



Appendix C

Early Acquisition Memorandum



Date: February 4, 2025

To: Janice Williams, Realty Officer – FHWA Virginia Division

From: Christina Ammens, Public Works - Engineering, Project Manager

Subject: Cleveland Street Phase IV Improvements, State-funded Early Acquisition without Federal Credit or Reimbursement

The City of Virginia Beach (the City), in coordination with the Virginia Department of Transportation (VDOT) and the Federal Highway Administration (FHWA) as the lead federal agency, is evaluating reconstructing portions of Cleveland Street and Columbus Street in Virginia Beach, Virginia. The project area under evaluation (from west to east) is from the intersection of Cleveland Street and North Witchduck Road to the intersection of Columbus Street and Independence Boulevard (herein referred to as the “project area” or “project corridor”). The proposed Cleveland Street Phase IV Improvements (the “project”) involves reconstructing the existing roadway from a two-lane undivided road to a three-lane undivided road and constructing new bicycle and pedestrian accommodations for a length of approximately 1.2 miles.

The Cleveland Street Phase IV Improvements is a planned and funded project in the City of Virginia Beach's Capital Improvement Program, VDOT's Six Year Transportation Improvement Program, and the Hampton Roads Amended 2045 Long-Range Transportation Plan and FY 2024-2027 Transportation Improvement Program. The project is subject to the requirements of the National Environmental Policy Act (NEPA) because of anticipated FHWA funding. An Environmental Assessment (EA) is currently being prepared for the project.

The City of Virginia Beach is proceeding with an early acquisition of Parcels 5, 6, and 7 with FHWA concurrence to avoid future tenant relocations (**Figure 1**). Parcels 5 and 7 were formerly proposed for full acquisition, although Parcel 6 (GPIN 14678456480000) was not. It was found the former Parcel 7 contained the limits of Parcel 6. Since Parcel 6 is within the limits of a parcel originally proposed for full acquisition and all three parcels are owned by J & H LEGACY PROPERTIES LLC (0.42 acres), it was also proposed for full acquisition. American Oceanic Coatings Corporation occupies Parcels 5, 6, and 7, Parcel 5 serves as the business's parking lot. The current property owner is closing the business and is considering renting or selling the parcels. Parcels 5, 6, and 7 are three of the thirteen (13) parcels proposed for full acquisition as part of the project for roadway widening and bicycle and pedestrian improvements. Of the total thirteen (13) parcels proposed for full acquisition, eleven (11) parcels contain industrial/commercial tenants, one (1) parcel consists of a mobile home residential community, and one (1) parcel is vacant and considered unoccupied. Parcels 5, 6, and 7 are commercial properties and therefore early acquisition is not proposed for the remaining one (1) residential and one (1) vacant parcel. If the property owner rented

or sold the parcels, the City would need to purchase the parcels and also relocate future potential tenants. Parcels 5, 6, and 7 are depicted in **Figure 1** and are detailed in **Table 1** below.

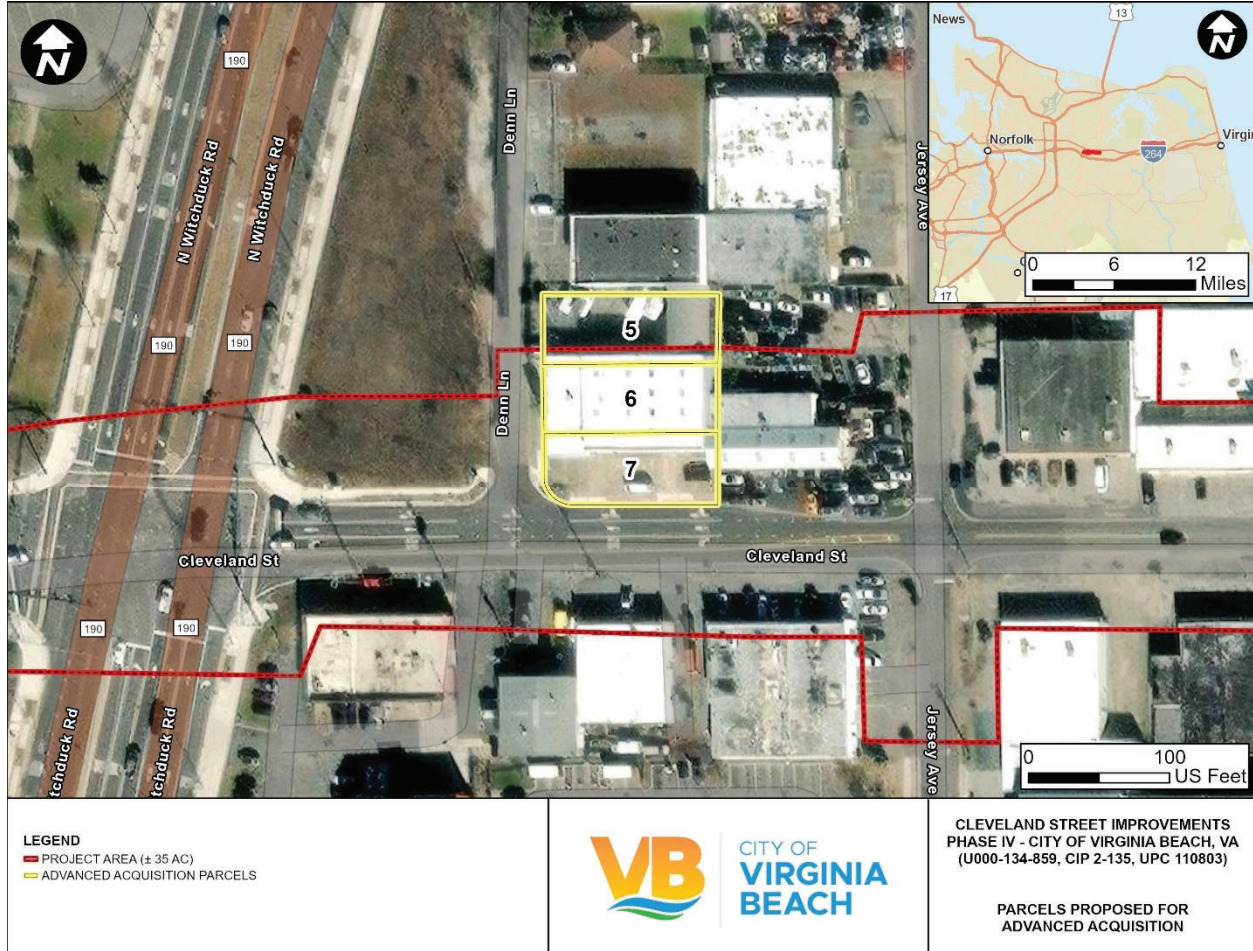


Figure1: Early Acquisition Parcels

Table 1. Parcels Proposed for Advanced Acquisition

Parcel #	GPIN	Address	Owner	Acreage
Parcel 5	14678447830000	250 Denn Lane	J & H LEGACY PROPERTIES LLC	0.14
Parcel 6	14678456480000	5048 Cleveland Street	J & H LEGACY PROPERTIES LLC	0.14
Parcel 7	14678456430000	N/A	J & H LEGACY PROPERTIES LLC	0.14

Ordinarily, the acquisition of properties or real property interests for federally assisted projects does not begin before the completion of the environmental review process, including NEPA. In some situations, however, the City could acquire property in advance of NEPA or other environmental determinations and remain eligible for funding through a process called early acquisition. Under 23 CFR §710.501(a), a State agency may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. The City of Virginia Beach may undertake an early acquisition before

the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes. There are four options for early acquisition in 23 *Code of Federal Regulations* (CFR) §710.501(b) through (e):

1. *State-funded Early Acquisition without Federal Credit or Reimbursement,*
2. *State-funded Early Acquisition Eligible for Future Credit,*
3. *State-funded Early Acquisition Eligible for Future Reimbursement, and*
4. *Federally Funded Early Acquisition Project.*

Parcels 5, 6, and 7 will be acquired under 23 CFR 710.501(b)/23 USC 108(c)(1): State-funded Early Acquisition without Federal Credit.

A State agency may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the State agency receives Federal financial assistance or other Federal approval under title 23 for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements set forth in 23 CFR §710.501(c)(1) through (5).

The City of Virginia Beach requests FHWA concurrence that early acquisition of Parcels 5, 6, and 7 meet the following requirements:

- Property lawfully obtained by the State agency;
- Not a U.S. Department of Transportation Act Section 4(f) property;
- Acquisitions and relocations comply with the Uniform Act;
- The State agency complies with Title VI of the Civil Rights Act;
- The early acquisition does not influence the NEPA decision for the proposed transportation project including:
 - The need to construct,
 - The consideration of alternatives,
 - The selection of design or location,

The City of Virginia Beach is proceeding with early acquisition of the parcels to avoid future tenant relocations. This does not prejudice the consideration of alternatives during the NEPA review process. The acquisition would occur at the City's own risk. Moreover, the City is certifying that the early acquisition would not limit the choice of reasonable alternatives for the project or otherwise influence the decision on any approval required for the project and would not prevent FHWA from making an impartial decision regarding alternatives that are being considered in the environmental review process.

Parcels 5, 6, and 7 are not eligible for listing in the National Register of Historic Places, although Parcels 6 and 7 are documented as a resource over 50-years of age (Virginia Department of Historic Resources Identification Number 134-6101). Neither Parcels 5, 6, nor 7 are U.S. Department of Transportation Act Section 4(f) properties. The parcels will be acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amendments (42 Section 4601, et seq.), the Code of Virginia (1950, as amended), and the Right of Way Division's Manual of Instructions. Further, all relocation assistance required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amendments (42 Section 4601, et seq.) and the Code of Virginia (1950, as amended) will be rendered to the displacee.

A public hearing will be held to present the preliminary project design, the findings of the EA, and to obtain input and comments from the public and interested parties. The EA would be available for public review prior to and at the hearing. There would be a minimum 30-day public comment period following notice of availability of the EA. Any comment received during the public hearing or comment period would be become part of the public hearing record and would be taken into consideration as the project develops. The City of Virginia Beach ensures nondiscrimination in all activities in accordance with Title VI of the Civil Rights Act of 1964, as amended.

FHWA Concurrence

**JANICE L
WILLIAMS**

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Janice Williams
ROW Officer
FHWA Virginia Division

Date