

# Condemnation Summit XXVIII

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# Relocation Hot Topics

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# Welcome, Michael Sullivan

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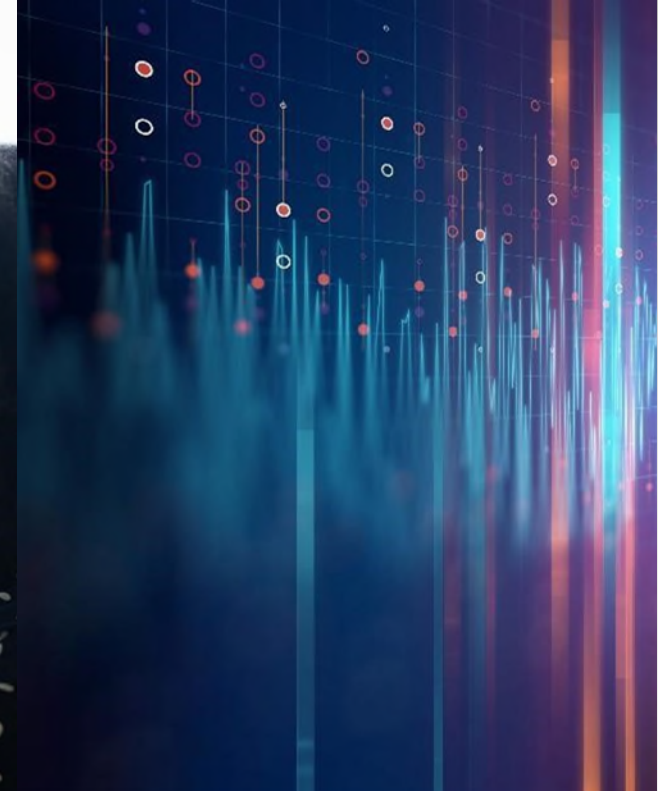


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# Agenda

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- What information do we play the game with?
- Key terms in the relocation of business, farm operations, etc.
- What about those underground storage tanks?
- Concrete relocation entitlements?
- Actual site search costs?
- Vacant land relocation?



# Introduction

- The survival of most businesses when property is acquired, and relocation is mandated, depends on proper implementation of applicable laws. The original public law 91-646 was formulated to ensure businesses did not close as a result of agency acquisition for a public purpose.

# Topic One

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Public Law 91-646.

42USC, Chapter 61, Section 4601 – 4655. The statutes.

49CFR, Part 24 – The regulations.

FHWA frequently asked questions. Link at

[www.fhwa.dot.gov/real\\_estate/policy\\_guidance/uafaqs.cfm](http://www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm)

*Case law – Beaird Poulan v. Department of Highways, State of Louisiana. 441 F. Supp. 866 and Pou Pacheco v. Soler Aquino. 833 F.2d 392 (1987)*

# Key Terms

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## §4621. Declaration of findings and policy

### (a) Findings

The Congress finds and declares that —

- (2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;
- (3) the displacement of businesses often results in their closure;

# Key Terms

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## §4621. Declaration of findings and policy

### (b) Policy

This subchapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. **The primary purpose of this subchapter is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.**



# Underground Storage Tanks

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Are Underground Storage Tanks Real Property or Relocation???

Argument as real property – They are buried in the ground!

Arguments for relocation – Each tank has a registration number.  
– States require tank closure report upon non-use.  
99% of all tanks closed are removed.











# FHWA Questions

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62. §[24.301](#)(g)(3). Are the costs incurred for site preparation for installing underground tanks eligible moving expenses?

Underground tanks are generally considered realty and purchased as part of the real estate. If under state law, the underground tanks are personal property and will be moved and used at the replacement site, then they can be considered an eligible moving expense.

# Concrete in Relocation

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Concrete as relocation?

Real property or relocation?

If concrete can be a relocation item, is there any limit to the amount of concrete recovered in relocation?

















# FHWA Questions

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**§[24.301](#)(g)(3). Can the costs of pits, pads, and foundations necessary for the installation of machinery or equipment in the replacement business site be reimbursed as a moving cost?**

The costs of pits, pads, and foundations can be reimbursed as an eligible moving cost if they are necessary for the reinstallation of equipment or machinery or the installation of substitute items that are necessary for the business operation. Normally, pits, pads, and foundations only add value to a property for a particular business operation and would not generally enhance real property.

**In the case where the pits, pads, and foundations are ascribed a contributory value, then that value may be deducted from the cost of the newly constructed pit, pads, and foundations.**

# Site Search

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Is the \$2,500.00 dollar limit a statutory or regulatory requirement?

Why do all Department of Transportations find it necessary to place the site search limit in their relocation cover letter?

If a relocation agent is aware of the site search circumstances with a specific business, does the relocation agent have an obligation to assist the displace in maximizing his entitlement?

Does a relocation agent (under contract with an acquiring agency) have the ethical responsible to disagree with the acquiring agency on the amount of site search. If there is disagreement between the relocation agent and the acquiring agency, is the agent responsible for documenting disagreement in the relocation file?

# FHWA Questions

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**§[24.301](#)(g)(17). How early can search costs be incurred by a displaced business and still be reimbursable? Could they be incurred prior to authorization or award of a grant for the project or program?**

While searching costs may be incurred by the displaced business at any time after there is a reasonable expectation that the business will be displaced, the agency cannot reimburse the displaced business for any searching costs incurred until the displaced business qualifies as a displaced business as defined in §[24.2](#)(a)(9).

# FHWA Questions

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## §[24.301](#)(g)(17). Can search expenses ever exceed \$2,500?

In unusual circumstances search expenses over \$2,500 may be reimbursed when the agency verifies that the expenses are justified and obtains a waiver from the funding agency, per §[24.7](#).

Refer to *Pou Pacheco v. Soler Aquino*, 833 F.2d 392 (1987)

Court awarded \$55,000.00 in documented site search.

# Vacant Land & Relocation

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Can the taking of vacant land from a larger parcel, where the taking does not affect the operation or access of an ongoing business, be grounds to relocate the entire facility??

What property aspects should be considered by the property owner's attorney and an agency relocation agent in determining if a business has been displaced by the taking of vacant land??

Refer to *Beaird-Poulan v. Department of Highways, State of Louisiana*, 441 F. Supp. 866 for the written decision.



# Vacant Land Relocation

## Legend

- Atlas Tubular
- Pipe Reclamation





# Thank You!

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# Questions?

