land may or may **not** be allowable, depending on the type of project.

¹ Components such as septic tanks serving only the property on which they are located.

II. Procedures Which Must be Followed to Acquire Permanent Easements and Fee Simple Title for Components Serving More Than One Property:

NOTE: This section applies to easements and fee simple acquisitions for components of the wastewater system which will not be used exclusively by the property owner on whose property the component is located. Examples include the location of a treatment plant or lift station.

- A. Public Notification (49 CFR 24.102 (b)): Each property owner whose land is affected by the project must be notified by certified mail (return receipt requested) as to the following:
1. A brief description of the project.
 2. The procedures which will be followed regarding appraisal and purchase.
 3. Where property owners can obtain additional information including copies of the regulations and property owners' rights.
- B. Appraisal: (49 CFR 24.102(c) and 24.104) Each affected parcel must be appraised and a review appraisal performed². Exceptions are discussed in 49 CFR 24.102(c)(2). An appraisal is not required for donated property or for property estimated at \$10,000 or less. A waiver valuation performed by a knowledgeable party is sufficient for property of \$10,000 or less. A blank waiver valuation form is attached. The waiver valuations may be accomplished by a knowledgeable local official or realtor. The cost, if any, should be minimal.
1. The appraiser must be able to document his/her professional qualifications and ability to utilize federal appraisal techniques.
 2. The property owner, or the owner's designated representative, must be invited to accompany the appraiser. (This invitation is not needed for the waiver valuation.)
- C. Purchase Offers: (49 CFR 24.102(e) and 24.104):

Upon the completion of appraisals, a purchase offer based upon the approved appraisal report price is sent to the property owner. An approved appraisal is one agreed to by a review appraiser. The purchase offer must contain:

1. Legal description and plat map of the property to be acquired.
2. The offer must include title transfer expenses.
3. A description of the property owners' alternatives to accepting the offer.
4. A "Statement of the Basis for Just Compensation". This is a statement signed by the review appraiser briefly describing the basis of the appraisal and stating the approved appraisal value.

²A review appraiser briefly checks first appraisal. When the two appraisals differ in value, the review appraiser sets the price

D. Negotiations: (49 CFR 24.102(f))

1. If the property owner rejects the purchase offer, a good faith effort at negotiating an agreeable purchase offer must be made. You should document negotiations with meeting or telephone memos, etc.

E. Eminent Domain:

1. If negotiations fail and use of eminent domain procedures is required, you must be able to document compliance with IC 32-24-1 et seq.

F. Relocation Services: (49 CFR 29.201 (et seq.))

1. If the project will require the displacement of any residence, business, or farm operation (excluding a landowner simply selling a portion of the land), relocation assistance services must be provided.

III. Obtain Access to On-site Components

If your project involves on-site components serving individual parcels, you will need a permanent easement to the property for installation and to assure maintenance throughout the useful life of the project.

These easements will generally be valued at much less than the \$10,000. Therefore a waiver valuation, not a full appraisal, is required.

Further, many property owners should be willing to donate their easements for the projects. If the easement is donated, no appraisal or waiver valuation is needed. The property owners may waive their rights to an appraisal or waiver valuation when they donate their easements. (The owners may have the appraisal or waiver valuation for tax purposes.) Donation is the best way to handle the large number of on-site easements in a project which includes individual septic tanks or grinder pumps.

Property owners may refuse to grant an easement. In such cases, the property can be bypassed by the construction of a "Y" installed in the public right-of-way. The property owners should be informed of their responsibility to install, at their own expense, acceptable equipment and to connect to the public sewer. Maintenance access in such cases would be assured through the sewer use ordinance and through the general policing powers of the municipality.

Another alternative is to place the septic tanks or grinder pumps in the public right-of-way. This avoids all problems regarding obtaining easements.

IV. Special Procedures for SRF Eligible Land:

Normally, land is an eligible project cost only when the land itself is used as an integral treatment component (e.g., overland flow technologies) or for the ultimate disposal of sludge. For parcels of land which are eligible for SRF funding, you must submit a variety of documents to this office during the land acquisition procedures.

- A. The proposed purchase offer price must receive approval from the SRF Program prior to making a purchase offer, or the land will be ineligible for funding. Land estimated to

exceed \$100,000 must have two full appraisals plus a review appraisal. Please submit a copy of the notification, appraisal reports, review appraisal, and purchase offer prior to making the purchase offer. Failure to obtain prior approval of purchase prices will lead to the land costs being ineligible for reimbursement.

- B. The SRF Program must provide prior approval of the initiation of a condemnation procedure.
- C. The federal and state interests in lands purchased with SRF Program funds must be recorded in the deeds.

V. Drinking Water Special Condition:

Land is eligible only if it is integral to a project that is needed to meet or maintain compliance and further public health protection. In this instance, land that is integral to a project is only the land needed to locate eligible treatment or distribution projects. In addition, the acquisition has to be from a willing seller. Land that is necessary for source water protection may be eligible to receive a loan under section 1452(k).

VI. To Be Submitted With the Construction Bid Documents:

- A. A site-title opinion from the municipal attorney that all parcels or permanent easements have been acquired.
- B. A copy of the deed for SRF Program funded parcels.
- C. A letter of certification from the project signatory that 49 CFR 24 was followed for all parcels or permanent easements acquired.

VII. Record Keeping: For each parcel, you must keep a copy of each of the documents discussed above. See 49 CFR 24.9 for further guidance.

VIII. Notice: This guidance document summarizes the borrower's responsibility to obtain necessary access, easements or title to real property under the federal regulations pertaining to the SRF projects. It remains the sole responsibility of the borrower's to identify and comply with specific requirements of state and federal code.

For further information, please contact:

Gayle Hicks: (317) 234-6730
State Revolving Fund Loan Programs
100 North Senate Avenue, STE 1275
Indianapolis, Indiana 46204
glhicks@ifaf.in.gov

Resources

1. 49 CFR Part 24. "Implementation of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970".
2. IC 32 Article 23 (Easements), IC 14-17-3 (Eminent Domain).
3. Uniform Appraisal Standards for Federal Land Acquisitions, Interagency Land Acquisition Conference of 1973.
4. Drinking Water State Revolving Fund Program Guidelines. USEPA1997.

SAMPLE ASSURANCE FOR
LAND ACQUISITION OF
SRF FUNDED PROJECTS

Re: Land Acquisition
(Financial Assistance Recipient)

To Whom It May Concern

As the authorized representative for the (city/town/district), I hereby certify that the property and easements needed for the construction of the new wastewater facilities were acquired per the applicable federal regulations contained in 49 CFR Part 24.

(Name of community/District)

(Signature of Signatory)

(Typed Name of Signatory)

(Title of Signatory)

(Date)

LAND GUIDANCE

WAIVER VALUATION

Type of Property _____ Project _____

Location _____ Parcel # _____

Owner _____ Phone _____ Road _____

Address _____ County _____

Area and Type of Acquisition: Permanent R/W _____

Temporary R/W _____

Comments about property to be acquired:

Support for the waiver valuation: (including improvements and cost to cure)

Unit Value of Land _____

Land Value _____

Name (Printed): _____

Cost-to-cure _____

Official/ Title _____

Improvements _____

Total Due Owner _____

Signature _____

Date _____