
Guidance Document 10

Local Government Guidance for Matching Right of Way Contributions on Growth Management (TRIP) Projects

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PURPOSE

Section 339.2819, F.S. provides for state funding of growth management Transportation Regional Incentive Program (TRIP) projects with up to a 50% match with local funds. It is anticipated that local governments will want to contribute rights of way for the project as all or part of their matching share. This document provides the guidance for such contributions.

AUTHORITY

Section 20.23(3)(a), Florida Statutes
Section 334.048(3), Florida Statutes

REFERENCES

23 CFR 710 Q&A
23 CFR 710.507, State and Local Contributions
FDOT Work Program Instructions, Part III, Chapter 7, County Incentive Grant Program
FDOT Work Program Instructions, Part III, Chapter 29, Right of Way
FDOT Work Program Instructions, Part III, Chapter 41,
Rule Chapter 14-66, Florida Administrative Code
Section 339.2819, Florida Statutes
Topic 575-000-000, Right of Way Manual
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended

DEFINITIONS

Exaction: When local governments require the donation of right of way as a condition of the development approval process.

Right of Way: Any real property interest acquired for construction or support of a transportation facility.

State Highway System Projects: Any project that is part of or anticipated to become part of the state highway system.

SCOPE

This guideline is intended to be used by the Florida Department of Transportation (FDOT) Central and District offices of Right of Way. Other offices may be affected if involved in administering related Department programs. The Florida Department of Transportation ***Work Program Instructions, Part III, Chapter 7, County Incentive Grant Program, Chapter 29, Right of Way*** and ***Chapter 41, Transportation Regional Incentive Program (TRIP)*** also includes this guidance. Inclusion within the ***Right of Way Manual*** satisfies the requirement referenced in ***23 CFR 710 Q&A*** that these matters be specified in the State's ***Right of Way Manual***.

10.1 Right of Way Eligible for Contribution

Right of way eligible for local government matching contribution credit are only those properties necessary for the qualified project itself. Right of way for prior projects are not eligible.

Example: An existing 2 lane facility is to be expanded to 4 lanes by the qualified project. The right of way for the existing 2 lane facility is not eligible for contribution credit. However, right of way needed for the additional 2 lanes or right of way held by the local government which are in excess of that necessary for the existing 2 lane facility but legitimately needed for the new 4 lane facility are eligible for credit.

Local governments may desire that developers or other private parties acquiring or contributing right of way on their behalf transfer title directly to FDOT. If the appropriate acquisition procedures have been followed, such transfers can be accepted by FDOT and credit allowed against the local government share of project costs in accordance with ***23 CFR 710.507, State and Local Contributions***.

10.2 Acquisition Procedures Requirement

Projects on the State Highway System or which use federal funding in any phase of the project or state funding in right of way must comply with either state law or rule or federal

law as implemented by the ***Right of Way Manual***. These laws are intended to protect or provide benefits to property owners and relocatees on federal or state funded projects on the National and State Highway Systems. The laws and rules are intended to ensure consistency of fair treatment under the law to citizens on these projects. FDOT must ensure that local governments or private parties involved in acquisition processes, acting on FDOT's or local government's behalf, comply with these requirements.

10.3 Projects off the State Highway System

These are projects which are not currently on the State Highway System and have no reasonable expectation of being added to the system in the future:

- (A) Projects with no Federal Funding in Any Phase:** Right of way acquired by the local government may be accepted for contribution credit regardless of the acquisition method or procedures used. Acquisition methods which do not conform to the requirements of the federal ***Uniform Relocation Assistance and Real Property Acquisition Policy Act (Uniform Act)*** may preclude the use of federal funding in any future phase of the project.

- (B) Projects with Federal Funding in Any Phase:** Right of way must have been acquired in accordance with the federal ***Uniform Act***. This also applies to developer donations where the developer acquires property for his/her benefit on the project through a formal or tacit agreement with the local government. Any right of way purchased for the project through acquisition methods which do not conform to the ***Uniform Act*** may be brought into compliance through remediation actions with approval of the Federal Highway Administration (FHWA). The type and extent of the remediation actions are at the discretion of FHWA and will be coordinated with FHWA by Central Office Right of Way.

10.4 Projects on the State Highway System

These include projects which are currently on the State Highway System and those where there is a reasonable expectation they may become part of the system in the future:

- (A) Projects With No Federal Funding in Any Phase:** Right of way acquired by the local government or private sector persons or groups acting as their agents or on their behalf may be accepted if the acquisition methods were in compliance with laws and rules applicable to FDOT. This includes providing Relocation Assistance to displaced persons in accordance with ***Rule Chapter 14-66, Florida Administrative Code***. Acquisition which

does not conform to the federal *Uniform Act* may preclude the later use of federal funding in any future phase.

- (B) Projects With Federal Funding in Any Phase:** Right of way must have been acquired in conformance to the federal *Uniform Act* as implemented by the *Right of Way Manual*. Lands donated by developers may be accepted, provided that the donor has been fully advised of the right to an appraisal and compensation and has specifically waived that right. Exactions obtained through a lawful ordinance or process may also be accepted. Right of way purchased for the project through acquisition methods which do not conform to the *Uniform Act* may be able to be brought into compliance through remediation actions with approval of FHWA. The type and extent of the remediation actions are at the discretion of FHWA and will be coordinated with FHWA by Central Office Right of Way.

10.5 Requirements for Developer Donations of Right of Way

It is recognized that developers may wish to donate right of way in order to expedite the completion of a project. Acceptance of these donations is acceptable provided that the donor has been fully advised of the right to compensation and has specifically waived that right. If the property being donated was acquired by the donor for his/her own purposes and at donor's own risk, and is now being made available for the project, the donation may be accepted with no necessity to inquire into the acquisition methods used. If, however, the property was acquired for the project under an agreement with the local government, whether written or not, the acquisition methods must comply with laws and rules applicable to FDOT. In that event, the developer is acting as an agent for or on behalf of the local government, and the law and rules apply in the acquisition.

10.6 Requirement for Right of Way Acquired Through Exactions

Right of way acquired through a lawfully adopted exaction ordinance or process can be accepted unless the process results in the developer acquiring the right of way as an agent of, or on behalf of, the local government.

10.7 Valuation of Contributed Right of Way

Once it is determined that right of way proposed for local matching contributions are eligible for all or part of the local government share of the project costs, the issue becomes the amount to be credited, i.e., the value of the property or property rights to the eligible project. Regardless of the valuation technique used, the maximum credit allowed will be the amount of the local government share of the project costs.

10.8 Methods for Determining the Value of Contributed Property

The following are methods that may be used in determining the value of the contributed property:

- (A) **Right of Way Acquisition as a Phase of the Project:** The value of the contribution for purchased parcels is the actual acquisition cost of the property including land, improvements, severance damages and business damages. Documentation of the acquisition costs may be through closing statements, final judgments or similar documents.
- (B) **Previously Purchased, Donated or Exacted Properties:** The contribution value may be either current market value or actual acquisition costs for land, improvements, severance damages, and business damages at the time the property was acquired. The method selected is at the District Right of Way Manager's discretion. The method selected must be used on a consistent basis according to the type of acquisition. Current fair market value may be used in those instances where there has been a significant change in market conditions (not caused by the project) since the property was acquired. The current market value may be established by new appraisal reports, updated appraisal reports, or other data provided by the local government that is confirmed by the District Appraisal Office as reflecting a reasonably accurate estimate of current fair market value. Documentation of actual acquisition costs at the time the property was acquired may be through closing statements, final judgments or similar documents.

NOTE: If there are federal funds in the project, the market value must be established by an appraisal report prepared by an appraiser acceptable to the District Appraisal Office.

TRAINING

None required.

FORMS

None