

Guidance Document 5

Right of Way Requirements for Local Public Agency Projects Funded Through the Department and for State Highway System Projects Funded and Constructed by Others

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PURPOSE

To provide guidance to District and Central Office Managers when determining appropriate right of way procedures for local public agencies to follow as a condition of obtaining financing through the various transportation funding programs administered by the Department. This guidance document also provides direction regarding appropriate right of way requirements for projects on the State Highway System that are not in the Department's work program but are funded and constructed by entities other than the Department.

AUTHORITY

Section 20.23(3)(a) Florida Statutes (F.S.)
Section 334.048(3) Florida Statutes (F.S.)

SCOPE

This guideline is intended to be used by Central and District Offices of Right of Way, Public Transportation and Management and Budget. Other offices may be affected if involved in administering Department programs to fund local public agency projects or approving State Highway System projects being funded and constructed by others.

BACKGROUND

As a condition of obtaining funding, either state or federal, through the Department for transportation projects, a local agency program must agree to acquire any necessary right of way in conformity with the requirements contained in **Section 5.1** and **Section 5.2** of this guideline. This guideline establishes minimum requirements for each circumstance outlined herein and should be applied regardless of whether federal or state monies are

used in the acquisition of the right of way.

REFERENCES

Public Law 91-646
Section 338.251, Florida Statutes
Topic 525-010-300, Local Agency Program Manual
Topic 575-000-000, Right of Way Manual
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended

DEFINITIONS

Federalized Project: Any project with federal participation in any project phase. For the purposes of this guidance document the term federalized will include those projects where there is the anticipation or intent to use federal funds in any project phase. Anticipation includes discussion by local and/or state officials regarding the intended or potential use of federal funds in any phase of the project.

Local Agency Program (LAP): A term specific to federally-funded, locally delivered projects where the Department is the pass-through entity.

Local Public Agency (LPA): A generic term used for any locally delivered project.

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.

5.1 State Highway System Projects

5.1.1 Federalized State Highway System Projects: All right of way acquired for federalized State Highway System projects must be acquired in compliance with ***Public Law 91-646, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended*** and all state laws and rules governing right of way acquisition by FDOT (see ***FDOT Local Agency Program Manual, Chapter 12, Right of Way Procedures*** for federal and state requirements).

5.1.2 Non-Federalized State Highway System Projects: All right of way acquired for

State Highway System projects funded by or through the Department must be acquired in compliance with all laws and rules governing right of way acquisition by FDOT. This does not apply to non-federalized State Highway System projects with state funding provided as a long-term loan, as specified in **Section 5.1.3** below.

5.1.3 Non-Federalized State Highway System Projects with State Funding Provided as a Long-Term Loan:

The Legislature has established certain funding programs whereby the Department provides long-term loans to other governmental entities which have independent statutory authority to provide transportation projects on the state highway system. An example of such a program is the Toll Facilities Revolving Trust Fund created pursuant to Section 338.251, F.S. When a non-federalized project is approved by the Department for a long-term loan and the responsibility for right of way acquisition and construction is the sole responsibility of the entity undertaking the project, the entity may utilize its own acquisition policies and procedures. The entity must also adhere to any specific requirements established by the Legislature or other governing body to qualify for funding under the specific program. It is recommended that as part of the approval process for such projects the Department obtain an agreement with the proposing entity providing that the entity is solely responsible for the project. Under no circumstances shall the entity act as an agent of the Department.

5.1.4 State Highway System Projects with No State or Federal Funding:

In rare instances, the Department may allow projects to be added to the State Highway System which are not in the Department's work program. These projects may be undertaken by entities such as local governments or developers. When such projects are approved by the Department and the responsibility for right of way acquisition and construction is the sole responsibility of the entity undertaking the project, the entity may utilize its own acquisition policies and procedures. It is recommended that as part of the approval process for such projects the Department obtain an agreement with the proposing entity providing that the entity is solely responsible for the project. Under no circumstances shall the entity act as an agent of the Department.

5.2 Non-State Highway System Projects

5.2.1 Federalized Non-State Highway System Projects: All right of way acquired for projects with federal funds in any phase must be acquired in compliance with **Public Law 91-646, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended** (see *FDOT Local Agency Program Manual, Chapter 12, Right of Way Procedures*).

5.2.2 Non-Federalized Non-State Highway System Projects: Where a project is

being funded by or through the Department but is not a State Highway System project and is not federalized the local public agency may utilize its own acquisition policies and procedures.

TRAINING

None required.

FORMS

None.