

At this juncture, ESD cannot engage owners or tenants about property acquisitions and relocations because:

- ESD is not a party to the federal environmental review under the National Environmental Protection Act (“NEPA”), involving FRA, FTA, MTA, Amtrak, and NJT, that will identify a “preferred alternative” for the Penn Station Expansion and evaluate reasonable alternatives. At this point, a preferred alternative has not been identified, and NEPA prohibits prejudging the outcome of the NEPA review, which is expected to kick off soon and take approximately 2 years to complete.
- Even if the Block 754, 780 and 806 properties (Site 1, 2 and 3 of the ESD General Project Plan or GPP) are selected as the preferred alternative under the NEPA review, it is unlikely that ESD will be the agency that acquires the properties or relocates the occupants because the federal funding agencies typically prefer that the agency that builds the transportation facility (MTA and/or Amtrak) also be responsible for the property acquisitions and relocations.
- Before any properties can be acquired for a project by eminent domain, the environmental review must be completed, and additional procedures must be strictly followed to protect the legal rights of owners and tenants. The procedures to acquire property and relocate occupants cannot commence until the NEPA process is completed. (*For this reason, ESD’s current GPP does not and cannot authorize acquisitions by eminent domain.*)
- If the NEPA review and federal approval process result in the selection of Blocks 754, 780 and 806 (Sites 1, 2 and 3) as the sites for Penn Station Expansion, the federal grant recipient, among other things, would have to prepare a property acquisition management plan and a tenant relocation plan that must be approved by the federal agency sponsor (FRA and/or FTA) in advance of engaging with owners and tenants. See FTA Circular 5010.1E. “Award Management Requirements,” Chapter IV (available online at <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/award-management-requirements-circular-50101e>). **Premature engagement with owners and tenants prior to completion of the project’s NEPA review and compliance with the federal grant management requirements could jeopardize a project’s eligibility for federal funding.** (See, e.g., FTA Circular 5010.1E, Chapter IV, Section 2.a.1.)
- Before properties are acquired by eminent domain, the condemnor (federal or state) must make offers of compensation in the amount of each property’s full appraised value and conduct good faith negotiations. If a NY state entity is the condemnor, it also must hold a public hearing and adopt findings under the Eminent Domain Procedure Law (“EDPL”). Owners may accept the appraised value as an advance payment and file claims for additional compensation. The title acquisition process typically takes an additional 1-2 years to complete, after the estimated 2 years to complete the NEPA process. Relocations may take an addition 1 year to complete.
- Regardless of which entity (State or federal) assumes responsibility for property acquisition, all acquisitions and relocations for federally funded projects like the Penn Station Expansion Project must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (the “Uniform Act”). The purpose of the Uniform Act is: 1) to provide just compensation for property acquisition and uniform, fair and equitable treatment of persons who are displaced in connection with federally funded projects; 2) to ensure that relocation assistance is provided to displaced persons and businesses to lessen the emotional and financial impact of displacement; and 3) *to ensure that no individual or family is displaced unless decent, safe, and sanitary housing is available within the displaced person’s financial means.* (Emphasis added.)
- The entity responsible for the property acquisition and relocations likely will hire a relocation consultant to work closely with owners and tenants, explain benefits under the Uniform Act, identify comparable replacement dwellings, and assist with moving and claims for benefits. The following is an example of the type of informational brochure that typically is provided to all owners and tenants to explain the applicable law, regulations and assistance that will be provided to displaced persons and businesses: <https://www.in.gov/indot/files/FHWA%20Relocation%20Brochure%20-%20GREEN.pdf>
- In summary:
  - No final decisions have been made about Penn Station Expansion.
  - Federal law and regulations restrict engagement with owners and tenants regarding property acquisition and relocation prior to completion of a project’s NEPA review and the displacing agency’s compliance with federal grant management requirements.
  - If property acquisitions and relocations of residents and businesses are required for Penn Station Expansion, owners, tenants and the community will have ample, legally mandated advance notice and an opportunity to be heard, and the rights of owners and tenants will be protected under the state EDPL and/or the federal Uniform Act.

**FOR DISCUSSION PURPOSES ONLY**