



1.5 FUNCTIONAL REPLACEMENT

Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) 49 CFR Part 24, publicly owned properties are not eligible for relocation assistance (with the exception of moving costs). However, the Functional Replacement Program developed by the Federal Highway Administration (FHWA), provides an alternative method of acquiring and compensating for publicly owned properties that provide essential public services. Examples may include schools, police and fire stations, parks, recreational areas, municipal garages or maintenance facilities, libraries and city or county government buildings and other public-owned areas. For parks and recreation areas, Sec. 4(f) provisions of the Department of Transportation (DOT) Act of 1966 may apply. The real property cannot be owned by a utility or railroad.

The functional replacement concept permits federal participation in costs of acquiring an adequate substitute site if one is required and the construction costs of the replacement improvements that duplicate the function of the acquired improvement. This concept requires that the facility must be needed by the public, must be actually replaced and the costs to presently replace the facility or cure damage to it be actually incurred by the public agency. The functional replacement concept may also be applied to state-funded projects. Wisconsin Statute, [s. 84.01\(15\)](#) authorizes and directs WisDOT to comply with the federal law and federal regulations issued under federal code thus giving WisDOT the authority to administer functional replacement provisions consistently statewide, when appropriate.

The intention of functional replacement is to consider providing additional monies when it is recognized that the cash compensation for the acquisition of the public facility may be insufficient to restore it to status quo. Costs of increases in capacity and other betterments or enhancements are not eligible for federal or state participation except where necessary to replace the facility's utility, unless required by existing codes, laws or zoning regulations, or related to reasonable prevailing standards for the facility being replaced. Because of the added review, oversight and approval associated with the functional replacement process, the importance of early coordination cannot be over emphasized. If you anticipate functional replacement will apply to a project, contact the Bureau of Technical Services-Real Estate (BTS-RE) as soon as possible to discuss specifics. The agency owning the public facility, at its option, may choose to accept conventional acquisition and cash compensation based on the appraised market value of the acquired property (WisDOT's standard acquisition process) in lieu of functional replacement.

1.5.1 State or Federal Participation

When the department determines that functional replacement of real property in public ownership may be necessary and in the public interest, state funds may participate in the payment to the public agency for:

- Functional replacement costs of improvements required to be replaced exclusive of increases in capacity or betterments; and

- Market value of land owned by the public agency when that public agency has land upon which to relocate facility; or
- Reasonable cost of acquiring a comparable, substitute site where lands owned by the public agency are not available for use in relocating the facility.

For federal participation in functional replacement, the FHWA must approve prior to the acquisition. The provisions of 23 CFR Subpart B, Section 710.509 should be reviewed to assure compliance with federal regulations pertaining to functional replacement of real property in public ownership. The estimated costs of functional replacement must be included in early real estate project cost estimates.

1.5.2 Process

Prior to the initiation of real estate acquisition, perhaps during an early project-scoping meeting, the region should identify any parcel acquisitions that may meet the definition of functional replacement. If such a parcel is identified, the following approvals and steps *must* be followed:

1. Region must contact BTS-RE relocation facilitator prior to preparation of conceptual stage report for highway project (to be included in environmental document) regarding possibility of functional replacement when publicly owned real property, including land/or facilities, is to be acquired for a federal aid or a state funded project. For consultant-managed projects or parcels negotiated by fee consultants, region must provide oversight of any parcels involving functional replacement.
2. BTS-RE and FHWA, if applicable, will agree on scope of property and project-related oversight prior to initiation of functional replacement. BTS-RE relocation facilitator will work with region and issue necessary approvals prior to initiation of functional replacement.
3. Regional representative should meet early in process with owning agency and inform agency of right to just compensation based on appraisal of market value and of option to choose either just compensation or functional replacement. Amount of functional replacement shall be limited to difference between approved offering price based on an appraisal of market value and actual cost to replace facility with an equivalent facility as defined in this section.
4. Parcels approved for functional replacement, shall have a mutually acceptable course of action developed with owner via an agreement. Action may include discussion on functional equivalency of facility and need to obtain bid estimates for necessary construction.
5. Regional Real Estate management will have responsibility to review final estimates to determine WisDOT participation costs. If federal funds are involved, estimates must be processed through BTS-RE who will obtain necessary review and approval from FHWA.
6. Any functional replacement funds over approved acquisition amount will be processed as an administrative revision or additional parcel cost depending on timing of payments.
7. A portion of replacement funds will be held until construction is complete to ensure replacement actually takes place and costs have actually been incurred.
8. Total cost of functional replacement will be based on an estimate of construction and either market value or reasonable, actual cost of acquiring a comparable substitute site.